

Rehabilitation or Discrimination?

The American criminal justice system has for decades spurned the use of rehabilitation over extended sentencing mandates for criminals - creating a stereotype that there exists no need to mend the root causes of crime and the idea that “once a criminal, always a criminal.” This notion has seeped into the American secondary education system, where punishment for small disciplinary issues seeks to reprimand students by the full extent possible – removal from the educational environment. Mandatory “zero tolerance” policies remove students from the classroom without providing a means of rehabilitation and solutions for disciplinary issues. Studies show that suspended students are more likely to be retained a grade, drop out, commit a crime and/or end up incarcerated as an adult. Considering all of its negatives, why do zero tolerance policies exist? First, under-resourced public education systems don’t allow for extensive, thereby expensive, rehabilitation programs. Secondly, race discrimination – African-American males are the most affected by this school-to-prison route – contributes to the zero tolerance issue. Lastly, achievement markers such as standardized testing and standards set by the No Child Left Behind Act seek to remove those from the classroom who may “drag down” test scores. If these three issues were addressed in the American public education system, the school-to-prison pipeline could be resolved over time.

The term zero-tolerance was taken from the war on drugs, where law enforcement are trained to act quickly and harshly upon drug offenders. These discipline policies were initiated in education during a juvenile crime wave of the late 1980s and early 1990s. As of recent, between 1992 and 2002 nationwide violent crimes at school against students aged 12 to 18 dropped by 50% and schools are considered one of the safest environments for children. (Advancement Project, Education on Lockdown) In addition, from 1994 from 2002, the youth arrest rate for violent crimes has declined nationwide by 47%. During the crime wave, Congress enacted the Gun-Free Act of 1994 which required states to enact laws expelling students found with firearms on school property. Many states and school districts went beyond the mandate and passed law expelling students found with other types of weapons, drugs on school grounds and for serious crimes committed on or off campus. When first enacted, zero-tolerance policies were meant solely for serious offenses, however the policies have become an overarching approach to disciplining students. Zero-tolerance penalties are now received for spitballs, imaginary weapons, smart mouth, trash talk and tardiness. Punishment by exclusion from the classroom has become the standard in American education. According to leading child psychologists, strict discipline policies can hinder a child's development of two major needs of school aged youths: "the development of strong and trusting relationships with key adults in their lives,

particularly those in their schools (teachers) and the formation of positive attitudes toward fairness and justice.” (Skiba, Zero Tolerance)

From 1974 to 2000, the amount of suspended students rose from 1.7 million to 3.1 million. Research over the past few years has determined the increased use of suspensions is due to seemingly trivial conduct and doesn't mandate such harsh punishment. The number of student arrests have also risen – for example student arrests in Philadelphia County schools increased from 1,632 in the 1999-2000 school year to 2,194 in the 2002-2003 year. In the Houston Independent School District during the year 2002, a large number of arrests were for minor offenses. For example, of the 4,002 arrests that year, 17% or 660 of them were for disruption of class or disruption of transportation. Approximately 1,040 of the 2002 arrests in Houston were for disorderly conduct.

Some examples of suspensions and/or expulsions:

- A six year-old African-American child was suspended for ten days for bringing a toenail clipper to school. A school board member said, “This is not about a toenail clipper! This is about the attachments on the toenail clipper!” (Harrisburg, PA)

- A 14-year-old boy mistakenly left a pocketknife in his book bag after a Boy Scout camping trip. At his hearing, the boy's Scout Master testified on the boy's behalf. The student was expelled under the district's Zero Tolerance Policy, which requires expulsion for possession of knives. As a result of an appeal by Legal Aid Society of Greater Cincinnati, the student was readmitted to school, but had already missed 80 days of school. (OH)

- An African-American ninth grader was expelled for one year from a predominantly white school district and sent to an alternative school because she had sparklers in her book bag. She had used them over the weekend and forgot they were in her bag. (East Baton Rouge Parish, LA)

- A four-year-old African-American child was suspended for one day because he allegedly pushed and shoved his classmates on the playground. The kindergartner's mother complained that she was not notified of this behavior and thus was not given an opportunity to correct his behavior.

- An African-American honors student attending school in a predominantly white school district was suspended from school indefinitely for fighting. This was her first disciplinary referral. (SC)

- An African-American male seventh grader bet a schoolmate on the outcome of a school basketball game. The schoolmate, who lost the bet, accused the boy of threatening him for payment. The school district conducted no investigation and instead notified law enforcement officials. The 7th grader was charged with felony extortion and expelled. (San Francisco, CA)

- On his way to school, an African-American male (5th grader) was shown two razor blades by a classmate who stated that she planned to use the blades to hurt two girls who were bullying her. The male student took the blades from his classmate and hid them in order to prevent a potential tragedy. Another student notified school officials that the boy had hidden the blades. Although the boy took steps to ensure the safety of others, he was suspended from school for one year. The District refused a request for a due process hearing. During that year, he was provided with no alternative education. As a result, he was required to repeat the fifth grade. (Winona, MS)

(Skiba, Zero Tolerance)

Administrators in these districts believe that zero-tolerance policies are necessary because of they could potentially: “avert tragedy by cracking down on minor conduct before it becomes serious,” “deter misconduct by providing youths with a ‘wake-up call,’” “limit legal liability by treating all misbehavior as serious,” “shift youths into the juvenile justice system to give them help that schools will not or cannot provide,” and “create an environment conducive to learning by removing children who do not want to learn.” (Education on Lockdown) There exists no evidence that these zero-tolerance policies are effective in treating misbehavior or preventing violence. Suspended students have a high rate of recidivism thus proving suspension as a fairly ineffective deterrent therefore the negatives of zero-tolerance policies severely outweigh its positives.

In a study by Fordham University on the New York City public school system in 2003, it found that the New York City Department of Education distributes much of its resources “statistically associated with behavioral descriptors along race and poverty lines,” (Fordham University, Equity or Exclusion) something that is common among other American school districts. Distribution of resources very clearly affects the distribution of teachers. At every level – elementary, middle and high – higher

congregations of Whites, Asians and rich students in a school's enrollment were correlated with more qualified faculties. In June 2003, the New York Court of Appeals ruled that the claim made in the case of the Campaign for Fiscal Equity v. State of New York that the funding formula used by the state of New York unfairly distributes money to richer districts over poorer, urban areas was a valid attempt to right this issue, however the case and verdict has been in limbo for years since. The lack of resources provide little opportunity to be involved in school outside of the classroom. Current research shows that "students who participate in extracurricular activities exhibit better behavior across a variety of measures including attendance, drug use, and study habits." Thus, these benefits lead to the idea that participation in extracurricular activities "strengthens students' connections to their school." (Fordham University, Equity or Exclusion)

In most school districts across the United States, funding for schools are determined by property taxes and other variables which adds to the discrepancies against poorer school districts. In 1973, the Supreme Court of the United States upheld this financing issue in the case San Antonio Independent School District v. Rodriguez where two Texas school districts were in question as one had an inordinate amount of resources compared to the next. The Supreme Court ruled that use of property taxes to determine funding for public schools does not violate the Equal Protection Clause of the

Fourteenth Amendment. Equality of education is not mandatory and Texas had not created a suspect lower class due to this funding calculation system. This case provided the foundation for school districts to fund richer districts and provide basis against lack of funding in poorer, urban areas.

Shown by the research study at Fordham, better resources equate to better teachers and teacher qualifications affect student behavior immensely. Teacher qualifications in the study were measured by education, credentials, and experience. Suspension rates in school with qualified teachers were below the national average. Also shown by the study, regardless of the racial makeup of the school, some educational resources were associated with positive behavior among students. Unfortunately, the resources associated with positive behavior were distributed unequally among racial and socioeconomic lines. To provide a means of comparison, the study isolated the behavioral data at twelve high school situated on college campuses in New York City. These schools were chosen because they are surrounded with enough resources to provide a quality education. African-American students were marginally represented more at these college secondary campuses compared to citywide schools – 37.8 percent compared to the city average of 35 percent – however the suspension rate was half the citywide rate for every race. Average attendance at the collegiate secondary schools were roughly 95 percent compared to the 80 percent

citywide average, thus proving resources are necessary to provide a quality education and motivation to students.

Racial disparities have been apparent and well documented in school disciplinary policies for decades. Recent data from the Department of Education prove this notion. Although African-American students constitute only 17 percent of public school students they make up 32 percent of out-of-school suspensions. Caucasian students (although 63 percent of public school enrollment) equate to only 50 percent of suspensions and approximately 50 percent of expulsions. (Skiba, Zero Tolerance)

Unfortunately, African-Americans seem to be the most persecuted sect of students. A study by the Applied Research Center “show[ed] that black children, particularly black males, are disciplined more often and more severely than any other minority group.”

The Condition of Education released by the United States Department of Education in 1997 revealed that almost 25 percent of all African-American male students were suspended at least once over a four year period. In addition to these alarming numbers, zero-tolerance policies are more likely to exist in African-American and Hispanic school districts. During the 1996-1997 school year, predominately minority school districts “were more likely to have policies addressing violence (85%), firearms (97%), other weapons (94%), and drugs (92%) than white districts (71% - violence, 92% - firearms, 88% - other weapons, and 83% - drugs). Studies show that African-American students

are far more likely than their white peers to be suspended, expelled, or arrested for the same conduct at school. (Skiba, Zero Tolerance)

These race discrepancies continue after secondary education. In 2002, African-American teenagers made up 16 percent of the juvenile population but were 43 percent of juvenile arrests – while Caucasians were 78% of the juvenile population and 55% of the youth arrests. In 1999, minority youth accounted for 34 percent of the United States population but 62 percent of youth in juvenile prison.

What causes these race discrepancies? One clear reason is socioeconomic status. Unfortunately, race and socioeconomic status is highly connected in American society thus “increasing the possibility that any finding of disproportionality due to race is a by-product of disproportionality associated with socioeconomic status.” (Skiba, The Color of Discipline) As previously mentioned, low socioeconomic status is correlated with increased school suspension. In a statement before the United States Commission on Civil Rights, the National Association of Secondary School Principals in 2000 argued that the racial disproportionality of zero tolerance policies:

“...is not an issue of discrimination or bias between ethnic or racial groups, but a socio-economic issue... A higher incidence of ethnic and racial minority students being

affected by zero tolerance policies should not be seen as disparate treatment or discrimination but in terms of an issue of socioeconomic status.”

A possibility exists that African-Americans innately have high rates of disruptive behavior and thus the higher rates of suspension and punishments are mandated. However, there have been no significant studies on this notion and no evidence that Blacks misbehave at a higher rate than other races. A study done by Shaw and Braden (1990) suggested that “although Black children received a disproportionate share of disciplinary referrals and corporal punishment, white children tended to be referred for disciplinary action for more severe rule violations than black children.”

In the research study performed Skiba, et. al. even with socioeconomic statuses controlled, significant racial disparities remained. These discrepancies though, were not at the administrative level. At that level, measures reflecting the disposition of the disciplinary policy were not subject to racial disproportionality. School administration seemed to dole out suspensions for most offenses regardless of race or socioeconomic statuses. In addition, the study failed to show a pattern of more serious behavior among those who were punished more often. White students were more likely to be referred to the office for more serious offenses such as “smoking, leaving without permission, obscene language, and vandalism,” while African-Americans were usually

suspended for “disrespect, excessive noise, threat, and loitering.” Thus African-American students are suspended more often than not due to a higher rate of office referral. What causes this increase? Bullara (1993) argues that the typical classroom style “[that] relies heavily on negative consequences contributes to school rejection and dropout by African-American youth; for such students the choice of either staying in school or dropping out may be less of a choice and more of a natural response to a negative environment in which he or she is trying to escape.” To resolve this issue, effective teacher training must be created as a majority of teachers feel “underprepared in the area of classroom management.” (Calhoun 1987)

Nationally, the American public education system has a fairly low graduation rate of approximately 68 percent students who enter high school in ninth grade graduate by twelfth grade. However, as implied from the plight of minorities in secondary education, the national graduation rates are substantially lower for minority groups and particularly lower for males. In 2001, 50 percent of African-American students, 51 percent of Native American students, and 53 percent of all Hispanic students graduated from American secondary schools. For males, the percentages are even more alarming: Black males have a graduation rate of approximately 43 percent, Native American males 47 percent, and Hispanic males 48 percent. To further worsen matters, official “dropout” statistics do not accurately portray all the students that have

left secondary education thus the numbers could potentially be more alarming than mentioned. (Orfield, *Losing Our Future*) On closer examination of dropout data by Orfield, et. Al., there were few states where the graduation gap between Whites and minorities was non-existent or reversed. For African-Americans, the gap ranged from 0.0 points in Alaska to 41.3 points in Wisconsin. For Hispanics, the disparity ranged from 6.2 points higher than Whites in Louisiana to 43.4 lower in New York. The national average for the graduation gap was 21.7 points. For Native Americans, the range was 2.8 higher than Whites in Alabama to 56.4 lower in Pennsylvania and a national average of about 23.8 below Caucasians.

Congress attempted to solve the severe dropout problem in the United States by passing the No Child Left Behind (NCLB) Act of 2002 – which included provisions on graduation rate accountability. Unfortunately, these provisions are not mandated and have not accomplished much change in secondary school graduation rates. The No Child Left Behind Act was the federal government's attempt to provide funding to disadvantaged students by "targeting states, districts, and school with large percentages of children in poverty." (Orfield, *Losing Our Future*) To gain federal funding, schools must meet a criterion that Congress believed would stimulate education reform and provide a solution to the graduation rate epidemic. The No Child Left Behind act mandates that states create standardized testing in at least reading and

math and to use these test scores to determine the efficacy of their schools. The basis for NCLB is that schools will produce enough reform that in twelve years 100 percent of their students will be proficient in math and reading. To ensure this goal, each state must create annual benchmarks for its schools and districts and meet these guidelines to gain federal funding. The states monitor the progress of the districts and the districts monitor the goals of its schools to ensure that Adequate Yearly Progress (AYP) is being completed toward the 100 percent goal. If a school fails to make Adequate Yearly Progress two years in a row, it is flagged “for technical assistance and labeled as ‘needing improvement.’” If it cannot improve by using assistance from its overseeing entity, the entity is required to intervene and take over the school or district. The No Child Left Behind Act has several options to address failing institutions from harsh – schools are closed and federal funding removed – to the compromising – requiring a school or district to bring in a consultant to address the issues at hand.

States and school districts all across the nation have a new focus now – not to be sanctioned due to test-driven requirements. This focus has led to the idea that many districts and school want to rid of low performing students to increase their test scores. The following scenario demonstrates this reasoning:

“Imagine a school has one thousand tenth grade students. Three hundred are very low achievers and fail a proficiency test. The remaining 700 are predominantly moderate achiever students, and pass. The school does not make the AYP testing goals. The next year the pressure is higher because two years under the goal will result in state intervention. NCLB requires that an even higher percentage of the students who are enrolled will have to pass the test for the school to make AYP. 95 percent of the enrolled eleventh graders must take the test. However, if 200 of the 300 low achievers leave for a GED program or simply drop out before the year gets underway, the ‘leavers’ will not be tested or counted for test-based accountability. As a result, the smaller test pool will have far fewer low achievers and the test scores of this group, compared to the original, should rise considerably. Without one additional dollar spent on instruction or academic support for the low achievers, the school’s test profile will have improved dramatically in just one year.” (Losing Our Future)

Considering resources are lacking at many American public schools, this scenario is more common than not.

The No Child Left Behind Act also requires that minorities, those who are learning the English language, students with disabilities, and students from low-income families make Adequate Yearly Progress as well. If any of these groups have not made progress, then the institution in general has not made their annual benchmark. Despite

the benefits that could come from establishing goals on each of these subgroups, it adds an additional level of pressure on minority students - who are disproportionately low achievers - and thus dropout becomes more likely among these groups. There exists a provision in the No Child Left Behind act that allows subgroups to be under the Adequate Yearly Progress for their respective criterion but the school pass its annual benchmark – this mechanism is dubbed the “safe harbor.” In these cases, the number of students within the subgroup in question who score proficient or better in math or reading must increase by 10 percent over the previous year – adding additional pressure on those within each category. In addition, the subgroup must illustrate improvement in another academic indicator such as graduation rate.

In addition to academic achievement benchmarks created by the No Child Left Behind act, as mentioned previously, graduation rate provisions are also included within its text. Graduation rate accountability was added to counter schools pushing out low achievers and create a desire to educate them. Increasing graduation rate is included within the criterion of Adequate Yearly Progress stating that “if a school failed to meet adequate rates for two consecutive years, it would be sent into ‘school improvement status.’” Although this is included in the act, the study done by Orfield, et. Al. suggested that these provisions are not enforced and that the United States Department of Education has taken steps to considerably weaken the graduate rate

provision of the NCLB Act. A review of federally approved plans under the No Child Left Behind Act illustrates these graduation rate issues. Thirty-nine states in the Union set what is deemed a “soft” Adequate Yearly Progress goal for graduation rate accountability. “Soft” as defined by the Orfield study is defined as “schools and districts that fall below the graduation rate goal established by the state can still ‘make AYP’ if they exhibit the smallest degree of improvement from one year to the next.” Only ten states set a boundary that if a school is under, it will constitute failure of Adequate Yearly Progress. Texas is an example of a “soft” graduation rate standard. Texas requires secondary schools to meet a standard of 70 percent graduation “or show improvement.” The required improvement is only 1/10th of a percentage point for any school or district that falls under the 70 percent benchmark. On the other end of the spectrum, California has set a motivated goal of 100 percent graduation rate but Adequate Yearly Progress can be passed if any improvement occurs. Further diluting the graduation rate requirement, Former United States Secretary of Education Roderick Paige issued regulations stating that the graduation rate did not need to be disaggregated for minority subgroups except to act as an additional academic indicator under the “safe harbor” mechanism thus the Adequate Yearly Progress can be met if the aggregate meet the graduation rate benchmark. This new mandate has caused states to require even less from their respective schools – employing “softer” regulations on

graduation rate. In a study committed by the Civil Rights Project at Harvard University and the Urban Institute, for all the states “which disaggregated graduation rates could be calculated” (approximately 46 states and District of Columbia), they all would fail the Adequate Yearly Progress standard for graduation rates and accountability, if the proposition was imposed seriously. This is assuming that at the minimum district graduation rate for the aggregate and disaggregate would be approximately 66 percent. Also, due to the focus on increasing test scores, the drop-out/ pushing out of minorities that are low performers will only worsen over time. Schools and districts are discovering it is more cost-effective and easier to remove poor achievers rather than to rehabilitate.

In summary, the school-to-prison pipeline is currently being propagated by the policies meant to reform the American public education system. The No Child Left Behind Act of 2002 was created and passed as a solution to the lack of funding for educational entities by creating standardized tests and achievement markers such as graduation rate to determine the amount of funding to be provided. However, NCLB has been used improperly – focusing on the standardized markers over the more important notion of graduation rate accountability. Funding wise, states still use calculations of property taxes and other ratings of socioeconomic status to fund schools which provide rich districts with substantial amounts of funding over poorer regions.

Until these calculations are altered, the vicious circle of poorer schools receiving less funding annually and richer schools gaining more and more resources will remain and worsen. Race is a factor that must be addressed in zero tolerance policies because classroom discrimination and low socioeconomic status can cause a disproportionate amount of minorities to be introduced to the pipeline. Until funding is spread out evenly among schools and standardized testing and achievement markers altered to allow growth and promote rehabilitation over punishment, this pipeline will exist and expand over the next few decades.

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