

DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS, AND RACIAL JUSTICE

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DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS, AND RACIAL JUSTICE

Daniel J. Losen, The Civil Rights Project/Proyecto Derechos Civiles at UCLA

Executive Summary

In March of 2010, Secretary of Education Arne Duncan delivered a speech that highlighted racial disparities in school suspension and expulsion and that called for more rigorous civil rights enforcement in education.¹ He suggested that students with disabilities and Black students, especially males, were suspended far more often than their White counterparts. These students, he also noted, were often punished more severely for similar misdeeds. Just months later, in September of 2010, a report analyzing 2006 data collected by the U.S. Department of Education's Office for Civil Rights found that more than 28% of Black male middle school students had been suspended at least once.² This is nearly three times the 10% rate for white males. Further, 18% of Black females in middle school were suspended, more than four times as often as white females (4%).³ Later that same month, U.S. Attorney General Eric Holder and Secretary Duncan each addressed a conference of civil rights lawyers in Washington, D.C., and affirmed their departments' commitment to ending such disparities.

This policy brief reviews what researchers have learned about racial disparities in school discipline, including trends over time and how these disparities further break down along lines of gender and disability status. Further, the brief explores the impact that school suspension has on children and their families, including the possibility that frequent out-of-school suspension may have a harmful and racially disparate impact. As part of the disparate impact analysis, the brief examines whether frequent disciplinary exclusion from school is educationally justifiable and whether other discipline policies and practices might better promote a safe and orderly learning environment while generating significantly less racial disparity.

Findings of this brief strongly suggest a need for reform. A review of the evidence suggests that subgroups experiencing disproportionate suspension miss important instructional time and are at greater risk of disengagement and diminished educational opportunities. Moreover, despite the fact that suspension is a predictor of students' risk for dropping out, school personnel are not required to report or evaluate the impact of disciplinary decisions. Overall, the evidence shows the following: there is no research base to support frequent suspension or expulsion in response to non-violent and mundane forms of adolescent misbehavior; large disparities by race, gender and disability status are evident in the use of these punishments; frequent suspension and expulsion are associated with negative outcomes; and better alternatives are available.

Based on the research reviewed, the following recommendations for improved policies and practices will help safeguard the civil rights of our schoolchildren and create more effective and equitable learning environments:

- **Public school educators should routinely collect, reflect upon, and publicly report data on school disciplinary removal. Reports at the state, district, and school level (where permissible) should include data disaggregated by race/ethnicity, gender, and disability status in terms of numbers of each group disciplined. These reports should also include the percentage of each group that experiences suspension and expulsion, as well as disaggregated incidence data on the type of infraction and the number of days of missed instruction that results from such removals.**
- **Civil rights enforcement agents should use the *disparate impact* standard of legal review as grounds to pursue remedies for the unjust and unnecessary removal of children from school.**
- **When Congress reauthorizes the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act, it should provide positive incentives for schools, districts and states to support students, teachers and school leaders in systemic improvements to classroom and behavior management where rates of disciplinary exclusion are high – even where disparities do not suggest unlawful discrimination.**
- **Federal and state policy should specify the rate of out-of-school suspensions as one of several factors to be considered in assessments of school efficacy, especially for low-performing schools.**
- **Researchers should investigate connections between school discipline data and key outcomes such as achievement, graduation rates, teacher effectiveness, and college and career readiness.**
- **System-wide improvements should be pursued through better policies and practices at all levels—including an effort to improve teachers’ skills in classroom and behavior management.**

Our public schools are essential to preparing our children to participate fully in our economic and democratic future. With these interests at stake, U.S. policymakers must find more effective ways to educate all of the nation’s children, including those who may be challenging to engage.

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There is an emerging consensus that an evaluation of public education should include multiple measures, not simply test results. Proposed indicators of effectiveness and improvement include an increased percentage of students earning a high school diploma, reductions in chronic absenteeism and grade retention, and an increasing number of students taking and passing advanced-level courses. The frequency of disciplinary exclusion, however, is often considered only as an indicator of school order and safety—as if student discipline had little connection to overarching educational goals.⁴

Often, student misbehavior is attributed exclusively to students themselves, but researchers know the same student can behave very differently in different classrooms. Disruptions tend to increase or decrease with the skill of the teacher in providing engaging instruction and in managing the classroom—areas many teachers say they would like help improving. For example, in a national survey of pre-K through 12th grade teachers, respondents identified their greatest needs as help with classroom management and instructional skills.⁵ Researchers also

The goal of creating safe school environments that are conducive to learning is not in question; rather, policymakers should base decisions on the best evidence about the methods of achieving such environments.

find a strong connection between effective classroom management and improved educational outcomes. And these skills can be learned and developed.⁶ According to the American Psychological Association: “When applied correctly, effective classroom management principles can work across all subject areas and all developmental levels.... They can be expected to promote students’ self-regulation, reduce the incidence of misbehavior, and increase student productivity.”⁷

Research also suggests an inverse relationship between student misbehavior and a teacher’s ability to engage students.⁸ As engagement goes up, misbehavior and suspensions tend to go down.

Yet despite these apparent connections to classroom management and quality of instruction, policymakers often treat student misbehavior as a problem originating solely with students and their parents. This ignores the potentially key roles played by teachers, teacher training, school leadership, or the school system. In fact, seeing students as wholly responsible for misbehavior has led many to embrace narrow policy interventions such as the kind of tough-love embodied by the iconic principal Joe Clark. According to *Time* magazine:

On a single day in his first year, he threw out 300 students for being tardy or absent and, he said, for disrupting the school. “Leeches and parasites,” he calls such pupils. Over the next five years he tossed out hundreds more.⁹

Clark's strong-arm discipline methods, portrayed by Morgan Freeman in the movie *Lean on Me*, can be summarized as kicking out the *bad kids* so the *good kids* can learn. But there is no evidence that Clark's approach worked to improve the education of well-behaved students, let alone for the students removed from school.¹⁰ Still, many echo Clark's sentiments, believing that students who want to be in school (and their teachers) should not be hampered by persistently disruptive students. Moreover, this approach has a common-sense appeal to ideas of merit.

The goal of creating safe school environments that are conducive to learning is not in question; rather, policymakers should base decisions on the best evidence about the methods of achieving such environments. In policy debates, the issue is sometimes mischaracterized as a choice between setting and enforcing clear behavioral expectations or having lax discipline. It is not. Given the connections researchers have established between students' misbehavior and such factors as teachers' instructional and management skills, it is reasonable to ask three related questions: At what point should frequent suspension and expulsion raise questions about a school's disciplinary policies, discrimination, the quality of its school leadership, and the training of its personnel? How do such policies affect the school environment as well as the students who are removed and their families? Can educators instill order in ways that do not rely heavily on disciplinary exclusion, but instead enable the vast majority of students to stay in school and succeed?

To explore these and related questions, this brief reviews available data on the frequency of suspension, including comparative data for subgroups. It goes on to explore whether heavy reliance on such measures is educationally justifiable, whether there are alternative strategies available, and whether current indicators suggest possible legal violations. Following this review of current research on the issue, recommendations for change are outlined. A companion publication uses those recommendations to suggest federal and state legislative language, concretely illustrating what the recommendations entail.

What Is Known about Current Use of Policies that Remove Students from School?

Policies that result in out-of-school suspensions and expulsions are described as "exclusionary," because they remove students from school. This segment of the brief provides an overview of available data about these policies, as well as the findings that reasonably follow from those data. The emphasis of the analysis is placed on "out-of-school" suspensions, rather than expulsions, in part because the numbers of suspensions dwarf the numbers of expulsions. According to U.S. Department of Education's (ED) 2006 Civil Rights Data Collection, more than 3.25 million students, or nearly 7% of all students enrolled in K-12, were estimated to have been suspended at least once.¹¹ In contrast, the same 2006 survey estimated 102,077 expulsions.¹²

Sources and Scope of Available Data

States and districts compile some reports concerning disciplinary policies, but information available to the public varies widely from state to state and from district to district. Other

reports and data are prompted by federal legislative requirements, but, as described below, these too leave many questions unanswered.

Data from the U.S. Office for Civil Rights

Since 1968, the U.S. Department of Education’s Office for Civil Rights (OCR) has been collecting data on out-of-school suspension and expulsion.¹³ OCR administers a biennial survey, which typically includes one-third to one-half of U.S. public schools and districts.¹⁴ Schools are instructed to count each suspended student only once, even if the student received several suspensions. This head-count data can be used to determine what percentage of a given subgroup was suspended. Researchers point out, however, that the unduplicated data yield a conservative estimate of students’ time out of school because the data do not capture repeat suspensions or the length of the suspensions.¹⁵ OCR data on expulsions are reported separately, with similar applicable reporting rules.

The OCR website provides national data as well as data on states, districts, and individual schools, disaggregated by race and ethnicity as well as gender. Survey data on students with disabilities include only suspensions of longer than 10 days (known as “long-term” suspension), which are not disaggregated by race in the public report. However, the most current data collection has been expanded in many ways, and data for students with disabilities can now be compared with data for their non-disabled peers. Several new categories, such as “in-school” suspensions, school-based arrests, and school referrals to law enforcement, were also added and will soon be available to the public.¹⁶ Changes will also provide more information on the number and length of suspensions.¹⁷

Data from ESEA and IDEA

Recipients of grants related to the Safe and Drug-Free Schools and Communities Act (SDFSCA)—part of the Elementary and Secondary Education Act (ESEA, currently known as No Child Left Behind)—are required to report data on the frequency, seriousness and incidence of violence and drug-related offenses that result in suspension or expulsion.¹⁸ Suspensions for lesser offenses are not included, nor are the data required to be disaggregated by student racial or ethnic subgroups. Like OCR data, SDFSCA data reflect a sample of the population, and states are not required to report annually.

The ESEA data does not match the far more extensive requirements of the Individuals with Disabilities Education Act (IDEA). The IDEA requires schools to provide annual reports based on a wide range of discipline data and analyses, including incidence data. Specifically, the IDEA requires reports on long-term suspensions and expulsions for students who were removed to an interim alternative educational setting; reports must disaggregate data by race, LEP status, gender and disability category. In addition, states must report for each of these groups “the incidence and duration of disciplinary actions ... including suspensions of 1 day or more.”¹⁹ However, public reports are explicitly mandated only at the state level and to the Secretary of Education.

State and District Level Data

A review of discipline data reported independently by each state is beyond the scope of this brief, but a quick survey of a few states illustrates the variability in reporting. Some states provide no district- or school-level racial data on school discipline in reports accessible to the public, even though they may collect such data.²⁰ In contrast, North Carolina provides an annual and highly comprehensive report to the public, with data disaggregated by race at both school and district levels.²¹ Similarly, Wisconsin annually provides disaggregated data by race, gender, and disability status. These data are available to the public on the state's website, allowing for an examination of discipline disparities for every district, by grade level and school type.²² Other states reporting racially disaggregated discipline data include Colorado,²³ Maryland,²⁴ Minnesota,²⁵ Florida²⁶ and Texas.²⁷

Frequency and Trends

Existing data, although limited in important ways, strongly suggest increasing use of exclusion as well as clear patterns of disparity.

Frequency and Racial Disparity

School suspensions have risen steadily since the early 1970s, and racial disparities have grown considerably as well.²⁸

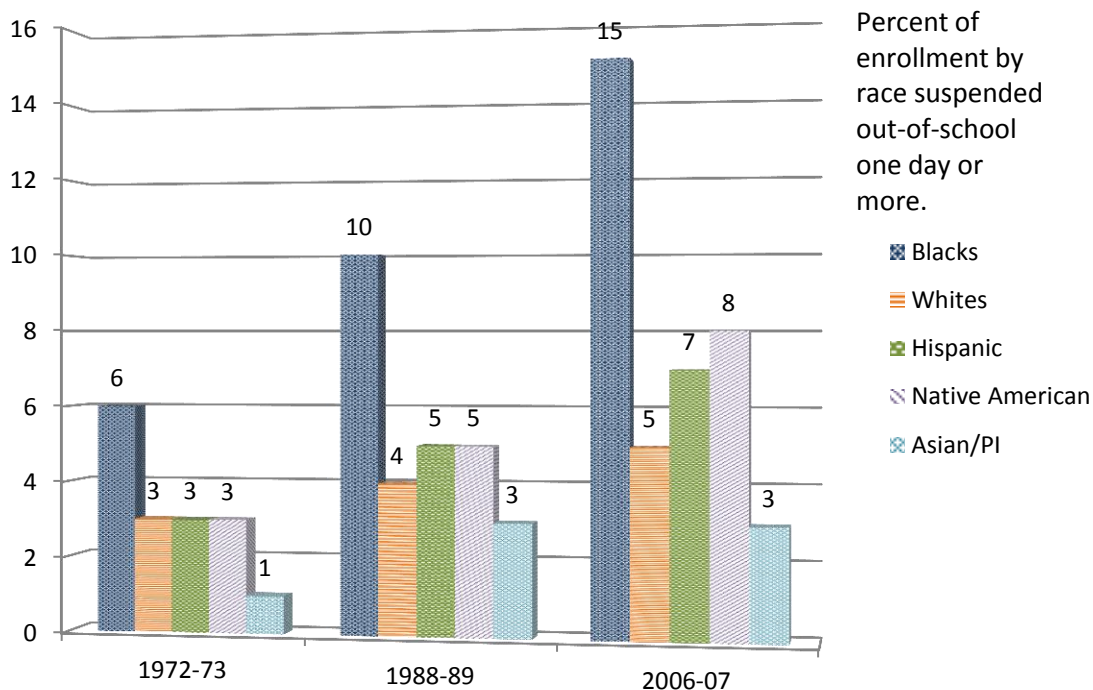


Figure 1. Racial Impact of the Rising Use of Suspension²⁹

The data show substantial increases for students of all races, with a growing racial discipline gap. Specifically, K-12 suspension rates have more than doubled since the early 1970s for all non-Whites. Concurrently, the Black/White gap more than tripled, rising from a difference of three percentage points in the 1970s to over 10 percentage points in 2006, when more than one out of every seven Black students enrolled was suspended at least once.

Students with Disabilities

Data for students between the ages of 3 and 21 who have disabilities indicate that they too experienced high rates of out-of-school suspensions. A review of state reports to the U.S. Office of Special Education Programs, for instance, indicates clear disparities: In 2006, at least one district in each of 46 states imposed long-term suspensions or expulsions on students with disabilities significantly more often than on nondisabled students. In some states, including Virginia, Tennessee, Delaware, Connecticut, Florida, Maryland, and Washington, 19% or more of all districts reported that there were “significant discrepancies” in long-term exclusionary discipline between students with disabilities and their non-disabled peers.³⁰

Racial disparities in discipline also appear within the subgroup of students with disabilities. As the table below reveals, many states in 2008 suspended more than one in five Black students with disabilities, and three states (Nebraska, Wisconsin and Nevada) suspended more than 30% of all Black students with disabilities. These reported rates are for suspensions of one day or more, not long-term suspensions.

Table 1. Racial Disparities in Suspensions of Students with Disabilities:

Percentages of students with disabilities who were suspended in 2007-2008, disaggregated by race, nationally and in the 10 states with highest rates for Black disciplinary out-of-school suspension.

	Black	White	Hispanic	American Indian/Alaska Native	Asian/Pacific Islander	Black/White Gap in Percentage Points
U.S Average	16.64	6.67	7.8	10.31	6.67	9.97
Nebraska	36.76	6.4	7.57	15.63	3.89	30.36
Wisconsin	34.39	7.15	13.42	17.43	4.05	27.24
Nevada	30.92	11.76	15.19	13.57	9.49	19.16
Delaware	28.39	11.43	17.36	14.29	3.32	16.96
Texas	25.98	8.34	12.84	11.23	3.98	17.64
Minnesota	24.24	6.41	10.18	16.22	5.34	17.83
Rhode Island	23.46	9.84	19.19	17.63	8.55	13.62
South Carolina	22.85	11.01	10.42	39.84	4.28	11.84
Louisiana	21.82	10.12	10.02	11.17	5.17	11.70
Georgia	22.17	8.52	9.33	11.74	3.70	13.65

Source: <http://www.ideadata.org>, Table 5-18; Calculated as a percentage of students with disabilities ages 3-21.

Middle School, Race and Gender

The 2010 report, *Suspended Education: Urban Middle Schools in Crisis*, revealed profound racial and gender disparities at the middle-school level, showing much higher rates than appear when aggregate K-12 data are analyzed. For example, based on OCR data from every state, 28.3% of Black males in middle school were suspended, compared with just 10% of White males. Moreover, 18% of Black females were suspended, compared with just 3.9% of White females. The report's further analysis of data for 18 of the nation's largest districts found that in 15 of them, at least 30% of all enrolled Black males were suspended one or more times.³¹ Across these 18 urban districts, hundreds of individual schools had extraordinarily high suspension rates—50% or higher for Black males.³²

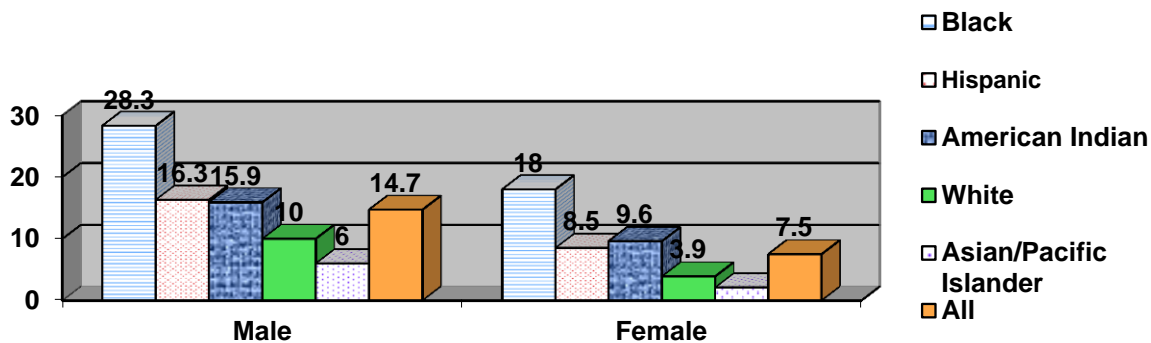


Figure 2. Percent of Enrolled Group Suspended

While the *Suspended Education* report was based on OCR data, which is accessible on-line, the OCR itself does not provide reports on middle school trends or disseminate analyzed data to the public in a user-friendly report format. The only district-wide discipline data that are readily accessible from the OCR lump together all grades, K-12. Without reports like *Suspended Education* that present analyzed district data by type of school (e.g., elementary, middle or high school), the extraordinarily high rates of suspension in middle school would be hard to detect.

Can Current Disparities Be Justified?

The data clearly demonstrate that some student subgroups receive a disproportionate number of exclusionary punishments. Why this situation is problematic is explored in this segment. Before turning to that discussion, however, it is necessary to address a frequently suggested explanation for some of the largest disparities: that some children—especially Black children—simply misbehave more than others.

Greater Suspension Rates Are Not Clearly Linked to More Frequent or More Serious Misbehavior.

Research on student behavior, race, and discipline has found no evidence that African American over-representation in school suspension is due to higher rates of misbehavior.³³ A 2010 study by Johns Hopkins researcher Dr. Katherine Bradshaw, based on 21 schools, found that even

when controlling for teacher ratings of student misbehavior, Black students were more likely to be sent to the office for disciplinary reasons.³⁴

Other studies suggest that racial disparities in discipline are larger in the offense categories that are subjective or vague, and vice versa. Specifically, Dr. Russ Skiba and his colleagues reviewed racial and gender disparities in school punishments in an urban setting and found that White students were referred to the office significantly more frequently for offenses that are relatively easy to document objectively (e.g., smoking, vandalism, leaving without permission, and using obscene language).³⁵ African American students, however, were referred more often for behaviors that seem to require more subjective judgment on the part of the person making the referral (e.g., disrespect, excessive noise, threatening behavior, and loitering).³⁶ In short, the researchers concluded that there is no evidence that racial disparities in school discipline can be explained by more serious patterns of rule-breaking among African American students.³⁷ It appears that White students are engaging more often in those behavioral transgressions that can be documented and counted without much subjectivity or discretion coming into play. However, for those offenses that require a judgment call by teachers, administrators and others, Black students are disproportionately called out. This suggests two possibilities: perhaps Black students focus their misbehavior on those types of activities that call for a subjective judgment of such misbehavior, or perhaps Black students are being unfairly singled out when it comes to prosecuting such misbehavior.

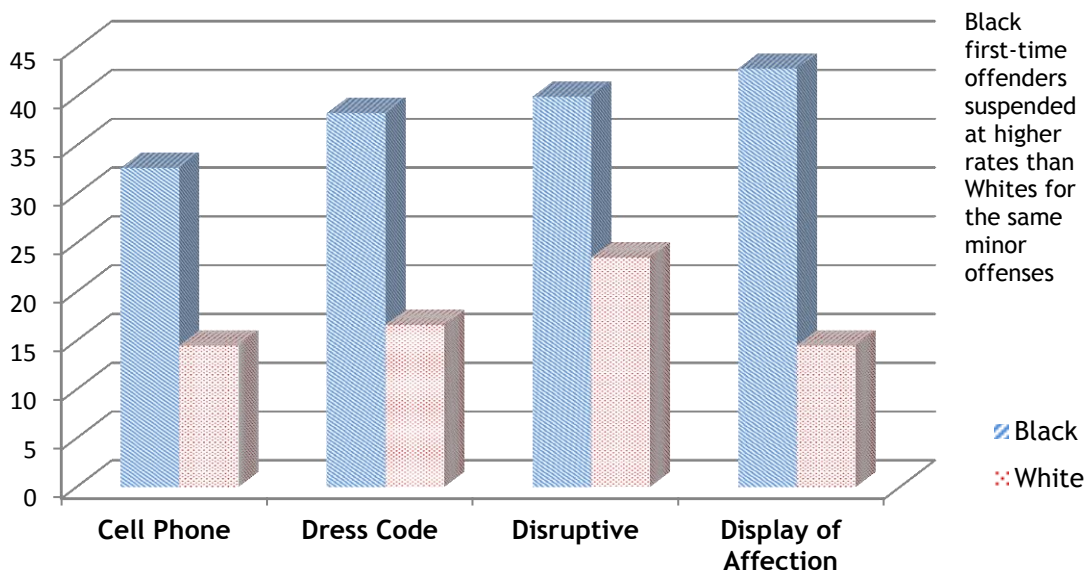


Figure 3. North Carolina Black/White Suspension Rates ³⁸

Suspensions for selected categories of infractions; first offense.

Similar conclusions are suggested by an analysis of recent data from North Carolina concerning first-time offenders. The data were collected in order to file a complaint with the OCR in September of 2010 arguing, in part, that the discipline policies and practices in Wake County were discriminatory. As the accompanying sample illustrates, Black first-time offenders in the State of North Carolina were far more likely than White first-time offenders to be suspended for

minor offenses, including cell-phone use, disruptive behavior, disrespect and public displays of affection.³⁹

This level of data on first-time offenders, disaggregated by race and type of offense, was obtained through a freedom-of-information request; it is not generally accessible or reported to the public. The Wake County complaint asserted that district data, like the state data charted above, demonstrated that for the same category of offense, far higher percentages of Black first-time offenders received out-of-school suspensions than of White first-time offenders.⁴⁰

Other kinds of research also suggest that suspensions are significantly influenced by factors other than student misbehavior.⁴¹ For example, researchers have concluded, after controlling for race and poverty, that the attitude of a school's principal toward the use of suspension correlated highly with its use. Principals who believed frequent punishments helped improve behavior and those who tended to blame behavioral problems on poor parenting and poverty also tended to suspend more students than those principals who strongly believed in enforcing school rules but who regarded suspension as a measure to be used sparingly.⁴² This evidence suggests that factors other than student behavior (in this case, principals' beliefs) can influence suspension and expulsion rates.

Lack of Educationally Justifiable Outcomes

Contrary to popular belief, most suspensions are not for guns, drugs or violence. Rausch and Skiba reported that only 5% of all out-of-school suspensions in the state they studied were issued for disciplinary incidents typically considered serious or dangerous, such as possession of weapons or drugs.⁴³ The remaining 95% of suspensions fell into two categories: *disruptive behavior* and *other*.⁴⁴ Accordingly, the high rates of disciplinary removal from school currently seen in American schools cannot reasonably be attributed to the necessary responses to unlawful or dangerous misbehavior.⁴⁵ Given the prevalence of less serious offenses, what, then, are the arguments that might justify harsh and frequent removal policies?

Three reasons appear to account for the common use of out-of-school suspension or expulsion for non-violent or repeated school code violations:

- to improve the student's behavior in the future by getting the parents' attention and active involvement;
- to deter other students from misbehaving; and
- to ensure that the school environment is conducive to teaching and learning.

These justifications, which are not mutually exclusive, all merit closer examination.

Exclusion to Get Parental Attention

Ideally, heightened parental awareness would foster a more effective partnership with educators and a collaborative effort to teach appropriate behavior. The expectation is that more parental involvement will reduce disruptive behavior and in turn improve the learning environment. The reality, however, may be far from this ideal. To the extent that a child's persistent misbehavior is

a reflection of serious problems or weaknesses attributable to family or home, there is little reason to believe that removing a child from school to spend more time in such a dysfunctional setting will improve behavior.

Moreover, even for the most effective parents, a child's suspension can have harmful ramifications for the entire family, such as lost work and income or even employment, particularly for poor or single parents. For some parents, the only alternative may be to leave a child unsupervised. Consider the following research-based policy statement on out-of-school suspension and expulsion, issued by the Academy of American Pediatrics' Committee on School Health:⁴⁶

Children who are suspended are often from a population that is the least likely to have supervision at home. According to the 2000 US census, children growing up in homes near or below the poverty level are more likely to be expelled. Children with single parents are between 2 and 4 times as likely to be suspended or expelled from school as are children with both parents at home, even when controlling for other social and demographic factors....

[C]hildren most likely to be suspended or expelled are those most in need of adult supervision and professional help. In one study, 15% of children who have never been abused but had witnessed domestic violence were suspended from school in the previous year. This was attributed to heightened aggression and delinquency from living in a violent home environment. For students with major home-life stresses, academic suspension in turn provides yet another life stress that, when compounded with what is already occurring in their lives, may predispose them to even higher risks of behavioral problems.⁴⁷

Thus, there seems little reason to accept the claim that exclusion will secure productive parental support for the children most likely to be excluded from schools.

Exclusion as Deterrence

If frequent use of suspensions deters future misbehavior, we would expect to see a positive cycle, with each new suspension improving the school environment. Yet, according to the American Psychological Association, which reviewed the research literature available on this topic, there is no evidence that zero-tolerance disciplinary policies and their application to mundane and non-violent misbehavior improve school safety or student behavior.⁴⁸ The above-mentioned *Opportunities Suspended* report summed up the research on the efficacy of suspension as follows:

Longitudinal studies have shown that students suspended in sixth grade are *more* likely to receive office referrals or suspensions by eighth grade, prompting some researchers to conclude that suspension may act more as a *reinforcer* than a punisher for inappropriate behavior (Tobin, Sugai, & Colvin, 1998).... Other research raises doubts as to whether harsh school discipline has a deterrent value (Raffaele Mendez 2003).⁴⁹

Raffaele Mendez, who studied longitudinal data on students from 150 schools in Florida's Pinellas County, found a strong relationship (after controlling for other at-risk factors) between the number of sixth-grade suspensions and the number of seventh- and eighth-grade suspensions.⁵⁰ She pointed out that the county provided no real assistance to students to help them correct their behavioral problems. She also explained that frequent use of suspension alone has no measurable positive deterrent or academic benefit to either the students who are suspended or to non-suspended (observer) students.

In sum, research offers little support for the theory that suspensions deter future misbehavior.

Exclusion to Improve the Teaching and Learning Environment

At least one study does suggest that zero-tolerance discipline policy improves the school environment for well-behaved students by improving safety and reducing distractions.⁵¹

Indeed, when teachers seek to remove a seriously disruptive student, they generally believe the removal will help them be more effective with the students who remain. In line with such thinking, the American Federation of Teachers (AFT) in West Virginia recently launched a successful lobbying campaign called "Discipline Without Delay," which helped to move the state legislature to strengthen a 1995 Act by giving teachers and bus drivers more authority to exclude "disruptive students."⁵² The AFT has highlighted this campaign in its national literature as a model of how the union can change policy to benefit teachers.⁵³

Certainly suspending disruptive children might improve teaching conditions by relieving some of the teacher's burden and stress. Yet the problems are generally not so simple as a few difficult students generating most behavior problems. For instance, as Professor Pedro Noguera observed, when a school in Oakland experimented with allowing teachers to remove "disruptive students" to a separate class, many teachers soon reported that in the wake of their departure, "other children who had not been particularly disruptive had emerged as major behavior problems."⁵⁴ In cases such as this, disruptive behavior may be blamed on a few "bad actors" when in fact the ones setting the stage may be inspiring the complained-of poor performances.

Most importantly, if suspending large numbers of disruptive students helped improve instruction and the learning environment, better academic results should be expected. But this does not seem to happen. Instead, research on the frequent use of school suspension has indicated that, after race and poverty are controlled for, higher rates of out-of-school suspension correlate with lower achievement scores.⁵⁵

Negative Impact on Students Who Are Removed

Since children are not expendable, since many suspensions respond to behavior for which many other students are *not* suspended, and since Black students are disproportionately hit by these discretionary removals, we must be concerned about how disciplinary removal affects the removed students, and not just those who remain in class. The notion that schools should "kick out the bad kids so the good kids can learn" violates a commitment to equal educational opportunity for all students.

One review of research exploring why students drop out found that “[s]everal studies, mostly based on case studies, have demonstrated how schools contribute to students’ involuntary departure by systematically excluding and discharging troublemakers and other problematic students.”⁵⁶ Failing to provide adequate resources and supports for such students can, according to some researchers and advocates, contribute to inappropriate behavior ⁵⁷ and thereby increase

The notion that schools should “kick out the bad kids so the good kids can learn” violates a commitment to equal educational opportunity for all students.

their likelihood of dropping out. For example, another study suggests that many students who eventually drop out had exhibited red flags, including poor behavior, suggesting they needed more support or intervention, but adequate help never came.⁵⁸ Responding to this sort of evidence, states and districts are increasingly treating suspensions and other indicators of poor behavior as early warning indications of dropout risk. For example, the Massachusetts Department of Education published a report highlighting the high risk for dropouts and the need for earlier interventions, citing “numerous suspensions” as among the leading indicators.⁵⁹

Further, and as noted earlier, the exclusion of these students presents immediate risks to their success and well-being. In the words of the Academy of Pediatrics:

Without the services of trained professionals (such as pediatricians, mental health professionals, and school counselors) and without a parent at home during the day, students with out-of-school suspensions and expulsions are far more likely to commit crimes. A Centers for Diseases Control and Prevention study found that when youth are not in school, they are more likely to become involved in a physical fight and to carry a weapon.... The lack of professional assistance at the time of exclusion from school, a time when a student most needs it, increases the risk of permanent school drop-out.⁶⁰

In fact, many in law enforcement have echoed the Academy’s concerns about the repercussions from having high numbers of unsupervised suspended students.⁶¹

Overall, links between suspensions and negative outcomes—such as dropping out and heightened risks to students’ mental and physical well-being—raise serious questions about the justification for suspending children, especially for relatively minor violations. This is particularly the case because most anticipated benefits of exclusion have not been documented.⁶²

Might Disparities Demonstrate Non-Compliance with Existing Law?

Uneven educational outcomes for various subgroups are unacceptable, as illustrated by the focus in No Child Left Behind on disaggregated subgroups. *All* children are expected to have the educational opportunities that will allow them to have successful outcomes. As related

specifically to disciplinary policy, the legislation discussed below sets forth a legal framework grounded in such expectations of equitable treatment.

IDEA and Significant Disproportionality

Concerned that students with disabilities tend to be suspended at higher rates and with racial disparities, Congress required that each state receiving funding under the Individuals with Disabilities Education Act (funding that all states receive) must provide assurances that, “The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of *long-term* suspensions and expulsions of children with disabilities among local educational agencies in the State; or compared to such rates for nondisabled children within such agencies.”⁶³ Where such discrepancies occur in long-term suspensions, states must review and consider revising (or require a local educational agency to revise) “its policies, practices, and procedures relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards” to ensure compliance.⁶⁴

Congress further provided for states to examine each school district’s data to determine if significant disproportionality based on race and ethnicity is occurring with respect to the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.⁶⁵ Where the data do point to “significant disproportionality,” districts are required to use a portion of their federal funds for “early intervening services,” which can include professional development to help teachers provide improved academic instruction and behavioral interventions.⁶⁶ States are allowed to come up with their own definitions of “significant disproportionality” subject to the review of the U.S. Secretary of Education.⁶⁷

Although the issue is beyond the scope of this brief, legal scholars, researchers, educators and civil rights advocates have complained that the provisions regarding the reporting and analysis of suspensions disaggregated by race have not been properly implemented.⁶⁸ Such complaints suggest that the legislative intent for disparities to trigger the mandated response of “early intervening services” is not being realized.

Civil Rights and Disparate Impact Theory

In March of 2010, Secretary Arne Duncan delivered a speech on the importance of strengthening civil rights enforcement in education, highlighting racial disparities in the use of suspension and expulsion. The Secretary suggested that students with disabilities and Black students, especially males, were suspended far more often than their White counterparts and often punished more severely for similar misdeeds.⁶⁹ Subsequently, U.S. Attorney General Eric Holder and Secretary Duncan each addressed a conference of civil rights lawyers in Washington D.C. and affirmed their departments’ commitment to remedying these disparities.⁷⁰ As part of their promised efforts, they indicated that new guidelines would be released in the winter of 2011 to help states and districts determine whether their discipline policies may have an unlawful “disparate impact” under OCR regulations.⁷¹

Under the “disparate impact” theory, a method of discipline that is racially neutral on its face but has a discriminatory effect may be found unlawful absent sufficient justification such as educational necessity. Even if a school’s action is found to be justified, it still may be unlawful if equally effective, less discriminatory alternatives are available.⁷²

The disparate impact approach enables enforcement agencies to address intentional discrimination hiding behind apparently neutral practices as well as unconscious or “implicit” bias, where there is no conscious attempt to discriminate.⁷³ The prevalence of implicit bias, including racial bias against Blacks, is well supported in psychological research.⁷⁴ Such bias may affect the choice of a policy or practice resulting in disproportionate suspensions for children of color. Similarly, disciplinary decisions made by individual teachers with unconscious racial bias may cumulatively add up to large racial disparities at the school or district level.

Opposition to the disparate impact approach is typically voiced as a concern that schools might set racial quotas on discipline, thus jeopardizing the safety of students and staff.⁷⁵ This fear seems unfounded, however, for two reasons. First, research does not support the underlying assumption that suspending and expelling students increases safety, particularly for nonviolent and non-drug offenses. Second, this argument loses sight of the fact that such administrative complaints can result only in injunctive relief,⁷⁶ which could be as simple as ending or replacing the discriminatory policy or practice; monetary damages would not be paid to complainants.

A second objection comes from researchers who argue that poverty, not race, is the determining factor underlying disparate impact. Research does show that poverty correlates with an increased risk for suspension.⁷⁷ But according to Skiba and Horner, “when the relationship of socio-economic status to disproportionality in discipline has been explored directly, race continues to make a significant contribution ... independent of socioeconomic status.”⁷⁸

Although several studies have included controls for poverty and still found race predictive, it is true that the high correlation of poverty and race makes it difficult to isolate race in relevant research.⁷⁹ This issue, however, distracts from the reality that these policies have a disproportionate impact on students of color. It also sidesteps the important question of whether the *frequent* use of out-of-school suspension is ever an educationally sound and justifiable response. As the above discussion indicated, the justifications most often provided for such policy are not supported by research evidence. The remaining question, then—both for consideration under the terms of disparate impact theory and also simply for sound educational policy—is whether there are in fact more effective and productive and less discriminatory alternatives available.

Are Better Alternatives Available?

Evidence does suggest the viability of alternatives to frequent disciplinary exclusion. In Baltimore public schools, for example, recent reforms illustrate one such alternative policy. According to *The New York Times*:

Since he [the superintendent, Dr. Andres Alonso] was hired, the dropout rate has fallen by half, more students are graduating and for the first time in many years, the system has gained students instead of losing them. ...

Next he took on the culture of the schools, which relied heavily on suspensions for discipline, a practice Dr. Alonso strongly opposed. “Kids come as is,” he likes to say, “and it’s our job to engage them.”

Now school administrators have to get his deputy’s signature for any suspension longer than five days. This year, suspensions fell below 10,000, far fewer than the 26,000 the system gave out in 2004.

Instead, schools handled discipline problems more through mediation, counseling and parent-teacher conferences, and offered incentives like sports and clubs. Mental health professionals were placed in every school with middle grades. “There was a lot of punishment energy focused on the kids,” said Michael Sarbanes, executive director of community engagement. “We were trying to overcome a perception that had built up over years that we don’t want you.”⁸⁰

The Baltimore example suggests that alternatives to the harsh yet increasingly popular measures may prove more effective in creating school communities that are more productive and inclusive. Moreover, there is research evidence that suggests there are many effective alternatives that promote safe and orderly schools and that reduce delinquency—while keeping students in school.⁸¹ Some of those alternatives are described briefly below.

System-wide Positive Behavior Interventions and Supports

System-wide Positive Behavior Interventions and Supports (alternatively abbreviated as either PBIS or SWPBS) is a well-established systemic and data-driven approach to improving school learning environments. Its emphasis is on changing underlying attitudes and policies concerning how behavior is addressed.⁸² Several prominent civil rights organizations have been seeking greater federal support for PBIS, and several child advocacy groups point to successful PBIS-based interventions.⁸³

PBIS consists of three different levels of intervention. The school-wide level affects every member of the school community. Its goal is to ensure a safe and effective learning environment by emphasizing appropriate student behavior and simultaneously working to reduce punitive disciplinary measures. At this level, PBIS entails frequent monitoring of office referrals for discipline and setting school-wide goals for reducing these referrals. The system of interventions and supports is designed to shift the focus from the individual student as the primary problem to the “collective behaviors, working structures, and routines of educators” and to “the whole school as the unit of analysis.”⁸⁴ Numerous studies have found positive results with school-wide PBIS.⁸⁵

The second and third levels of intervention provide additional supports and services for smaller numbers of students who exhibit challenging behavior. These include interventions conducted

in individual classrooms and focus more on specialized instruction of school expectations, skills training for students, or other strategies tailored to specific behaviors.

One study of an otherwise successfully implemented PBIS system, however, demonstrated that Black and Latino students nevertheless received more severe punishment for the category of

There is research supporting the possibility that frequent suspensions are used to avoid accountability for the test scores of lower achievers.

minor misbehavior and concluded that one cannot assume that interventions intended to improve behavior will be effective to the same degree for all groups.⁸⁶ The researchers suggested that PBIS might benefit by using data disaggregated by race, and that a more gender- and disability-conscious, culturally responsive PBIS approach is possible. PBIS systems do, in fact, enable users to produce school ethnicity reports. Although underutilized, the use of ethnicity reports by districts implementing PBIS appears to be rising.⁸⁷

Support and Training for Teachers and Leaders

A wealth of research links effective classroom management with improved educational outcomes.⁸⁸ The significantly higher rates of suspensions as students move from elementary to middle school suggest that classroom management problems become greater as young children become adolescents and are more likely to challenge authority figures.

One question researchers in the field have raised is whether schools are increasingly punishing students in school for behavior that psychologists consider within the normal range for adolescents. If so, teachers serving adolescents may need more specialized training and greater understanding of adolescent development. Large racial differences in suspension rates also raise questions about whether training to bolster classroom management skills might be even more useful if it included components of multicultural sensitivity to make teachers aware that implicit bias may affect how they discipline their students. Likewise, the data suggest that teachers might benefit from increased support and training in working with students with disabilities, who are increasingly mainstreamed in general education classrooms.

Leadership training might also generate improvements. As noted earlier, variations in a leader's approach to school discipline can make a profound difference in attendance and educational outcomes.⁸⁹ Therefore, significant gains might be made toward both reducing school exclusion and improving academic progress if schools replaced the attitude of kick-out proponents like Joe Clark with the attitude embraced by Baltimore's superintendent Dr. Alonso: "Kids come as is, and it's our job to engage them."⁹⁰

Other Strategies

In addition to PBIS and professional development strategies, other methods include "ecological approaches to classroom management" and "social emotional learning." Research suggests these might be most effective if implemented in combination with PBIS.⁹¹

Discussion: Implications for Change

Given the above evidence, it seems time to ask whether it is fundamentally sound policy for schools in a *public* education system to remove large numbers of children from school on behavioral grounds that other schools successfully address without removal.

As Harvard Law School Dean Martha Minow illuminates in her book, *In Brown's Wake*, the decision in *Brown v. Board of Education* represents America's commitment to the ideal of equal educational opportunity for a broad array of groups that were at one time lawfully excluded—including students with disabilities whose behavior was problematic for educators.⁹² Now, however, there is evidence that decision makers may be retreating from the *Brown* commitment and are excluding students simply because they might be challenging to teach.

In addition, although the issue is beyond the scope of this brief, it is equally important to consider whether the large and increasing racial disparities in disciplinary exclusion may reflect a long-standing historical pattern of intentional discrimination.⁹³ Broad disparities in disciplinary exclusion, including large racial disparities among students with disabilities, raise questions about the root causes of behavioral problems, the nature of educational environments, and norms that may be consciously or unconsciously more hostile to some groups.

Overall, research suggests that less exclusionary approaches yield better behavioral and academic outcomes. It is true that the literature is not yet robust enough to establish suspension as a direct cause of lower achievement or dropping out, and research does not point clearly to a single “best” disciplinary system. Yet the clear need for more data analysis should not cause policy paralysis. What is clear at this point is that policy decisions increasingly favoring harsher discipline are not justified by existing research. Suspending students reduces instructional time and often results in those most in need of adult supervision being left unsupervised. Moreover, the observed disparities suggest the possibility of unlawful discrimination. Even without a perfect solution, educators can replace harmful policies and practices with more reasonable and less discriminatory research-based ones.

Improvements in Policy and Assessment

The frequent use of disciplinary removal is likely not educationally justifiable but is likely to have a negative impact on students and their families. Disciplinary exclusion for minor offenses is an issue of *learning and educational opportunity*; removing students from the classroom reduces the amount of instruction they receive and is associated with lower educational outcomes, including a greater risk of dropping out. This argues in favor of alternative strategies that can improve school climate and student safety without removing students from school. Moreover, if assessment of schools takes into account disciplinary data like that discussed here, we may strengthen our measures of school effectiveness and positively influence achievement.

It is also necessary to acknowledge that current trends are not occurring in a vacuum. Federal policy currently provides an incentive for school leaders to remove low-achieving students from the cohort of students used to evaluate school performance. These lower achievers are more likely to be disruptive.⁹⁴ No Child Left Behind has imposed accountability measures for schools

based primarily on student test results—but only for the test scores of students who attend a school for a full academic year.⁹⁵ Students who are frequently suspended or expelled are less likely to meet that threshold. There is, in fact, research supporting the possibility that frequent suspensions are used to avoid accountability for the test scores of lower achievers,⁹⁶ and civil rights advocates have expressed concern that test-driven accountability for schools encourages a range of school policies and practices—including frequent suspension for minor offenses—that “push-out” low-achieving students, especially students of color.⁹⁷

Therefore, it is critically important to replace these counterproductive policy incentives with incentives to improve achievement scores and graduation rates while also reducing disciplinary exclusion. The alternatives discussed above, PBIS in particular, have taken root and are gaining support as a matter of sound general education strategy; they deserve greater policy support.

Improvement in Enforcement and Reporting

As discussed above—and as recently acknowledged by Secretary Duncan and Attorney General Holder—greater enforcement of existing legislation is necessary. IDEA provisions as well as Civil Rights data and disparate impact theory offer tools to ensure that specific subgroups of students do not suffer discrimination in their schools. Until recently, the evidence suggests that these tools had not been utilized to stop discriminatory practice. Those charged with reviewing the data and ensuring compliance need to meet their responsibility for monitoring school performance.

In addition, it is essential that more information be made available to the public. The lack of *annually* and uniformly collected data on how out-of-school exclusion is being used, and the lack of comprehensive and coherent reports to the public about discipline at the federal, state, district and school levels, make the current picture incomplete. Although the latest federal civil rights data collection will substantially fill some of the holes in our knowledge base, many gaps will remain.

At the moment, little information is publicly available: more reports are needed, and the public must be given access to them. Otherwise, it is exceedingly difficult for parents, civil rights advocates and policymakers to determine whether discrimination may be occurring in a particular school or district and to press for relief in cases where it is. Moreover, as new policies are adopted, it will be essential to monitor conditions to determine whether they are having the desired effects.

Recommendations

The current overemphasis on exclusion as a response to misbehavior is unwise and unproductive. While efforts to persuade policymakers to replace harmful or ineffective policies and practices are hampered by the fact that too little information on the current situation is available, enough is known to suggest several changes in the nation’s present course. Therefore, and based on the research reviewed above, the following recommendations for improved

policies and practices will help safeguard the civil rights of our schoolchildren and create more effective and equitable learning environments:

- **Public school educators should routinely collect, reflect upon, and publicly report data on school disciplinary removal. Reports at the state, district, and school level (where permissible) should include data disaggregated by race/ethnicity, gender, and disability status in terms of numbers of each group disciplined. These reports should also include the percentage of each group that experiences suspension and expulsion, as well as disaggregated incidence data on the type of infraction and the number of days of missed instruction that results from such removals.**
- **Civil rights enforcement agents should use the *disparate impact* standard of legal review as grounds to pursue remedies for the unjust and unnecessary removal of children from school.**
- **When Congress reauthorizes the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act, it should provide positive incentives for schools, districts and states to support students, teachers and school leaders in systemic improvements to classroom and behavior management where rates of disciplinary exclusion are high – even where disparities do not suggest unlawful discrimination.**
- **Federal and state policy should specify the rate of out-of-school suspensions as one of several factors to be considered in assessments of school efficacy, especially for low-performing schools.**
- **Researchers should investigate connections between school discipline data and key outcomes such as achievement, graduation rates, teacher effectiveness, and college and career readiness.**
- **System-wide improvements should be pursued through better policies and practices at all levels—including an effort to improve teachers’ skills in classroom and behavior management.**

Ultimately, U.S. policymakers must find more effective ways to educate all of the nation’s children, including those who may be challenging to engage. Our public schools are essential to preparing our children to participate fully in our economic and democratic future.

Notes and References

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- 4 For example, the ESEA only addresses school discipline and behavior in the subpart of the act called the Safe and Drug Free Schools And Communities Act. The Safe and Drug Free Schools and Communities provisions of the ESEA (Title IV Part A § 4112 (c)(3)(ii)) requires that States provide information on a school-by-school basis on: truancy rates; the frequency, seriousness, and incidence of violence and drug-related offenses resulting in suspensions and expulsions in elementary schools and secondary schools in the State.
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<http://www.fldoehub.org/schoolsafety/Pages/SESIRDisciplinary.aspx>.

The annual reports provide disaggregated data on both the number of actions and the number of students disciplined one or more times.

27 Texas collects and reports extensive amounts of discipline data, with a great deal of disaggregation. In a web document titled *Disciplinary Data Product: Annual Summary Report*, the state lists all the data collection and reporting categories with links to several of the reports following this explanation:

A 425 PEIMS record is required for each disciplinary action taken against a student which results in the removal from the regular classroom for at least one day. A single student can have multiple records if removed from the classroom more than once and a single incident can result in multiple actions. These data are required by TEC Chapter 37, and by IDEA '97, which includes students who are receiving special education and related services.

Every disciplinary action that results in the removal of a student from any part of their regular academic program is categorized in one of the following general categories: In-School Suspension (ISS), Out-of-School Suspension (OSS), Expulsion, JJAEP, or Disciplinary Action Education Program (DAEP) assignments.

The counts on these reports are generated independently at the state, region and district levels, depending on the level requested. In general, if the heading name includes "students", a student is counted once for the particular criteria of action or reason at the selected level. Otherwise, this is a count of records. Students may be counted more than once. [Updated Nov. 2010].

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45 The millions of *suspensions* meted out each year *dwarf expulsions* and rarely involve serious violence. According to U.S. Department of Education's (ED) 2006 Civil Rights Data Collection, nearly 3.5 million students, or nearly 7% of all students enrolled in K-12, were suspended at least once. See U.S. Department of Education. (2006) National and

State Projections. Retrieved March 1, 2011, from http://ocrdata.ed.gov/Projections_2006.aspx.

The same OCR 2006 survey reported 102,077 expulsions, which would include all the mandatory expulsions for firearms. For example, possession of unlawful firearms elicits a mandatory expulsion of one year according to the Safe and Drug Free Schools and Communities Act.

Many states have expanded mandatory expulsion laws to include all weapons, unlawful drugs and violent acts. In contrast, the majority of suspensions are for minor violations such as truancy, dress-code violations, inappropriate language or disruptive behavior.

Skiba, R.J., et al. (2006). *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*. American Psychological Association (APA) Zero Tolerance Task Force (citing the following: Imich, A.J. (1994). Exclusions from school: current trends and issues. *Educational Research* 36 (1), 3-11; Kaeser, S.C. (1979). Suspensions in school discipline. *Education and Urban Society* 11, 465-484; Morgan-D'Atrio, C., Northrup, J., LaFleur, L., & Spera, S. (1996). Toward prescriptive alternatives to suspensions: a preliminary evaluation, *Behavioral Disorders* 21, 190-200; Raffaele Mendez, L.M. & Knoff, H.M. Who gets suspended from school and why: a demographic analysis of schools and disciplinary infractions in a large school district. *Education and Treatment of Children*, 26, 30-51)

46 American Academy of Pediatrics. (2003, November). Policy Statement: Out-of-school suspension and expulsion.) *Pediatrics*, 112 (5), 1206-1209. Retrieved November 29, 2010, from <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;112/5/1206>. (A statement of reaffirmation for this policy was published on August 1, 2008.)

47 American Academy of Pediatrics. (2003, November). Policy Statement: Out-of-school suspension and expulsion.) *Pediatrics*, 112 (5), 1206-1209. Retrieved November 29, 2010, from <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;112/5/1206>. (A statement of reaffirmation for this policy was published on August 1, 2008.)

48 American Psychological Association Zero Tolerance Task Force, (2008, December). Are zero tolerance policies effective in the schools? An evidentiary review and recommendations. *American Psychologist*, 63 (9), 852-862.

49 Losen, D.L. & Skiba, R.J. (2010, September). *Suspended Education: Urban Middle Schools in Crisis*. Los Angeles: The Civil Rights Project at UCLA. Retrieved December 5, 2010, from http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/suspended-education-urban-middle-schools-in-crisis/Suspended-Education_FINAL-2.pdf

50 Raffaele Mendez, L. (2003) Predictors of suspension and negative school outcomes: A longitudinal investigation. In J. Wald & D. Losen (Eds.), (2003). Deconstructing the School to Prison Pipeline [special issue], *New Directions for Youth Development*, 99, 24-25. San Francisco: Jossey-Bass.

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It should be noted that despite highlighting this as one example of lobbying success in their February 2009

newsletter, one cannot assume that the AFT, as a national organization, currently supports this approach over systemic interventions that provide teachers with better training and help improve behavior with fewer exclusions.

53 American Federation of Teachers. (2009, February). Standing Together. *American Teacher*, 93, (5), 11-12. Retrieved March 1, 2011, from http://www.aft.org/pdfs/americanteacher/AT_FEBO9prot.pdf

54 Noguera, P.A. (2001). Finding safety where we least expect it: the role of social capital. In W. Ayers, B. Dohrn, & R. Ayers, (Eds.). *Preventing School Violence, in Zero Tolerance: Resisting the Drive for Punishment in Our Schools*. New York: The New Press, 204-205.

55 Skiba, R. J. & Rausch, M. K. (2006). Zero tolerance, suspension, and expulsion: Questions of equity and effectiveness. In C. M. Evertson & C. S. Weinstein (Eds.), *Handbook for Classroom Management: Research, Practice, and Contemporary Issues*. Mahwah, NJ: Lawrence Erlbaum Associates, 1063-1089.

56 Rumberger, R.W., (2004). Why students drop out of school. In G. Orfield (Ed.), *Dropouts in America: Confronting the Graduation Rate Crisis*. Cambridge: Harvard Education Press, 143-144.

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57 Kim, Y.K., Losen, D.J., & Hewitt, D.T. (2010). *The School-to-Prison Pipeline: Structuring Legal Reform*, (1st ed.). New York: New York University Press. 1 (citing National Center for Schools and Communities, (2003). Equity or Exclusion: the Dynamics of Resources, Demographics, and Behavior in the New York City Public Schools. Fordham University, available at http://www.ncsatfordham.org/binary_data/files/EQUITY_OR_EXCLUSION.pdf.)

58 Balfanz, R. et al. (2003). High poverty secondary schools and the juvenile justice system. In J. Wald & D. Losen (eds.) *Deconstructing the School to Prison Pipeline [special issue]*, *New Directions for Youth Development*, 99, 77-78. San Francisco: Jossey-Bass.

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59 Vaznis, J., (2010, November 29). Thousands called dropout risks. *The Boston Globe*. Retrieved November 29, 2010, from http://www.boston.com/news/education/k_12/articles/2010/11/29/thousands_called_dropouts_risks/

60 American Academy of Pediatrics. (2003, November). Policy Statement: Out-of-school suspension and expulsion. *Pediatrics*, 112 (5), 1206-1209. Retrieved November 29, 2010, from <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;112/5/1206>. (A statement of reaffirmation for this policy was published on August 1, 2008.)

61 Fight Crime: Invest in Kids (2009). *Comments Pursuant to Notice of Proposed Information Collection Request*. New York: Author.

Fight Crime: Invest in Kids is a non-profit organization of 5,000 police chiefs, sheriffs, prosecutors and other law enforcement leaders. It recently stated:

While school safety must be maintained and truly dangerous students removed from the school community as appropriate, suspension and expulsion often provide troubled kids exactly what they do not need: an extended, unsupervised hiatus from school that increases their risk of engaging in substance abuse and violent crime.

The organization calls for more data to “...help educational authorities track suspensions and expulsions to evaluate their approach to school discipline and ensure students are not inappropriately placed at risk.”

62 According to a 2011 Texas study that tracked all the middle school students in the State, being suspended even once had a strong correlation with negative academic outcomes and involvement in the juvenile justice system. Fabelo, T., Thompson, M.D., Plotkin, M., Carmichael, D., Marchbanks, M.P. III, & Booth, E.A. (2011, July). *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*. New York: Council of State Governments Justice Center, 88.

63 IDEA Public law 108-446 § 612(a)(22) *emphasis added*. Retrieved December 12, 2010, from <http://idea.ed.gov/download/statute.html>

64 IDEA, Public law 108-446 §612(a)(22).Retrieved December 12, 2010, from <http://idea.ed.gov/download/statute.html>

65 IDEA, Public law 108-446 § 618(d)(1)(C). Retrieved December 12, 2010, from <http://idea.ed.gov/download/statute.html>

66 IDEA, Public law 108-446 § 618(d)(1)(C). Retrieved December 12, 2010, from <http://idea.ed.gov/download/statute.html>

67 IDEA Public law 108-446 requires:

§ 612(a)(that for eligibility that the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:)
(24) OVERIDENTIFICATION AND DISPROPORTIONALITY - The State has in effect, consistent with the purposes of this title and with section 618(d), policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities....

Public law 108-446 §618(d). Retrieved December 12, 2010, from <http://idea.ed.gov/download/statute.html>. Even though §618 (d) does not explicitly mention review by the Secretary, Secretarial approval is explicitly referenced in §612(d) of the above general eligibility section. Public law 108-446 §612(d). Retrieved December 12, 2010, from <http://idea.ed.gov/download/statute.html>.

68 Letter from The Civil Rights Project, John Brittain Esq., Professor Martha Minow, et al., to Office of Information and Regulatory Affairs, U.S. Department of Education. (November 20, 2008) [on file with author]

69 Duncan, A. (2010, March 8). *Crossing the Next Bridge*, Remarks of the U.S. Secretary of Education, Selma, Alabama. Retrieved December 10, 2010, from <http://www2.ed.gov/news/speeches/2010/03/03082010.html>

70 Zehr, M. (2010, December). Obama administration targets “disparate impact” of school discipline. *Education Week*. Retrieved December 11, 2010, from http://www.edweek.org/ew/articles/2010/10/07/07disparate_ep.h30.html (subscription required).

71 Zehr, M. (2010, December). Obama administration targets “disparate impact” of school discipline. *Education Week*. Retrieved December 11, 2010, from http://www.edweek.org/ew/articles/2010/10/07/07disparate_ep.h30.html (subscription required).

72 Kim, Y.K., Losen, D.J., & Hewitt, D.T. (2010). *The School-to-Prison Pipeline: Structuring Legal Reform*, (1st ed.). New York: New York University Press. 13-34, 39.

73 See e.g. Gladwell, M. (2005). *blink, The Power of Thinking Without Thinking*. Boston: Little Brown and Co., 77-85.

74 Kang, J. (2010). *Implicit Bias: A Primer for Courts*. Retrieved December 11, 2010, from new.abanet.org/sections/criminaljustice/.../unit%203%20kang.pdf

But see, Bower, B. (2006, April), The Bias Finders: A test of unconscious attitudes polarizes psychologists. *Science News Online*. Retrieved December 10, 2010, from <http://joshpackard.files.wordpress.com/2008/03/the-bias-finders-what-does-iat-measure.pdf>

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76 See Losen, D.L. (2004). Challenging Racial Disparities: The Promise and Pitfalls of the No Child Left Behind Act’s Race-conscious Accountability. *Howard Law Journal*, 47 (2), 243-298.

77 See Skiba, R., Horner, R.H. et al. (2009). Race is not neutral: a national investigation of African American and Latino disproportionality in school discipline. *School Psychology Review*, 40 (1), 85-107 (citing Brantlinger, E. (1991) Social class distinction in adolescents’ reports of problems and punishment in school. *Behavioral Disorder*, 17, 36-46; and Wu et al., (1982) Student suspension: a critical reappraisal, *The Urban Review*, 14, 245-303).

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82 See Sugai, G. & Horner, R., (2002). The evolution of discipline practices: school-wide positive behavior supports. *Child and Family Behavior Therapy, 24* (1/2), 23-50, 28.

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Research on SWPBS in elementary schools in Hawaii and Illinois indicated improvements in the proportion of third graders meeting or exceeding state reading assessments. See

Horner, R.H., et al. (2009). A randomized wait-list controlled effectiveness trial assessing school-wide positive behavior support in elementary schools. *Journal of Positive Behavior Interventions, 11*, 133.

Similarly, another randomized control trial found that implementation of PBS in elementary schools was related to (a) reduction in office disciplinary referrals, (b) reduction in suspensions, and (c) improved fifth grade academic performance:

Bradshaw, et al. (2010). Examining the effects of school-wide positive behavioral interventions and supports on student outcomes: results from a randomized controlled effectiveness trial in elementary schools. *Journal of Positive Behavior Interventions, 12*, 133-148, first published online April 20, 2009.

Further, a study of 28 K-12 schools and early childhood programs indicated that implementation of PBS resulted in a reduction of 6,010 office discipline referrals and 1,032 suspensions, with middle and high schools experiencing the most benefit. These reductions helped recover 864 days of teaching, 1,701 days of learning, and 571 days of leadership. Implementation was associated with academic gains in math for the vast majority of schools who implemented with fidelity. Improvements in reading/language arts were less pervasive.

Muscott, H.S. et al. (2008, July). Positive behavioral interventions and supports in New Hampshire: effects of large-scale implementation of schoolwide positive behavior support on student discipline and academic achievement. *Journal of Positive Behavior Interventions*, 10, 190-205.

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See also,

Vincent, C. et al. (2009) *Do elementary schools that document reductions in overall office discipline referrals document reductions across all student races and ethnicities?* OSEP Technical Assistance Center on Positive Behavioral Interventions and Supports. Retrieved January 24, 2011, from http://www.pbis.org/evaluation/evaluation_briefs/oct_09.aspx

88 See Brophy, J. (1986). Teacher Influences on Student Achievement. *American Psychologist*, 41(10), 1069-1077.

89 Further, if out-of-school suspensions do not usually help improve educational outcomes, researchers in the ethics of administration point out that their frequent use raises serious ethical concerns. See

McCray & Beachum, (2006, Winter). A critique of zero tolerance policies: an issue of justice and caring. *Values and Ethics in Educational Administration*. 5 (1). Retrieved August 29, 2011, from http://www.nipissingu.ca/csle/VEEA/Vol5_Num1.pdf

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91 Osher, D., Bear, G.G., Sprague, J.R., & Doyle W. (2010). How can we improve school discipline? *Educational Researcher*, 39, (1), 48-58. Retrieved December 10, 2010, from

<http://edr.sagepub.com/content/39/1/48.full.pdf+html> (subscription required).

92 Minow, M. (2010). *In the Wake of Brown*. New York, Oxford University Press, i, 69-79.

See also, Kim, Y.K, Losen, D.J., & Hewitt, D.T., (2010). *The School-to-Prison Pipeline: Structuring Legal Reform*, (1st ed.) New York: New York University Press, 53.

93 For example, "the message of zero tolerance is clearly one of obedience, not participation. It reinforces in all children, and especially minority children, that they are excluded by, and powerless against, the government." Losen & Edley, The role of law in policing abusive disciplinary practices: why school discipline is a civil rights issue. In W. Ayers, B. Dohrn, & R. Ayers, (Eds.). *Preventing School Violence, in Zero Tolerance: Resisting the Drive for Punishment in Our Schools*. New York: The New Press, 231.

With regard to the racial disparities among students with disabilities, as the former director of the U.S. Department of Education's Office of Special Education Programs, Tom Hehir, has written, "given the bigoted and historical exclusion surrounding students with disabilities, it should not be surprising that the disability label was used by racists seeking

to preserve Jim Crow when they could no longer get away with the explicit use of race as the basis of exclusion.”
Hehir, T., (2002) Eliminating ableism in education. 1-33.

94 See Kelly, S. (2010). A crisis of authority in predominantly black schools? *Teachers College Record*, 112, 1247-1274, 1253, describing well established research connecting poverty and risk for behavioral issues.

95 PUBLIC LAW 107-110—JAN. 8, 2002, §1111(b)(3)(C)(xi). Retrieved December 12, 2010, from <http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>

96 See Figlio, D. (2006, May). Testing, crime, and punishment. *Journal of Public Economics*, 90, 837-851, documenting evidence that schools respond to high-stakes testing by selectively disciplining their students because due to an incentive to keep high-performing students in school and low-performing students out of school during the testing window in order to maximize aggregate test scores.

97 See, e.g., Advancement Project (2010). *Test, Punish, and Push Out: How Zero Tolerance and High Stakes Testing Funnel Youth into the School-to Prison Pipeline*. Washington, DC: Author, 14, citing for example that according to Akron Ohio school code a student may be expelled for being late to class, having cigarettes, or uttering profanity. Retrieved February 28, 2011, from <http://www.advancementproject.org/sites/default/files/publications/01-EducationReport-2009v8-HiRes.pdf>