



Education or Incarceration?

Ending America's school-to-prison pipeline

**ALLIANCE
AGAINST**

**SECLUSION
&
RESTRAINT**

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Alliance Against Seclusion and Restraint

“All children deserve to grow up at home in safe, stable families, receive a quality education in safe, supportive schools, and participate in peaceful, thriving communities. Every child should be able to have a childhood that provides the time and space for learning, mistakes, and restorative correction by caring adults with knowledge of adolescent brain development and a child’s capacity to change based on neuroscience. To the extent that children are deemed to have committed a punishable offense per the juvenile justice system or a crime per the adult criminal justice system, they are entitled to adequate legal representation and a response that is age-appropriate, developmentally-appropriate, culturally-responsive, gender-responsive, and trauma-informed in the least-restrictive, most-safe setting in order to facilitate rehabilitation, promote healing, ensure positive youth development, and reduce recidivism.” This is the Children’s Defense Fund’s Vision for Youth Justice.¹

However, the reality is that children are being criminalized at younger ages and subjected to the juvenile justice system and/or the adult criminal justice system. Children who are poor; children of color; children with disabilities; children with mental health and substance abuse challenges; children facing neglect, abuse, and/or violence; children in foster care; and children who identify as lesbian, gay, bisexual, transgender, or queer (LGBTQ) are most affected. Racial disproportionality remains and it gets worse as children of color go deeper in the system—from the point of arrest to post-adjudication placement.²

Why is this happening? Has school discipline changed? Are student behaviors more severe? The purpose of this paper is to review the events and processes that have occurred over the past decades that have led to the changes in how the behaviors of children and youth are perceived and treated, the rise in disproportionality of disciplinary responses, and the efforts to reverse the trend to criminalize children, including promising practices and outcomes.

Zero Tolerance Policies and Their Impact

Zero tolerance laws were passed in the 1980s and 1990s, and policies and practices were implemented that were intended to keep America’s school children safe. These policies typically enforce mandatory sentencing such as automatic suspension, expulsion, or even arrest. The phrase “zero tolerance” and the consequent mandatory punishments originated in the Reagan era when the federal Anti-Drug Abuse Act of 1986 was signed into law.³ The law imposed new mandatory minimum sentences for drug offenders changing a rehabilitative system into a punitive system.

Congress passed the Gun-Free Schools Act of 1994, requiring states to expel students who bring firearms to school.⁴ While these severe disciplinary responses were intended for serious offences, school districts slowly broadened their scope, eventually including minor offenses (e.g. dress code violations, cursing, insubordination, and tardiness) to the list of behaviors that would trigger severe disciplinary actions. These harsh policies didn’t allow room to consider the individual circumstances, mitigating factors or to apply discretion or even common sense when responding to student infractions.

¹ <https://www.childrensdefense.org/#our-vision>

² *ibid*

³ <https://supportiveschooldiscipline.org/learn/reference-guides/zero-tolerance>

⁴ *ibid*

Henry A. Giroux, in *Mis/Education and Zero Tolerance: Disposable Youth and the Politics of Domestic Militarization*⁵ describes how the “War on Poverty” was replaced with an emphasis on domestic warfare, and that the policies of social investment, at all levels of government gave way to an emphasis on repression, surveillance, and control. The view of youth shifted in the 1980’s and 1990’s along with the operation and perhaps, the ultimate purpose of schools when these federal laws described above were passed. Rather than offering compassion and support, schools became rigid and intolerant. Giroux reported that suspensions skyrocketed after the implementation of zero tolerance policies as did referrals to police or the juvenile justice system, with black students much more likely to be suspended or referred to police than white students.

A review by the Children’s Defense Fund found more than 30,000 incidents of school suspensions and expulsions for nonviolent, noncriminal offenses in just one school year including:

- Suspending a student from school for four months for sharpening his pencil without permission and giving the teacher a “threatening” look when asked to sit down;
- Expelling a student from school for the rest of a school year for poking another student with a ballpoint pen during an exam;
- Expelling a student from school permanently because her possession of an antibiotic violated the school’s zero tolerance drug policy; and
- Calling the police, handcuffing, and then expelling a student who started a snowball fight on school grounds.⁶

Ostensibly, the purpose of the zero tolerance policies and practices was to deter students from committing serious rule violations and to create a safe school environment by removing students who were violent and distracted from the learning environment. According to an evidentiary review by the American Psychological Association Zero Tolerance Task Force,⁷ the evidence does not support an assumption that violence in schools is out of control or increasing. Incidents of critical and deadly violence remain a relatively small proportion of school disruptions and the data have consistently indicated that school violence and disruption have remained stable, or even decreased somewhat, since approximately 1985. Furthermore, schools with higher rates of school suspension and expulsion appear to have less satisfactory ratings of school climate, to have less satisfactory school governance structures, and to spend a disproportionate amount of time on disciplinary matters.

The American Psychological Association Zero Tolerance Task Force review also showed that that zero tolerance policies have the opposite effect that was intended. Rather than reducing the likelihood of repeating misbehavior, however, school suspension in general appears to predict higher future rates of misbehavior and suspension among those students who are

⁵<https://www.deepdyve.com/lp/duke-university-press/mis-education-and-zero-tolerance-disposable-youth-and-the-politics-of-K6nGBYvN8z>

⁶<https://www.childrensdefense.org/wp-content/uploads/2018/08/dismantling-the-cpp.pdf>

⁷ <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

suspended. In the long term, school suspension and expulsion are moderately associated with a higher likelihood of school dropout and failure to graduate on time.⁸

Perhaps more importantly, the APA Zero Tolerance Task Force Review also included findings from a variety of fields that adolescents displayed psychosocial immaturity in four areas: poor resistance to peer influence, attitudes toward and perception of risk, future orientation, and impulse control. Developmental neuroscience information about the structure of the adolescent brain is consistent with these findings of psychosocial immaturity. Secondary schools may be at odds with the developmental challenges of adolescents; zero tolerance policies may be especially troublesome for this age group given the developmental challenges they face as a part of their maturation process.⁹

In addition, recent research indicates a negative relationship between the use of school suspension and expulsion and schoolwide academic achievement, even when controlling for demographics such as socioeconomic status. Exclusionary discipline practices have been highly correlated with having the strongest relationship to academic disengagement.¹⁰

The Children's Defense Fund's 2013 Report *Dismantling the Cradle to Prison Pipeline: Preventing Pushouts in Mississippi Schools* reported the following.¹¹ The kind of punishment associated with zero tolerance policies is inappropriate for youths whose brains and cognitive judgment are still developing. Zero tolerance increases expulsion and suspension rates, dropout rates, police presence on school campuses, the number of court referrals, juvenile crime rates and the entry of youth into the juvenile justice system. Zero tolerance school discipline policies disproportionately impact students of color—the very students disproportionately fed into the criminal justice system.

Suspension and expulsion are not limited to older age children. In fact children in preschool are suspended at 3x the rate of k-12 students.¹² Children who are suspended or expelled in preschool are as much as 10 times as likely to drop out of high school and to end up in jail. An estimated 50,000 preschoolers were suspended in 2015 and 17,000 were expelled.¹³ According to Walter Gilliam, PhD, preschool expulsions and suspensions are not child behaviors; they are adult decisions because the factors that have the most impact on risk for expulsion are not child behaviors, but program factors (group sizes, child-teacher ratios, availability of consultants and support staff to assist teachers with managing challenging behaviors), as well as teacher factors (e.g., teacher depression and teacher job stress).¹⁴

In their 2014 report about the school-to-prison pipeline, Skiba, Arredondo, and Williams reported the following:¹⁵

⁸ <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

⁹ <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

¹⁰ [Climate Change: Implementing School Discipline Practices That Create a Positive School Climate](https://www.childrendefense.org/wp-content/uploads/2018/08/dismantling-the-cpp.pdf)

¹¹ <https://www.childrendefense.org/wp-content/uploads/2018/08/dismantling-the-cpp.pdf>

¹² <https://news.yale.edu/2005/05/17/pre-k-students-expelled-more-three-times-rate-k-12-students-0>

¹³ <https://dnyuz.com/2019/08/03/kicking-kids-out-of-preschool-is-damaging-experts-say-so-why-is-it-still-happening/>

¹⁴ <https://psychologybenefits.org/2014/12/13/preschool-expulsions/>

¹⁵ More Than a Metaphor: The Contribution of Exclusionary Discipline to a School-to-Prison Pipeline, *The Contribution of Exclusionary Discipline to a School-to-Prison Pipeline, Equity & Excellence in Education*, 47:4, 546-564, DOI: 0.1080/10665684.2014.958965

- Exclusionary discipline was widely used and continues to increase particularly for African American students, and rather than being restricted to serious behavior infractions, it was *most commonly used* for more interactive day-to-day disruptions, especially defiance and non-compliance.
- African American students were overrepresented in discipline for nearly 40 years, and the over-representation has increased. The discipline disproportionality for other racial/ethnic groups, especially Latino and Native American students, and for gender and disability status was also reported.
- Rates of school suspension and expulsion are associated with both qualitative and quantitative indicators of school climate.
- School exclusion through suspension and expulsion is associated with decreases in academic achievement for both the overall school and individual levels, and an increased risk of negative behavior over time.

Suspension for older students is also harmful and a contributor to the school-to-prison pipeline according to a study by Andrew Bacher-Hicks and David Deming of Harvard University and Stephen Billings of the University of Colorado-Boulder.¹⁶ Their findings indicated that students assigned to high-suspension schools are more likely to be arrested and incarcerated later, and less likely to attend a four-year college. Male minority students are most likely to be affected. In fact, students assigned to a school with a one standard deviation higher suspension rate are 15–20% more likely to be arrested and incarcerated as adults and were also less likely to attend a four-year college.

These studies support the conclusions of the American Academy of Pediatrics as indicated in the 2013 Policy Statement on Out of School Suspension and Expulsion:

*The AAP does not support the concept of zero tolerance for the developing child. The AAP maintains that out-of-school suspension and expulsion are counterproductive to the intended goals, rarely if ever are necessary, and should not be considered as appropriate discipline in any but the most extreme and dangerous circumstances, as determined on an individual basis rather than as a blanket policy.*¹⁷

In addition to suspension and expulsion, other exclusionary disciplinary procedures that also remove students from the learning environment include seclusion, restraint, and school arrests. These exclusionary disciplinary practices are punitive, and they deprive students from accessing educational opportunities.

Two specific procedures, restraint and seclusion, have been debated for over 20 years, and despite the fact that there have been found to provide no therapeutic or educational benefit and even more importantly, they cause physical and psychological harm, including death to the child, to the person administering them and to bystanders, they continue to be used.¹⁸ In 2012, The U.S. Department of Education developed a Restraint and Seclusion Resource Document.¹⁹ This document defines restraint and seclusion and includes 15 principles about the use of restraint and seclusion. Physical restraint is defined as a personal restriction that

¹⁶ <https://www.gse.harvard.edu/news/uk/19/09/school-discipline-linked-later-consequences>

¹⁷ <https://pediatrics.aappublications.org/content/pediatrics/131/3/e1000.full.pdf>

¹⁸ Appendix A. Interview with Ron Garrison on Restraint and Seclusion. *Talk to Me*. Emma Van der Klift (2019)

¹⁹ <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. Seclusion is defined as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.

The impact of restraint and seclusion procedures can be seen in **The Kids We Lose**,²⁰ a 90-minute documentary film about the human side of being a child or student with behavioral challenges, and the struggles faced by parents, educators, staff in facilities, mental health clinicians, and judicial and law enforcement professionals in trying to ensure that these kids receive the help they need. The film, a collaboration between Lone Wolf Media and the non-profit Lives in the Balance, exposes the often brutal, inhumane ways in which kids with social, emotional, and behavioral challenges are treated in schools, inpatient psychiatric units, residential facilities, and prisons.

In *Restraint and Seclusion: Hear Our Stories* (2013) is a documentary by Dan Habib, children and adults who experienced restraint and/or seclusion and parents of children who were restrained or secluded share their experience. One of the adults told of how her mother saw a teacher abusing a boy in the classroom next to her, not realizing that was the norm. She went on to say that the problem was that people, especially children want to believe that the world is good, so when they see torture occurring, they make up a story in their heads. The story is usually about the child/victim having done something wrong. “They see us as bad or dangerous.”²¹

The following was contained In a February 25, 2019 letter from the American Civil Liberties Union (ACLU) submitted for consideration at the Subcommittee on Early Childhood, Elementary and Secondary Education’s hearing on “Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices.”²²

We strongly support the Subcommittee’s scrutiny of the harmful use of aversives, restraint, and seclusion in our schools which deny students an equal educational opportunity and violate their civil and human rights.

The practice of restraining and secluding schoolchildren is not new and has been implicated in countless and often ongoing cases of severe, pervasive, and traumatic abuse across the country. Despite numerous studies, investigations, and governmental hearings at the state and federal level, too many of our schoolchildren continue to be subjected to actions by teachers, administrators, and other school personnel that threaten their health and safety. Over the years, we have become aware of the horrifying stories that pierced the public’s consciousness—stories of children being locked in closets, arms bound in handcuffs behind their back or even suffocating to death from inappropriate use of force. Even when these techniques are used in less dramatic fashion, children often experience lifelong trauma. And the alarming truth is that most incidents of restraint and seclusion occur in the shadows, with impunity, and far from public or even parental view. Indeed, a large percentage of school districts reported no data on students being subject to restraint and seclusion—despite parent reports of horrific abuses.

²⁰ <http://www.thekidswelose.com/>

²¹ <https://www.youtube.com/watch?v=pD4U0mQL2uI>

²² <https://www.aclu.org/letter/letter-house-committee-education-and-labor-restraint-and-seclusion-schools>

These draconian and dangerous practices are most frequently used against students with disabilities and students of color. Based on data provided by the Department of Education, while students with disabilities represent only 12% of school enrollment, they constitute 71% of those students subject to restraint and 66% of those students subject to seclusion. Although African-American students made up just 15.5% of total student enrollment, they were 25.1% of students subject to physical restraint, 33.7% of students subject to mechanical restraint and 22.4% of students subject to seclusion.

The effects include substantial and disproportionate physical and emotional injuries and disruptive exclusions from the educational process. The use of unnecessary restraint and seclusion by federally funded schools—either directly or through contractual arrangements with private special education schools—has no pedagogical basis, discriminates against students with disabilities, and impairs the educational objectives of public schools with respect to children with disabilities. Often, restraint and seclusion is carried out because of inadequate teacher training, a desire to punish a student on the part of school personnel, or bias against students with disabilities, students of color or those students who fall into both categories.

Congress has attempted to pass national legislation since 2009²³ to eliminate the use of seclusion and minimize the use of restraint to instances where it is necessary for protection of life and serious injury. States have passed laws or are in various phases of regulating the use of these dangerous practices. However, even in states where regulations or laws are in place, they do not always protect students from inappropriate, harmful use of these procedures, which are disproportionately used on students with disabilities and students of color.²⁴

The 2018 Education Commission's 50 State Comparison of School Policies on Discipline indicate that though states are beginning to look at alternative disciplinary approaches, the use of seclusion, restraint, suspension, expulsion and even corporal punishment (spanking) continues across the nation.²⁵

*Zero tolerance school discipline policies and the arrest and criminalization of children at younger and younger ages for behaviors once handled by schools and community institutions overwhelm and break apart already fragile young lives.*²⁶

Ellen Goodman, columnist, summed it when she wrote "*Zero tolerance for misbehavior evolved into zero tolerance for kids themselves. We've developed an attitude - and not just in schools where zero tolerance often translates into a quick and dirty way of kicking kids out. We're in a time of a general crackdown - a tough love without the love.*"²⁷

The school-to-prison pipeline (STTP)

²³ <https://www.congress.gov/bill/111th-congress/house-bill/4247/titles>

²⁴ <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>

²⁵ <https://www.ecs.org/50-state-comparison-state-policies-on-school-discipline/>

²⁶ <https://www.childrensdefense.org/wp-content/uploads/2018/08/dismantling-the-cpp.pdf>

²⁷ https://products.kitsapsun.com/archive/2000/01-04/0002_ellen_goodman_each_case_deserves.html

The metaphor “school-to-prison pipeline” (STPP) was first used in 2003 after a conference held at Northeastern University.²⁸ The STTP refers to the policies and practices that are directly and indirectly pushing students out of school and on a pathway to prison, including, but not limited to: harsh school discipline policies that overuse suspension and expulsion, increased policing and surveillance that create prison-like environments in schools, overreliance on referrals to law enforcement and the juvenile justice system, and an alienating and punitive high-stakes testing-driven academic environment. The National Education Association’s definition refers specifically to students of color.²⁹ However, while this “pipeline” impacts students of all races and cultures, it disproportionately impacts students of color and students with disabilities.

There are hundreds of reports, studies and articles about the school-to-prison pipeline. In fact, the concept was broadened to recognize that children of color born into poverty were already more likely than others to wind up on the prison pipeline before they even get to school. The Children’s Defense Fund’s (CDF) launched a “Cradle to Prison Pipeline® Campaign” in 2008 with a goal of dismantling the pipeline that results in the arrest, conviction, incarceration, and in some cases, death of thousands of predominantly racial-ethnic minority youth.³⁰ According to the report:

- A Black boy born in 2001 had a 1 in 3 chance of going to prison in his lifetime;
- a Latino boy a 1 in 6 chance; and
- a White boy a 1 in 17 chance.
- A Black girl born in 2001 had a 1 in 17 chance of going to prison in her lifetime;
- a Latino girl a 1 in 45 chance; and a
- White girl a 1 in 111 chance.

CDF’s 2007 report, *America’s Cradle to Prison Pipeline*³¹ identified poverty, racial disparities and a culture of punishment rather than prevention and early intervention as key forces driving the Cradle to Prison Pipeline. In addition, the following contributing factors were identified:

- poor school quality where not reading at grade level, failing or acting out are met with police intervention, and suspensions or expulsions leading to dropping out;
- Inadequate mental health system of services and supports; and
- a juvenile justice system which cements many children’s sense of hopelessness and offers too few positive programs, too late, to change the Pipeline’s trajectory.

Jason P. Nance and Sarah E. Redfield suggested in 2016 that students often become involved in the criminal justice system due to a combination of factors including low academic achievement; low academic expectations; poor relationships with other members of the school community; poor school climates; low engagement; incorrect referral or categorization in

²⁸https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf

²⁹ <https://ra.nea.org/business-item/2016-pol-e01-2/#>

³⁰ <http://www.nea.org/home/31606.htm>

³¹ <https://www.childrensdefense.org/wp-content/uploads/2018/08/cradle-prison-pipeline-report-2007-full-lowres.pdf>

special education; and overly harsh and exclusionary discipline such as suspension, expulsion, referral to law enforcement, arrest, or treatment in the juvenile justice system.³²

According to the CDF's 2007 America's Cradle to Prison Pipeline report³³, schools use detention centers as their discipline. Several specific examples were provided: A 5-year-old girl in St. Petersburg, Florida, was arrested and handcuffed by three police officers following a temper tantrum and before her mother could arrive at school to consult with teachers. A 10-year-old girl was arrested in Philadelphia for having scissors in her backpack, which she had brought for use in class. The rhetorical question was asked "Have we adults lost our common sense, arresting and handcuffing 5-, 6-, 8- and 10-year-old children on school grounds and criminalizing children at younger and younger ages for offenses that used to be handled by schools or in communities?"

The 2007 CDF report also included information from a 2004 Senate Hearing that 15,000 children with psychiatric disorders were improperly incarcerated in 2003 because no mental health services were available.³⁴

In its 2003 report on juvenile justice in Ohio, the American Bar Association attributed the "heavy reliance on the juvenile justice system for treatment or punishment" in Ohio to "the lack of resources to treat children with mental illness, public schools in academic emergency, a mortality rate from child abuse higher than the national average, and a high poverty rate."³⁵ Ohio's juvenile incarceration rate at the time ranked fifth in the nation. "Increasingly, it is not so much the criminality of the behavior but the lack of alternatives for children with severe emotional and behavioral problems, children who have been expelled from school, and children whose families cannot provide adequate care that brings them into the juvenile justice system," the report stated.

According to the Children's Defense Fund, America is failing our children. In *The State of America's Children 2020*³⁶ the following is reported:

"Too many children—particularly children in poverty; children of color; children with disabilities; children with mental health and substance abuse challenges; children subjected to neglect, abuse and/or other violence; children in foster care and LGBTQ children—are pushed out of their schools and homes into the juvenile justice or adult criminal justice systems. While the number of children arrested and incarcerated has declined over the past decade largely due to positive changes in policy and practice, America's children continue to be criminalized at alarming rates.

³² ABA Task Force Wants to Help Disrupt School-to-Prison Pipeline:

<https://jije.org/2016/02/12/aba-task-force-wants-to-help-disrupt-school-to-prison-pipeline/189230/>

³³ <https://www.childrendefense.org/wp-content/uploads/2018/08/cradle-prison-pipeline-report-2007-full-lowres.pdf>

³⁴ United States House of Representatives Committee on Government Reform, Minority Staff Special Investigations Division, "Incarceration of Youth Who Are Waiting for Community Mental Health Services in the United States" (July 2004), at <http://govtaff.senate.gov/files/040707juvenilereport.pdf>

³⁵ American Bar Association, Juvenile Justice Center, National Juvenile Defender Center, *Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio* (March 2003), p. 1, at http://www.njdc.info/pdf/Ohio_Assessment.pdf

³⁶ <https://www.childrendefense.org/the-state-of-americas-children-2020/>

- In 2018, 728,280 children were arrested in the U.S. A child or teen was arrested every 43 seconds despite a 63 percent reduction in child arrests between 2009 and 2018.
- Although the number of children in the juvenile justice system has been cut in half since 2007, 43,580 children and youth were held in residential placement on a given night in 2017. Nearly 2 in 3 were placed in the most restrictive facilities.
- Another 935 children were incarcerated in adult prisons on any given night in 2017—down from 2,283 in 2007. An estimated 76,000 children are prosecuted, sentenced or incarcerated as adults annually.
- While many states have made legislative changes to raise the age of juvenile court jurisdiction to 18, five states still automatically prosecute 17-year-olds as adults (Georgia, Michigan, Missouri, Texas and Wisconsin) and all states allow children charged with certain offenses to be prosecuted in adult courts.

Even as child arrests and detentions have fallen, extreme racial disparities have persisted across the juvenile and adult criminal justice systems. Children of color, particularly Black children, continue to be over criminalized and overrepresented at every point—from arrests to post-adjudication placements.

- Although 62 percent of children arrested in the U.S. were white, children of color were nearly two times more likely to be arrested than white children. Black children were two and a half times more likely.
- In 2017, the residential placement rate for children of color was more than two times that for white children nationwide and more than four times that for white children in 18 states and the District of Columbia. Black children were committed or detained at nearly five times the rate of white children.
- 67 percent of children in the juvenile justice system were children of color: 41 percent were Black, and 21 percent were Hispanic.
- Children of color are also disproportionately transferred to the adult criminal justice system, where they are tried and prosecuted as adults. *In 2017, Black youth represented 54 percent of youth prosecuted in adult criminal court but only 15 percent of the total youth population. Black youth are nine times more likely than white youth to receive an adult prison sentence; American Indian/Alaska Native youth are almost two times more likely and Hispanic youth are 40 percent more likely.*
- At least 1 in 3 youth in the juvenile justice system has a disability qualifying them for special education services under the Individuals with Disabilities Education Act (IDEA)—nearly four times the rate of youth in public schools. Less than half receive special education services while in custody.
- The percent of LGBTQ children in the juvenile justice system (20 percent) is more than two times that of LGBTQ youth in the general population (7-9 percent); 85 percent are children of color.

Information is becoming increasingly available about the disparity of disciplinary practices for girls of color. Black girls are disciplined and suspended at much higher rates than white girls.³⁷ This has been attributed to an “adultification” bias toward black girls which leads to harsher treatment and higher standards for black girls in schools, according to reports published by

³⁷<https://www.ecs.org/50-state-comparison-state-policies-on-school-discipline/>

the Georgetown Law Center on Poverty and Inequality. In terms of juvenile justice, Black girls are 2.7x more likely to be referred to Juvenile Justice than white girls, less likely to have their cases diverted and 1.2x more likely than white girls to be detained.³⁸

Jaquira Diaz reported that the school-to-prison pipeline is getting worse for black and brown girls in an article in The Guardian.³⁹ She cited her personal experience and the widely publicized story of 4 12-year old black and Latinx girls who were interrogated and strip-searched at school after their principal suspected them of being on drugs and concealing drugs.⁴⁰ According to Diaz, The Juvenile Detention Alternatives Initiative⁴¹ found that in 1992, black girls comprised 29% of all girls with juvenile court cases; in 2002, the number was 30%; and by 2009, it was 40%. This increase was not determined to be due to a rise in the criminal activity of black girls, but rather due to decisions made by white school officials and police officers. Black girls and their white counterparts were not punished similarly.

In 2012, the US. The Department of Justice filed a lawsuit against the City of Meridian, Mississippi, Lauderdale County, judges of the Lauderdale County Youth Court and the state of Mississippi in which they alleged officials were helping to operate a “school-to-prison pipeline in which the rights of children were repeatedly and routinely violated.”⁴² Students could be incarcerated for minor, nonviolent behavior including dress code infractions such as wearing the wrong color socks, tardiness, using vulgar language, yelling at teachers, and going to the bathroom or leaving the classroom without permission.

Police in Schools

Law enforcement has been embedded in some schools as early as the 1940s.⁴³ President Bill Clinton’s 1994 Violent Crime Control and Law Enforcement Act created the Office of Community Oriented Policing Services (COPS).⁴⁴ This bill included funding for policing in schools. Federal funding supported additional police in school after the Columbine shootings and each time there was another school shooting.⁴⁵

Police officers in schools include School Resource Officers (SRO), School Security Officers (SSO), Security Guards or other titles, depending on the district or state. The officers may be hired or contracted through local police or sheriff departments, or less frequently through the Fire Department. Alternatively, schools may hire their own police personnel.⁴⁶

As funding for schools has been squeezed with reductions or caps at the state and federal level to a varying degree during the past 10–15 years, the prioritization of school police officers over mental health support staff such as social workers, counselors and psychologists can be seen in the following statistics:

³⁸<https://www.aecf.org/resources/listening-to-black-women-and-girls/>

³⁹<https://www.theguardian.com/commentisfree/2019/mar/14/black-brown-girls-school-prison-crime-jaquira-diaz>

⁴⁰<https://www.buzzfeednews.com/article/skbaer/inghamton-school-strip-search-students>

⁴¹<https://www.aecf.org/work/juvenile-justice/jdai/>

⁴²<https://www.childrensdefense.org/wp-content/uploads/2018/08/dismantling-the-cpp.pdf>

⁴³<https://advancementproject.org/wp-content/uploads/WCTLweb/index.html#page=18>

⁴⁴<https://advancementproject.org/wp-content/uploads/WCTLweb/index.html#page=22>

⁴⁵ ibid

⁴⁶ School Policing: Results of a National Survey of School Resource Officers.

<https://www.edweek.org/media/school-resource-officer-survey-copyright-education-week.pdf>

- 1.7 million students are in schools with police but no counselors.
- 3 million students are in schools with police but no nurses.
- 6 million students are in schools with police but no school psychologists.
- 10 million students are in schools with police but no social workers.
- 14 million students are in schools with police but no counselor, nurse, psychologist, or social worker.⁴⁷

According to the 2019 American Civil Liberties Union (ACLU) report *Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students*, the impact of these priorities affect the most marginalized students; students of color and students with disabilities.⁴⁸ Teachers, unprepared by their training to deal with behavioral challenges call on the school resource offices for assistance. In fact, in the ACLU report, they noted that schools with police reported 3.5 times as many arrests as schools without police. The report also included these statistics:

- Students with disabilities were arrested at a rate 2.9 times that of students without disabilities. In some states, they were 10 times as likely to be arrested than their counterparts.
- Black students were arrested at a rate 3 times that of white students. In some states, they were 8 times as likely to be arrested.
- Pacific Island/Native Hawaiian and Native American students were arrested at a rate 2 times that of white students.
- Latinx students were arrested at a rate 1.3 times that of white students.
- Black girls made up 16 percent of the female student population but were 39 percent of girls arrested in school. Black girls were arrested at a rate 4 times that of white girls. North Carolina, Iowa, and Michigan, Black girls were more than 8 times as likely to be arrested than white girls.
- Native American girls had a school arrest rate 3.5 times that of white girls. Native American girls were 12 percent of girls in Montana but were 62 percent of female arrests in that state.
- Black and Latino boys with disabilities were 3 percent of students but were 12 percent of school arrests.

The 2019 ACLU report cited above also reports that there is no data indicating that police in schools improve either the students' mental health, educational outcomes, or their safety—and in fact, in many cases they are causing harm, including increased referrals to the criminal justice system for non criminal activities, reduction in mental health/social services and reduced sense of safety for students.⁴⁹ Police in schools do what they are trained to do - detain, handcuff, and arrest. Examples included:

⁴⁷ Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students: https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf

⁴⁸ *ibid*

⁴⁹ Kupchik, Aaron, "School Policing: What the Research Shows," June 11, 2018, <https://www.endzerotolerance.org/single-post/2018/06/08/School-Policing-What-the-Research-Shows>

- An evaluation of the impact of North Carolina’s state grant program for school resource officers concluded that middle schools that used state grants to hire and train SROs did not report reductions in serious incidents like assaults, homicide, bomb threats, possession and use of alcohol and drugs, or possession of weapons.⁵⁰ (This study, reported in 2018 compared 460 middle schools, those with SRO programs funded by the state with those that did not adopt an SRO program, over a seven-year period).
- A 2018 study reviewing the impact of federal grants for school police on 2.5 million students in Texas found a 6 percent increase in middle school discipline rates, a 2.5 percent decrease in high school graduation rates, and a 4 percent decrease in college enrollment rates.⁵¹

Gary Broderick, legislative director of RISE for Youth⁵², a nonpartisan campaign that promotes the creation of community-based alternatives to youth incarceration states, “police department policies are designed around dealing with adult behavior,” Broderick added. “Teens’ brains are not as developed as adults’ brains – they need to be given room to make mistakes and they need adults to support them. That is not the role police officers play.”⁵³ Broderick suggested that the issue is about funding. “Instead of investing in the infrastructure and human capital needed to meet the diverse emotional and psychological needs of all children, Chesterfield (Virginia) and other school systems have deployed SROs as a relatively inexpensive answer to a complex problem. *Rather than hiring counselors and social workers and significantly reducing class sizes so teachers can give students individual attention, all of which would require dramatic increases in school budgets, he says localities pack kids into classrooms and manufacture situations where there is going to be more misbehavior.*” Teachers reaching for the option they have available is not the problem,” Broderick added. “Teachers need to have staff they can call to help deal with discipline issues. They need people trained in de-escalation and adolescent brain development, not people who are trained to respond to criminal behavior.”⁵⁴

Schools as Prisons

For many students, schools look and feel like prison. Students must step through metal detectors, live under the constant view of surveillance cameras, and encounter police in their school hallway.⁵⁵ There are drug sniffing dogs, random searches, and harsh punishments including seclusion and restraint. News reports tell of students who have been tasered⁵⁶, five year old⁵⁷ and six year old children being handcuffed and arrested for a tantrum,⁵⁸ children as young as four years old being placed in a room that she describes as the “jail room”⁵⁹ and a six

⁵⁰ Anderson, Kenneth Alonzo (2018) “Policing and Middle Schools: An Evaluation of a Statewide School Resource Officer Policy,” *Middle Grades Review*: Vol. 4: Iss. 2.

⁵¹ <https://drive.google.com/file/d/1XbO7qyNWB4Fz54nGXluej-yRhvTa5kMF/view>

⁵² <https://www.riseforyouth.org/>

⁵³ <https://www.chesterfieldobserver.com/articles/friend-or-foe-the-debate-over-policing-schools-turns-political/>

⁵⁴ [ibid](#)

⁵⁵ We Came To Learn: A Call to Action for Police Free Schools (The Advancement Project) 2018

<https://advancementproject.org/wecametolearn/>

⁵⁶ https://www.huffpost.com/entry/she-didnt-know-her-autistic-son-could-be-tasered-at-school_n_5dcf0e42e4b01f982f01cce5

⁵⁷ <https://www.kcra.com/article/5-year-old-handcuffed-charged-with-battery-on-officer/6395087>

⁵⁸ <https://nypost.com/2019/09/22/florida-6-year-old-arrested-handcuffed-for-elementary-school-tantrum/>

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<https://www.wric.com/news/taking-action/they-are-going-to-put-me-in-the-jail-room-henrico-mom-says-her-child-is-terrified-t-o-go-to-school/>

year old who had a meltdown, taken from school to a locked mental facility without parent consent and without parent contact for two days.⁶⁰

These examples highlight the lack of understanding of typical and atypical child development, neurodiversity, brain development, biologically based stress behaviors and children's need for relational safety. School Wide Behavior Management Programs that put a premium on compliance over connection/relationships, fail to recognize the developmental and individual needs of students and fail to differentiate between volitional behaviors and biologically based stress behaviors (fight-flight-freeze autonomic reactions) result in a school environments with toxic levels of stress for vulnerable children, including students who have experienced trauma, students with neuro-diversity such as autism or Attention Deficit Hyperactivity Disorder (ADHD), and students with mental health challenges such as anxiety, or depression.

Children are not only punished for their biologically based stress responses, but are also arrested for these non-volitional behaviors. In Denver, a six-year-old with Post Traumatic Stress Disorder (PTSD) was provoked into a meltdown by a bully. The bus driver called the police on the girl with the mental health condition who had been bullied; then prevented the girl's mother from getting on the bus to comfort her.⁶¹ Parent support groups share many similar examples of children (often children with autism) having a meltdown in stressful situations where neither their Individualized Education Plan (IEP), nor their Behavioral Intervention Plan (BIP) were followed. The child is punished, and in some cases, schools have pressed charges for the child's behavior (again, biologically based stress behaviors) when the school did not provide the required supports for the child.

Parents in support groups have commented that it is as though their child is being criminally charged for being autistic. There is an imbalance of power with schools having government immunity. It is not unusual for parents of children with disabilities to find themselves in the position of "fighting the school" to provide assessments, Individualized Educational Plans (IEP) required supports and/or accommodations and/or adhere to Behavior Improvement Plans (BIP). Despite guidance from the U.S Department of Education that children should not be punished for behaviors that result from their disabilities, but rather should receive support,⁶² far too many children are punished rather than receiving supports and/or accommodations.

Harsh discipline/punishment for non-volitional behaviors is a form of bullying. Even verbal bullying and emotional abuse by educators can leave scars on the brain according to neuroscientific research.⁶³ Very young children and teens are at significant risk of developing Post Traumatic Stress Disorder (PTSD) due to their stage of brain development. Bullying causes a stress response that releases cortisol to the brain. That hormone has been directly linked to depression, a mental illness reaching epidemic proportions in our teen populations. Bullying can leave an indelible imprint because it affects hormones, reduces connectivity in the brain, and sabotages new neurons' growth. It causes permanent harm. MRIs show that the

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<https://www.news4jax.com/news/local/2020/02/10/mother-wants-answers-after-6-year-old-daughter-was-involuntarily-committed-at-school/>

⁶¹

<https://neuroclastic.com/2020/03/01/trending-in-america-calling-the-police-on-disabled-kids-in-kindergarten/?fbclid=IwAR0F-r9KuSeSEeVqWZ5ljeQYmOp6dGf4ZZRU0BQ2OeGn3aPL-j2rP-R8yvE>

⁶²<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>

⁶³ <https://www.edutopia.org/blog/what-neuroscience-reveals-bullying-by-educators-jennifer-fraser>

brain's pain response to exclusion and taunting is identical to its reaction when the body is physically hit or burned. Neuroscientists are clear that a positive, supportive environment will allow teens to flourish, but a toxic environment will cause them to suffer in powerful and enduring ways. Bullying does not stop when students leave school. The brain changes are long-term, and the emotional scars may last a lifetime. The adolescent period can make or break a child's intelligence; this is why cortisol is so devastating when released into the brain by bullying: it damages brain structures affecting learning, memory, concentration, and decision making.

As noted in the section on Zero Tolerance Policies, restraint and seclusion occur daily in America's schools and are used most frequently for students with disabilities and are used disproportionately for students of color. Nearly daily newspaper accounts report the atrocities children face in the name of "keeping schools safe."^{64 65 66 67 68 69 70 71}

A further threat to schools as safe havens for students is the introduction of threat detection assessments and technology. A report in Searchlight New Mexico⁷² reported that Albuquerque Public School's use of threat assessments had a disproportionate impact on students with disabilities and Black students. *Children in special education were the subject of 56 percent of the threat assessments despite making up only 18 percent of the district's student population. Black children were the subject of nearly 10 percent of threat assessments but are only 2.6 percent of all students.* The report highlighted a child with autism who was in first grade when he was deemed a "high-level threat" to the school. The report goes on to caution that Albuquerque's experience serves as a warning to schools nationwide that well-meaning attempts to prevent gun violence and keep students safe may instead stigmatize whole groups of students, with evaluations staying on students' records for years.

Referral to law enforcement is an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation. School-related arrest refers to an arrest of a student for any activity conducted on school grounds, during off-campus school activities (including while taking school transportation), or due to a referral by any school official. All arrests are considered referrals to law enforcement. During the 2015–16 school year, over 290,600 students were referred to law enforcement agencies or arrested. Approximately 82,500 of the 290,600 total students referred to law enforcement or arrested were students with disabilities (IDEA). *Students with disabilities (IDEA) represented 12 percent of the overall student enrollment and 28 percent of students referred*

⁶⁴https://oklahomawatch.org/2017/12/04/despite-objections-oklahoma-schools-use-seclusion-rooms-to-isolate-students/?fbclid=IwAR3QtxAx5TcY2bmTFfwkzTOkrO8LNtvFlu9zhj_vTRw0terTWNdQ5w8gWgc

⁶⁵ <https://dailydose.blogspot.com/2012/09/a-terrifying-way-to-discipline-children.html>

⁶⁶ <https://abcnews.go.com/Blotter/death-school-parents-protest-dangerous-discipline-autistic-disabled/story?id=17702216>

⁶⁷ <https://wamu.org/story/19/03/13/children-are-routinely-isolated-in-some-fairfax-county-schools-the-district-didnt-report-it>

⁶⁸ <https://www.theguardian.com/us-news/2019/oct/08/the-truth-behind-the-physical-discipline-albuquerque-schools-say-they-dont-use>

⁶⁹ <https://www.buzzfeednews.com/article/skbaer/student-autism-death-school-restraint?bfsource=relatedmanual>

⁷⁰ <https://vpm.org/explore/category/seclusion>

⁷¹ <https://features.propublica.org/illinois-seclusion-rooms/school-students-put-in-isolated-timeouts/>

⁷²

<https://theappeal.org/new-to-the-school-to-prison-pipeline-armed-teachers-facial-recognition-and-first-graders-labeled-high-level-threats/>

to law enforcement or arrested. *Black students represented 15 percent of the total student enrollment, and 31 percent of students who were referred to law enforcement or arrested.*⁷³

As noted earlier in this report, the zero tolerance policies expanded over time to include minor offenses. Offenses that in earlier years would have been handled by the schools have become criminal offenses that must be reported to the police. Research is consistently showing differences in how these minor offenses are handled for white children and children of color. It was reported in *TEST, Punish, and Push Out: How “Zero Tolerance” and High–Stakes Testing Funnel Youth Into the School-to-Prison Pipeline*⁷⁴ that despite changes in discipline practices over time, students of color continue to disproportionately bear the burden of harsh school discipline. Two key components to that inequity have been identified: unequal treatment at the individual level, and unequal use of zero tolerance at the systemic level. An additional theory proposed for the disparity is Critical Race Theory⁷⁵ (CRT), the legal studies theory that seeks to explain the ways in which laws, including those regulating education, perpetuate racial inequality without explicitly discriminating. According to Crawley and Hirschfield in *Examining the School-to-Prison Pipeline Metaphor*, CRT holds that European American (EA) bias and systems of hierarchy lock communities of color into marginalized positions over time, irrespective of legal reforms. The EA cultural bias is built into the country’s laws and into educational policies and codes; however racism seems ordinary and natural because it is now advanced through race-neutral practices. For example, as the zero tolerance rules began to expand beyond dangerous behaviors, appropriate versus inappropriate behaviors were based on white culture. Thus a behavior or custom that was appropriate in the Black culture could be a reason for suspension or expulsion. Hairstyles is one such example.

At the individual level, investigations of student behavior, race, and discipline around the country have yielded no evidence that the over-representation of students of color among suspended students is due to poverty or higher rates of misbehavior.⁷⁶ Studies have shown that students of color are punished more severely for less serious or more subjective infractions. At the systemic level, it is also frequently the case that schools with large populations of students of color rely more on exclusionary discipline than predominantly White schools. As a result, it is not uncommon for the same behavior that triggers little to no response in many predominantly White communities to result in severe consequences in communities of color. The combined effect is that because of unconscious biases, discriminatory treatment, and systemic racism, the already unjust system of zero tolerance is particularly devastating for the educational opportunities of students of color.

In the Research Brief “*Do Early Educators’ Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?*” authored by Walter S. Gilliam, PhD et al.,⁷⁷ the researchers looked at underlying processes, including implicit bias, that contribute to the racial disparities in school readiness and subsequent

⁷³ <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>

⁷⁴ Test, Punish and Pushout.. https://b3cdn.net/advancement/d05cb2181a4545db07_r2im6cage.pdf

⁷⁵ <https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-346>

⁷⁶ http://www.njcn.org/uploads/digital-library/OSF_Discipline-Disparities_Disparity_NewResearch_3.18.14.pdf

⁷⁷ https://medicine.yale.edu/childstudy/zigler/publications/Preschool%20Implicit%20Bias%20Policy%20Brief_final_9_26_27676_6_5379_v1.pdf

educational- and later-life achievement and opportunity. Black preschoolers are 3.6 times as likely to receive one or more suspensions relative to White preschoolers. This is particularly concerning as Black children make up only 19% of preschool enrollment but comprise 47% of preschoolers suspended one or more times. Similarly, boys are three times as likely as girls to be suspended one or more times.⁷⁸

While many of the outcomes of the policies and practices discussed above are measurable, and much has been documented about these outcomes, the impact on the child's sense of self is impacted in ways that have barely been touched on in the literature. As one adult wrote about her experience of being secluded as a first grader, children who are punished from the time they are young for things they do not understand do not blame the teachers; they blame themselves.⁷⁹

Funding Considerations

According to a May 2019 Center on Budget and Policy Priorities Report, K-12 funding was more than 10% below pre-recession levels in seven states.⁸⁰ Another consideration with state funding is that the methodology used for many states has often used property taxes which results in less funding available for schools located in areas of poverty.

Funding for schools has been negatively impacted at the federal level by sequestration, budget cuts and spending caps over the past 12 years. Funding for the Individuals with Disabilities Education Act (IDEA) has NEVER reached the level authorized when IDEA was enacted. The IDEA formula was designed to provide each state with a maximum grant equal to the state's number of children with disabilities receiving services multiplied by a percentage of the national average per pupil expenditure (APPE). The APPE percentage was authorized to gradually increase—starting at 5 percent in fiscal year 1978 and increasing to 40 percent in 1982. The 40 percent APPE funding level, which was permanently authorized, has come to be known as “IDEA full funding”. With the exception of 2009, when the federal funding for IDEA was boosted with ARRA⁸¹ funds, the percentages have ranged from a low of 8% to a high of 18%⁸², and a percentage of 14.6% in 2019.⁸³ The U.S. Department of Education estimate for expenditures for FY 2020 shows that the federal share has decreased to 13 percent.

In contrast to funding for schools, funding for prisons has increased dramatically.⁸⁴ From 1979–80 to 2012–13, public PK–12 expenditures increased by 107 percent (from \$258 to \$534 billion), while total state and local corrections expenditures increased by 324 percent (from \$17 to \$71 billion) — triple the rate of increase in education spending. On an individual basis, fifteen states spend at least \$27,000 more per prisoner than they do per student.⁸⁵

⁷⁸ <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2013-14.html>

⁷⁹ <https://endseclusion.org/2019/10/28/the-allegory-of-the-closet/>

⁸⁰ <https://www.cbpp.org/blog/k-12-funding-still-lagging-in-many-states>

⁸¹ American Recovery and Reinvestment Act of 2009

⁸² https://www.ncd.gov/sites/default/files/NCD_BrokenPromises_508.pdf

⁸³ <https://www.ncl.org/news/policy-and-advocacy/idea-full-funding-why-should-congress-invest-in-special-education>

⁸⁴ <https://www2.ed.gov/rschstat/eval/other/expenditures-corrections-education/brief.pdf>

⁸⁵

<https://www.dailymail.co.uk/news/article-6317783/Incarceration-vs-education-America-spends-prison-does-public-schools.html?fbclid=IwAR3BHKXRLj3Cs1LCUyFalGimIbdFH2lhyUwBmSxTALxA0xhp1o1q97JOHQY>

This dramatic increase in corrections expenditures over the past three decades occurred despite a fall in crime rates. According to data from the Bureau of Justice Statistics, the number of people incarcerated in state and local correctional facilities more than quadrupled over the past few decades, rising from about 490,000 in 1980 to over 2 million in 2014, due in part to the enactment of additional, often lengthy mandatory minimum sentence laws.⁸⁶ It is of note that the United States incarcerates youth and adults at vastly higher rates than most other countries in the world. Americans account for 4.4 percent of the global population, but 22 percent of the world's prison population.⁸⁷

The American Bar Association Task Force on Reversing the school-to-prison Pipeline reports that states and localities spend millions of dollars each year to arrest, prosecute, convict and detain youth. The long-term costs of confining youth run into the billions of dollars per year when the increased costs associated with recidivism, lost future earnings, lost tax revenue, and increased Medicaid and Medicare spending are considered.⁸⁸

Discussion

The school-to-prison pipeline has been studied extensively for nearly two decades. Key findings consistent across the multitude of studies include the detrimental impact of zero tolerance practices and harsh disciplinary practices including seclusion, restraint, suspension, expulsion; increasing numbers of police in schools and reduction of mental health support staff (counselors, social workers, psychologists), great disparity in disciplinary rates and referral to juvenile justice for students of color and students with disability. Despite widespread awareness and efforts that have been made to reverse the school-to-prison pipeline, harsh disciplinary practices continue, as do other factors that contribute to the pipeline. Inadequate funding is a major barrier. When there is not enough money:

- Class sizes are larger; teachers don't have enough time for each student
- There is not enough money to provide sufficient support staff for students with disabilities
- There are not enough counselor, social worker and/or other mental health staff to support students
- There is not enough time for staff training about disabilities before general education teachers are given the responsibility of teaching inclusive classes
- There is not enough time for training about effective practices for assisting students who have experienced trauma
- There is not enough time for training about effective practices for individualized, relationship based, developmentally appropriate practices that support children with varying needs
- There is insufficient time to bring existing staff up to speed about the advances in understanding of the brain and nervous system; including application of that

⁸⁶ <https://www2.ed.gov/rschstat/eval/other/expenditures-corrections-education/brief.pdf>

⁸⁷

<https://www.dailymail.co.uk/news/article-6317783/Incarceration-vs-education-America-spends-prison-does-public-schools.html?fbclid=IwAR3BHKXRLj3Cs1LCUyFalGimlbdFH2lhyUwBmSxTALxA0xhp1o1q97JOHQY>

⁸⁸ <https://jije.org/2016/02/12/aba-task-force-wants-to-help-disrupt-school-to-prison-pipeline/189230/>

knowledge to support children who have difficulty with brain/body and emotional regulation

When the teachers don't have the training to understand biologically based stress responses, they do not know the effective way to respond to a child who is under such a high degree of stress. There seems to be agreement in educational literature that "behavior is communication." However, there is no agreement about what that behavior is communicating or the mechanisms to learn what the child is communicating. Positive Behavior Intervention and Supports, the federally funded national technical assistance agency promotes a simplified concept of children's behavior as being simply about getting something they want or getting out of something they don't want. In their document "Preventing Restraint and Seclusion in Schools", the following statement is made. "students use their behavior to communicate that they want to get something (like attention or an activity) or avoid something (like escape an unpleasant or undesired situation)"⁸⁹. There is no mention of behavior responses that are involuntary due to heightened sensitivity of the body's stress mechanism.

Children who have anxiety, children who have experienced trauma, and children with neurodiversities such as autism and attention deficit hyperactivity deficit, as well as other children whose behaviors are challenging are likely to have heightened sensitivity of their body's nervous system, the body's mechanism for determining whether or not they are safe. Consequently, their body's will react to things in the environment (or to internal sensations, thoughts or feelings) with fight, flight, or freeze behaviors. For individuals who have not been educated about neuroscience, these behaviors look the same as volitional behavior. In school, a sharp request (or one that is perceived as sharp by the child), a change in routine, a request for homework the child forgot to do, the teacher's perfume (reminding him of a traumatic incident), or countless other examples, could set off a reactive response for a vulnerable child. In such cases, the child needs compassion and understanding and help to return to a calm, regulated state. He or she does not need to be punished for an autonomic, nonvolitional response.

Unfortunately, many educational leaders, as well as legislators and policy writers, are not educated about the body's biologically based stress responses and have referred to children with behavioral challenges as "violent", casting these children as villains, rather than focusing on what is necessary to provide schools and families with the necessary supports. The narrative focuses on the danger students pose to teachers, with that danger being the justification for seclusion and restraint and moving students to "special schools." The root cause of the student's distressed behavior in these discussions is ignored or the people arguing for restraint, seclusion have not availed themselves of the brain and trauma science of the past 30 years.

The use of inflammatory terminology (violent, out-of-control students) is harmful as it places the student in the position of being a perpetrator of intended harm, when in many, if not most cases, the student was responding to a threat their brain/body detected due to their brain biology. As Mona Delahooke, Ph.D. explains, "a child who can't control his or her behavior is in a brain state that is driven subconsciously. The behavior is not willful or intentional, but

⁸⁹https://assets-global.website-files.com/5d3725188825e071f1670246/5d76d3445b32331f468405db_Preventing%20Restraint%20and%20Seclusion%20in%20Schools.pdf

reactive and instinctive. These “fight-or-flight” responses stem from a brain-body connection that doesn’t support control over one’s emotions and behaviors. Through the nervous system, the child is begging to be witnessed as vulnerable and frightened.” The child needs relational safety, not punishment. Mona discusses these issues, as well as how teachers and others can better support students in school in the Trauma Informed Educators Network Podcast with Mathew Portell).⁹⁰ Dr. Delahooke’s book, Beyond Behaviors: Using Brain Science to Understand and Solve Children’s Behaviors provides detailed information to help teachers, administrators, parents, and others differentiate between volitional and nonvolitional behaviors and to learn how best to support children who are struggling with their behaviors.

Dr. Bruce Perry, Neuroscientist, Clinician, and Teacher, has created a series of educational videos to explain the science underlying behaviors.⁹¹

The populations most impacted by the school-to-prison pipeline are students of color, students with disabilities and students who live in poverty.

The 2019 American Civil Liberty Union sums up the findings in their *Cops and No Counselors* report.⁹²

- Millions of students are being underserved and lack access to critical supports. These glaring deficits in mental health staff for students are inexcusable, especially in comparison to the number of reported law enforcement in schools.
- Students with unmet behavioral and mental health needs, combined with law enforcement with limited training and ill-defined roles has resulted in disastrous consequences.
- The analysis related to school policing measures also demonstrate glaring racial and disability status disparities in school arrests and referrals to law enforcement.
- The findings indicate that this surge in police officers contributes to a biased application of discipline and over-criminalization of students of color and students with disabilities.

Curt Decker, the Executive Director of the National Disability Rights Network (NDRN), writes the following in his introductory letter in the report: *Probation Referral A Model for Diversion of Children and Youth with Disabilities from the Juvenile Justice System*: “Children and youth with disabilities often land in the correctional system after they are failed by other systems. These are not children who benefit from punishment or confinement. They cannot “learn” from their mistakes because their actions are not mistakes -- they are consequential and oftentimes predictable behaviors of children who have not received needed services. These children are “mis-incarcerated.” The practice of mis-incarceration does not make us safer as a society, it does not benefit youth or their families, and is incredibly expensive. Children who receive services at home and in their communities are more successful than those we lock up.”⁹³

⁹⁰<https://podcasts.apple.com/us/podcast/episode-15-dr-mona-delahooke-trauma-informed-educators/id1480791597?i=100046999229>

⁹¹ <https://www.neurosequential.com/covid-19-resources>

⁹² <https://www.aclu.org/report/cops-and-no-counselors>

⁹³ https://www.ndrn.org/wp-content/uploads/2019/10/Probation_Referral_Report_FINAL_w_Appendices.pdf

The report highlights that, now more than ever, school boards and administrators need guidance to navigate their responsibility to ensure each of their students are safe from discriminatory discipline, especially when they engage law enforcement. The report concludes with recommendations for improving student safety, well-being, opportunity to learn, and school climate, and ensuring that these measures work to prevent discrimination and eliminate the disproportionate impact of school policing on students of color and students with disabilities.

According to a 2016 Brief from the U.S. Department of Education, children growing up in poor communities often not only do poorly in school but also are disproportionately arrested and incarcerated during their teen-age and young adult years. Additionally, children with incarcerated parents face an increased risk of a variety of adverse outcomes, including antisocial and violent behavior and lower educational attainment.⁹⁴

Glimmers of hope

As more people become aware of the impact of adverse childhood experiences (ACE), schools are beginning to implement trauma informed practices rather than compliance based disciplinary models that feature rewards and consequences (punishment).^{95 96} In districts where schools have not made changes, teachers are seeking out training, and resources are available through books, web resources, conferences, and online training opportunities to learn the basics about brain science, educational neuroscience, the importance of relational safety, brain/body regulation including co-regulation.

There is beginning to be recognition that youth should not be treated the same as adults because the adolescent brain has not fully developed. According to *Juvenile Justice and the Adolescent Brain*,⁹⁷ findings from neuroscience are increasing knowledge about teenage behavior and informing policy decisions regarding juvenile justice. This is reflected in legislative actions across the states as bills begin to be introduced and passed to raise the age that a child can be prosecuted as an adult.^{98 99}

As research has documented the unintended consequences of criminalization of minor offenses, states have begun to make changes in their laws to reverse such practices. For example, Virginia passed legislation in March 2020 which will be effective July 1, 2020 that an elementary or secondary school student is not guilty of disorderly conduct in a public place if the disorderly conduct occurred on the property of an elementary or secondary school, on a school bus, or at any activity conducted or sponsored by any elementary or secondary school.¹⁰⁰ In addition legislation was passed during the same legislative session that eliminates the

⁹⁴<https://www2.ed.gov/rschstat/eval/other/expenditures-corrections-education/brief.pdf>

⁹⁵Applying a Trauma Informed School Systems Approach: Examples from School Community-Academic Partnerships
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6128351/>

⁹⁶

<https://thenotebook.org/articles/2020/02/11/district-finds-that-creating-more-trauma-informed-schools-requires-a-change-of-culture/>

⁹⁷ Massachusetts General Hospital Center for Law, Brain, and Behavior <http://clbb.mgh.harvard.edu/juvenilejustice/>

⁹⁸https://www.abajournal.com/magazine/article/adult_prosecution_juvenile_justice?utm_source=2017%2F1%2F27&utm_campaign=2017%2F1%2F27&utm_medium=email

⁹⁹ <http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB477>

¹⁰⁰ <http://lis.virginia.gov/cgi-bin/legp604.exe?201+bil+HB0256>

requirement that school principals report to law enforcement certain enumerated acts that may constitute a misdemeanor offense.¹⁰¹ In the same legislative session in Virginia, bills were passed to require data collection and analysis regarding incidents with School Resource Officers, specific training of School Resource Officers, and review/renewal of School Resource Officer contracts every two years (which would be available for public review).

In addition, a dress code equity act was passed and is awaiting the Governor's signature. This bill requires the Board of Education to include in its guidelines and model policies for codes of student conduct (i) standards for reducing bias and harassment in the enforcement of any code of student conduct and (ii) standards for dress or grooming codes, which the bill defines as any practice, policy, or portion of a code of student conduct adopted by a school board that governs or restricts the attire of any enrolled student. The bill requires any dress or grooming code included in a school board's code of student conduct or otherwise adopted by a school board to (a) permit any student to wear any religiously and ethnically specific or significant head covering or hairstyle, including hijabs, yarmulkes, headwraps, braids, locs, and cornrows; (b) maintain gender neutrality by subjecting any student to the same set of rules and standards regardless of gender; (c) not have a disparate impact on students of a particular gender; (d) be clear, specific, and objective in defining terms, if used; (e) prohibit any school board employee from enforcing the dress or grooming code by direct physical contact with a student or a student's attire; and (f) prohibit any school board employee from requiring a student to undress in front of any other individual, including the enforcing school board employee, to comply with the dress or grooming code. This act would eliminate discrimination and punishment based on nation about clothing, including head coverings on the basis of race, gender, culture, sexual identity.¹⁰²

Recommendations and Next Steps

After 20 years of extensive research, the answers to what is needed to dismantle the school-to-prison pipeline are apparent.

1. Funding our nation's schools must be a priority at the state and federal level:
 - a. The funding must be equitable; that is, the amount of funding must not depend on where the student live, but rather on what the needs of that community are for their students
 - b. The funding must be fully sufficient to meet the needs of students with disabilities
 - c. The funding must allow for teachers to be paid in accordance with their training and responsibilities
 - d. The funding must allow for time for training, time for parent/teacher collaboration, time for teacher collaboration and learning
 - e. Ensure sufficient levels of mental health professionals,
 - f. Ensure sufficient levels of support staff to meet the needs of students with disabilities
 - g. Weigh the benefits of School Resource Officers and School Security Officers vs Mental Health staff in making decisions about staffing.

¹⁰¹ <http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB257>

¹⁰² <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB837&201+sum+HB837>

2. Teachers must be supported through appropriate training and time for training including training on the following topics:
 - a. Implicit bias and ways to reduce bias
 - b. Trauma, the impact on the developing brain, resiliency
 - c. Self- reflection and reflective supervision
 - d. Educational neuroscience
 - i. Basic parts of the brain involved with maintaining life, regulation, emotions, executive functions
 - ii. Autonomic reactions
 - iii. Polyvagal theory; stress responses
 - iv. Co-regulation -> self-regulation; how to recognize child's state and prevent dysregulation; how to respond when child is dysregulated

3. School wide and classroom management systems that utilize rewards and consequences (punishments) must be replaced with relationship-based, individualized, neuro-scientific and neurodevelopmentally sound and collaborative approaches that recognize the key importance of relationships and regulation (of the adults and the students).

4. Strengthening of collaboration across agencies that serve students including the Juvenile Justice Center, Social Service Agencies, Medicaid Agencies, Mental Health and Public Health Agencies, as well as private organizations. Consider implementing Communities in Schools.¹⁰³

Changing practices is extremely difficult, even when the facts clearly indicate that change is in everyone's best interest. People are often not swayed by facts alone. The following practices were reviewed and the research indicates that much harm has been done by these practices with little or no evidence that the practice had the desired impact. In fact, in some cases, the practices had the opposite effect.

- Zero Tolerance policies
- Suspension
- Restraint, Seclusion and Exclusion
- Expulsion
- Police in Schools (*without training in child development, brain development; instead of counselors, social workers)

These practices have taken a tremendous toll on individual lives and on the communities of the young people lost to prison. Even those who did not end up in prison did not/do not fare well in schools where these policies are practiced. There is not only a cost in terms of human suffering, but also a financial cost from young people who are not able to reach their potential and contribute to society. There is also the cost of burned out, exhausted teachers. Schools are often not meeting the needs of students with disabilities (funding constraints).

¹⁰³ <https://www.communitiesinschools.org/>

As this paper is in its final revision, our country is in the midst of a National Pandemic with COVID-19. Each day brings more uncertainty. One thing that is certain, however. Every student, parent, teacher, administrator, indeed every individual has been impacted by and will continue to be impacted by unprecedented levels of stress. When students do return to school, they must be supported with compassion and understanding, and the recognition that they are likely to experience heightened levels of dysregulation with consequent stress responses (fight/flight/freeze reactions). These responses must be met with relational safety, not harsh disciplinary consequences.

While school is out and many leaders are making resources available free online, now is the opportune time for educators and education leaders to learn about educational neuroscience, brain functioning, regulation, the autonomic nervous system, polyvagal theory and neuroception of threat or safety, and relational safety. With this knowledge, it is only natural that there would be a shift from compliance based school management systems to schools as safe havens where every student is valued and every student thrives.