

Eliminating Excessive and Disparate School Discipline: A Review of Research and Policy Reform

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Nearly 3.5 million public school students were suspended out of school at least once in 2011–2012 (U.S. Department of Education Office for Civil Rights, 2014). That is more than one student suspended for every public school teacher in America (Losen, Hodson, Keith, Morrison, & Belway, 2015b). The growing national awareness of the disparate treatment of students on the basis of race by law enforcement authorities was piqued most recently by the video images of a Black female student being thrown from her chair by a White school resource officer, prompted by her refusal to put her cell phone away during class. The officer not only arrested the girl, but also her classmate who videotaped the incident and protested what she was witnessing (Pérez-Peña, Hauser, & Stolberg, 2015). Incidents like these have provoked school authorities across the country to consider how race and gender bias might affect their perceptions of and response to student behavior (Smith-Evans, George, Goss Graves, Kaufman, & Frohlich, 2014). While harsh disciplinary approaches

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may be more common in schools serving high percentages of historically disadvantaged youth, biased perceptions in all schools can lead educators to respond more severely when the behavior of children of color is at issue (Okonofua & Eberhardt, 2015). Factors in the school setting, such as the presence of school police and other high-security measures, may further contribute to these disparate disciplinary responses and weaken the relationship between students and educators (Finn & Servoss, 2015).

Schools face the imperative of providing safety for all members of the community while also ensuring that children receive the level of support, freedom, and developmentally appropriate responses to behavior found in optimal learning environments. Although the topic of school discipline is often discussed as a safety issue, most suspensions are not responses to safety concerns. Rather, discipline policy and practice have much more to do with how schools manage the learning environment. For example, in Texas, serious violent acts and safety-related rule violations trigger a “non-discretionary” mandatory removal, but these represent less than 5% of all disciplinary removals from school (Fabelo et al., 2011). In contrast, removals are routine for minor offenses like tardiness, truancy, using foul language, disruption, defiance, or cell phone possession (Losen, Martinez, & Okelola, 2014). This excessive use of harsh discipline for minor offenses is highly problematic. As former United States Secretary of Education Arne Duncan observed, “[A]s a nation, we are severely underestimating the traumatic impact of our children being subject to, or even just seeing or witnessing, unnecessary physical force and arrests in our schools and classrooms.... To do better, we also have to take a hard look at ourselves, our history, and the implicit bias that we all carry” (Duncan, 2015).

Of course, school authorities must address misbehavior, even if it does not raise immediate safety concerns. Removing a student from a classroom can be an appropriate response to help de-escalate a conflict or to access counseling and other support outside the classroom. Yet many of our nation’s public schools are quick to remove students from school for relatively minor offenses (Losen, 2011). In some schools, harsh punishments are meted out even for minor, first-time rule infractions, while in others, repeated minor misbehavior can trigger automatic suspension, expulsion, or referrals to juvenile court to pay fines or serve jail time (Theriot, 2009). A growing body of research demonstrates that the most effective responses do not entail exclusion from school (González, 2015; Gregory et al., this volume). Rather, strategies like the Virginia threat assessment protocol help educators distinguish serious threats from more minor offenses, and ensure that the disciplinary response is both appropriate to

the student's behavior and responsive to what they may need (Cornell & Lovegrove, 2015). Time spent in the classroom is one of the most consistent predictors of academic achievement (Ginsburg, Jordan, & Chang, 2014). Therefore, any unnecessary exclusion reduces the opportunity for learning, and undermines our national goals for educating all children.

Mounting evidence of the overuse of exclusionary discipline in our nation's schools, and the significant threat posed to students' opportunity to learn, has led to federal, state, and district action to shift policy and practice. This chapter reviews the status and consequences of discipline disparities, as well as policy efforts to curb overly punitive practices and their disparate impact on students of color.

EXCESSIVE DISCIPLINARY EXCLUSION HARMS SOME GROUPS OF CHILDREN MORE THAN OTHERS

A large proportion of public school students will be suspended during their middle and high school years, and Black students are most at risk. Most parents, school board members, and policymakers do not realize how often our public schools suspend students because these data are not published on an annual basis in the way that test scores and graduation rates are (Center for Civil Rights Remedies and Council of State Governments, 2013). Nonetheless, data suggests that suspension rates in many of America's schools are extremely high. While approximately 5% of students are suspended out-of-school during any given year (Losen & Gillespie, 2012), these rates have shown a steady rise since the early 1970s, when the number of students suspended was about half of what it is today. Further, the 5% risk in a given year does not capture the high likelihood of suspension that accrues over the course of a student's school career. New longitudinal research findings using a national database indicates that between one third and one half of all students surveyed experienced at least one suspension at some point between Kindergarten and twelfth grade (Shollenberger, 2015).

Moreover, data for the 2011–2012 academic year shows that, nationally, Black students face the highest risk of out-of-school suspension, followed by Native Americans and then Latinos, at both the elementary and secondary levels (Losen et al., 2015b). As depicted in Fig. 14.1, Black students in elementary school were suspended out of school at a rate that is 6 percentage points higher than their White peers. This Black/White gap expanded almost threefold as they moved into secondary (middle and high) school, resulting in a nearly 17-percentage point difference. Indeed,

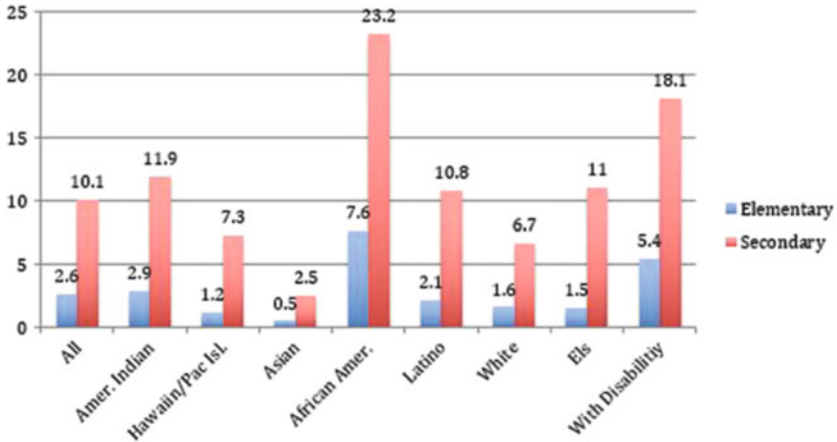


Fig. 14.1 Elementary and secondary suspension rates by subgroup, 2011–2012

across the nation, in just one year—2011–2012—nearly one of every four Black secondary school students was suspended at least one time.

These national averages do not fully capture the extent of the problem, given the wide variation in disciplinary approach within and across schools and districts. While many districts have low numbers of suspensions, others have staggering rates such as those in which well over 50% of the enrolled population are suspended in a single year (Losen et al., 2015b).

A cross-sectional analysis of gender and disability data shows extreme disparities. Data from the 2011–2012 school year shows that 34% of all enrolled Black male students with disabilities at the secondary level were suspended at least once (Losen et al., 2015b). Black female students also face significant disparities, and are at equal or greater risk of suspension compared with males of other racial/ethnic groups (Losen et al., 2015b). These disparities by race, gender, and disability status raise serious concerns about the extent to which some schools are meeting their legal obligation to educate all students.

Profound disparities are evident in rates of expulsion and school-based arrests, where the life consequences are severe. Compared to out-of-school suspensions, far fewer students are expelled, referred to law enforcement, or arrested, and the overall risks for these categories are typically no larger

than 1% of any groups' enrollment (U.S. Department of Education National Projections, 2015). However, expulsion and arrest have much greater and more immediate impact, and the data are clear that Black students are disproportionately punished. While Black students represent 18% of enrolled public school students, they represent 39% of students expelled and 42% of referrals to law enforcement from school. Together, Black and Latino students represent 42% of the student body, but account for 72% of the students who are arrested for school-related offenses (U.S. Department of Education Office for Civil Rights, 2014).

These patterns mirror disparities in the juvenile justice system, where Black and Latino youth represent two-thirds of all those in detention and correctional facilities, despite comprising only one third of the country's adolescent population (National Council on Crime and Delinquency, 2007). In addition, data from a nationally representative population-based sample of adolescents indicate that LGBT youth are also at greater risk for expulsion than their heterosexual peers and are approximately 50% more likely to be stopped by the police than other youth (Himmelstein & Bruckner, 2011). Non-heterosexual girls, in particular, experienced about twice as many arrests and convictions as other girls who had engaged in similar transgressions.

RESEARCH SHOWS THAT THE HARM IS EXTENSIVE AND EXPENSIVE

The negative social and academic consequences of the over-reliance on exclusionary discipline to manage behavior are important for policymakers and practitioners to understand.

Frequent suspensions increase dropout risks and juvenile justice involvement. The potential impact of being suspended, even once, can be devastating. For example, a study tracking all ninth graders throughout high school and post-graduation in Florida found that being suspended just one time in Grade 9 was associated with a two-fold increase in the risk of dropping out, from 16% to 32% (Balfanz, Byrnes, & Fox, 2015). The *Breaking Schools' Rules* study that tracked Texas middle school students for six years (Fabelo et al., 2011) found that being removed on disciplinary grounds for a discretionary violation was associated with a nearly three-fold increase in the likelihood of future contact with the juvenile justice system. In addition, a national longitudinal study revealed that suspension

from school tended to precede serious delinquency, especially for Black and Latino children (Shollenberger, 2015).

The hidden costs of school exclusion are high. Out-of-school suspensions produce economic and social costs that are less obvious but enormously burdensome for school systems. For example, economists in Texas estimated a 13% increase in dropouts from the widespread use of suspension across the state, based on the *Breaking Schools' Rules* finding that 60% of all Texas middle school students had been suspended from the classroom. As a result, the state incurred between 700 million and 1 billion dollars annually in lost tax revenue and additional years of instruction for retained students (Marchbanks et al., 2015). Moreover, removal of students from the classroom can also negatively affect opportunities for higher education, since a significant number of colleges consider student school discipline records as part of the admissions process. A survey of colleges and universities found that 89% of institutions of higher education that collected school discipline records from prospective students used this information in their admissions decision making (Weissman & NaPier, 2015).

SCHOOL FACTORS, INCLUDING BIAS, CONTRIBUTE TO DISPARITIES IN DISCIPLINE

Behavioral differences do not explain the disparities. Research indicates that Black students are often disciplined more harshly than their White peers, even when engaging in the same conduct (Nicholson-Crotty, Birchmeier, & Valentine, 2009). Several studies indicate that racial disparities are far more likely to be found in the minor subjective offense categories (Fabelo et al., 2011), and that the racial disparities in suspensions are not sufficiently explained by differential misbehavior (Finn & Servoss, 2015; Skiba, Shure, & Williams, 2012) or poverty (Fabelo et al., 2011).

Data on disparities raises questions about the influence of stereotypes and unconscious bias. The hard-to-measure nature of implicit or unconscious bias makes it very difficult to prove a causal connection, but emerging research findings strongly suggest that bias may be one of several contributing factors to disparities in discipline (see e.g., Akalis, Banaji, & Kosslyn, 2008; Goff, Eberhardt, Williams, & Jackson, 2008). The clearest study indicating racial bias by teachers that affects disciplinary actions was recently reported by Okonofua and Eberhardt (2015), who found that when teachers of all races were each given the same narrative about a student's behavior, with the student's race randomly varied, those judging

what they believed was a Black student's second misdeed were more likely to call for a suspension than if they believed the second time offender was White. Okonofua and Eberhardt suggest that, over time, with repeated exchanges, students may pick up on even subtle differences in treatment, which may in turn inspire repeated misbehavior and disengagement from school. Exactly how much influence bias has on teachers' and administrators' discipline decisions is just beginning to be explored. Given the research findings, it seems likely, however, that subtle forms of bias can affect whether the observed behaviors of different groups are perceived as differentially problematic, and can also influence the subjective decision regarding the appropriate response.

Differences in discipline may be reinforced by structural disparities. Many Black and other students of color attend schools that rely so heavily on safety and surveillance measures that they resemble correctional facilities more than educational institutions. Nationwide, 26% of Black students report passing through metal detectors when entering school compared with 5.4% of White students (Toldson, 2011). At the same time, Black students are significantly more likely to report feeling unsafe at their school. Civil rights advocates have long expressed concerns that the emphasis in funding and policy on putting police in schools might exacerbate extant disparities in referrals to law enforcement and school-based arrests (Toppo, 2015).

EFFECTIVE AND PROMISING ALTERNATIVES TO EXCLUSIONARY DISCIPLINE AND INTERVENTIONS CAN REDUCE RACIAL DISPARITY

More effective practices can be found in thousands of schools across the country. Schools and districts vary widely in their use of suspensions, and many are successful in creating orderly, safe, and productive learning environments without excessive disciplinary exclusion. A national analysis of high- and low-suspending secondary schools suggests that 60% of schools employ more effective alternatives (Losen, Ee, Hodson, & Martinez, 2015a). In sheer numbers, approximately 8000 secondary schools from nearly 4,000 districts suspended fewer than 10% of every major subgroup enrolled (Losen & Martinez, 2013).

Greater awareness on the part of educators is already helping reduce excessive removals. In response to the concerns about exclusionary discipline, a number of states and districts have begun to change their practice. A preliminary analysis of data from these jurisdictions indicates a decline in suspension

rates may already be occurring. For example, data on the 2011–2012 school year from Maryland, (Maryland State Department of Education, 2015), Wisconsin, (Wisconsin, Department of Public Instruction, 2015) and Connecticut (Connecticut State Department of Education, 2013), reports based on state-collected data from the 2011–2012, and in California, the 2013–2014, school year, show declining suspension rates for all students. Notably, in California, two consecutive years of reduction were observed for all racial and ethnic groups with lower suspensions for the catch-all category of disruption/defiance driving the downward trend (Losen, Keith, Hodson, Martinez, & Belway, 2015c).

Safe and effective schools are characterized by strong teacher-student and teacher-parent relationships and low suspension rates. A recent district-wide study of Chicago schools, controlling for student demographics and the safety of the neighborhood of the attending students, found that the quality of teacher-student and teacher-parent relationships was the strongest predictor of a strong sense of safety in the school building (Steinberg, Allensworth, & Johnson, 2015). While poverty and the crime levels in the community mattered, the study also found that lower suspension rates were correlated with the higher safety ratings found for “strong-relationship” schools serving students from high-crime neighborhoods.

A CHANGE IN DISCIPLINARY APPROACH IS UNDERWAY

Increasingly, federal and state policymakers are taking steps that de-emphasize student removals from school, yet help reduce disruptive behavior. State and federal efforts have included policy and legislative initiatives to expand and improve discipline data collection, analysis, and reporting; reform truancy laws; and limit out-of-school suspensions.

Federal Efforts

Among the most notable federal actions is the issuance in 2014 of guidance from the Department of Education’s Office for Civil Rights (OCR) and Department of Justice (U.S. Department of Education, Office for Civil Rights and U.S. Department of Justice, 2014). That guidance alerted states and school districts to the harm that results from disciplinary disparities, and warned that failure to change harsh policies and practices in the face of more effective alternative approaches could constitute a violation of civil rights. Schools and districts whose patterns of disparity would support a finding of a disparate impact violation pursuant to federal regulations are obligated to

use more effective methods that do not harm some groups of children more than others. Beginning in 2009, OCR expanded the school discipline data that school districts are required to report. It also negotiated more than 55 settlements with districts in response to complaints of racial disparity from advocates or prompted by federal compliance review, and at least 30 new complaints have been opened for investigation (Losen et al., 2015b).

In March 2015, members of Congress introduced the Supportive School Climate Act of 2015 to reduce suspensions, expulsions, and other overly punitive school disciplinary actions to improve youth outcomes. The Act would permit the use of federal funds for Positive Behavior Interventions and Supports (PBIS) when states do the following: (1) ensure that school discipline policies align with civil rights laws and are applied equally to all students; (2) provide technical assistance to state and local education professionals, including training on trauma-informed approaches; (3) coordinate efforts with local education agencies to maximize reintegration of students involved with the criminal and juvenile justice systems; (4) strengthen laws governing the coordination between school systems and correctional facilities, ensuring that once students are incarcerated, they have a meaningful opportunity to turn their lives around when released; (5) establish systems for sustained family and community engagement in schools; and (6) provide transparent reporting of data on suspensions, expulsions, disciplinary transfers and referrals, seclusion, restraint, and school-based arrests at the state and local level in both aggregated and disaggregated forms.

A May 2015 Report of the President's Task Force on 21st Century Policing called on law enforcement and school officials to work collaboratively to keep students in the classroom and ensure appropriate alternatives to suspension and expulsion are available. In addition, the Task Force encouraged the use of discipline as an instructional tool; the development of partnerships with community members, families, schools, and law enforcement; and minimizing law enforcement policies and procedures that stigmatize youth and marginalize their participation in schools and communities.

State Efforts

Following the 2011 *Breaking Schools' Rules* report, the Council of State Governments launched a consensus-building initiative among experts and stakeholders to identify and describe effective disciplinary practices and policy. The resulting *School Discipline Consensus Report* (Morgan, Salomon, Plotkin, & Cohen, 2014) highlights reform efforts by state

policymakers as examples for others to follow. For example, Connecticut legislators passed a law requiring out-of-school suspension be used as a measure of last resort (Connecticut State Department of Education, 2013). In Colorado, state policymakers directed state education dollars to expand from a pilot program to system-wide implementation of restorative practices in Denver (González, 2015). And the state of Virginia mandated the formation of school-based teams to implement threat assessment protocols designed to prioritize prevention over punishment (Virginia Code § 22.1-79.4, 2013).

In September 2015, a law decriminalizing truancy in the state of Texas went into effect (Associated Press, 2015). As more than 100,000 students in the state were prosecuted for truancy-related misdemeanors in 2013 alone, these efforts stand to impact a significant number of students (Associated Press, 2015). April 2015 also marked a stay in the operations at one large Texas school district's truancy court, pending a review of the district's truancy procedures for disproportionality in the treatment of Black and Latino students (Elliott, 2015). Shortly thereafter, the Texas State Senate also voted to ease zero-tolerance policies in favor of helping students learn from minor infractions (Savage, 2015).

In March 2015, the Governor of West Virginia signed a truancy reform bill requiring school-based interventions before a student is referred to court for truancy and doubling the number of absences required before a referral is issued. The effort was made in response to a large increase in the number of children referred to the judicial system and the high costs of removing students from their home for missing school (Burdette, 2015). Shortly thereafter, the Governor signed a juvenile justice reform bill creating a \$4.5 million initiative on restorative justice programs across the state (Jenkins, 2015).

In 2014, California lawmakers eliminated suspensions and expulsions of students in grades K-3 for "disruption or willful defiance," a category of behavioral offense that in 2011–2012 accounted for nearly 50% of all suspensions in the state K-12 schools (California Education Code § 48900, 2014). That same year, the Maryland Department of Education adopted new regulations requiring school districts to review data for significant disparities by race and student disability status, and to take steps to eliminate these disparities in three years (Blad, 2014). Local school districts were also required to reduce long-term out-of-school suspensions and expulsions, beginning with the 2014–2015 school year (Maryland State Department of Education, COMAR 13A.08.01, 2014). Similarly, in

Massachusetts, a new discipline reform law took effect in July 2014 that makes exclusion from school a last resort, and requires districts to provide academic assistance to students for the first ten days of exclusion, regardless of the offense. In addition, the law requires the collection, analysis, and dissemination of discipline data, disaggregated by race and ethnicity. Furthermore, where discipline disparities based on race and disability status are evident, the law requires that corrective action be taken.

In addition, two other states pushed for changes. Georgia altered its zero-tolerance weapons policy to refer only to firearms and gave boards of education discretion to modify expulsion or discipline of students who violate it (Georgia, Title 16, Act 575, 2014). In June 2014, the Louisiana State Legislature adopted SCR 134, a resolution urging schools to examine their discipline policies in light of the disproportionate impact on students of color (Broome, 2014).

And, beginning in 2014, Arkansas has required an annual report on school discipline, including data disaggregated by race and other factors (Arkansas Act 1329, 2013). In Texas, beginning in 2013, HB 2651 directs the commissioner of education to review school suspension/expulsion procedures with opportunity for public comment (Texas H. B. 2651, 2013). Washington State also made changes to its student discipline laws, in particular those that relate to re-engaging students after suspension (Washington State Legislature RCW 28A.600.022, 2013).

District Efforts

Federal guidance on “disparate impact” may have spurred better district practices. District actions in 2015 suggest that enforcement efforts and public reporting are succeeding in encouraging a shift in disciplinary approach. For example, the superintendent of the Oklahoma City Public Schools pledged to change disciplinary practice in response to an OCR investigation and news reports placing the district among the highest suspending in the nation (Wendler, 2015). While reform initiated in response to civil rights actions is encouraging, measures addressing the harmful and disparate impact of excessive suspension have been adopted without such pressure by school and district leaders who have come to realize the costs of the status quo and the benefits of alternative practices. For example, although not prompted by federal investigation, the Superintendent of the Visalia Unified School District in California took action to improve the school environment through non-punitive strategies that address and reduce the

overuse of exclusionary discipline. Observing a decline in suspension rates, Superintendent Wheaton explained: “We did it on our own: We didn’t jump into all of this to get this data to change ... But obviously somewhere along the way, some of our initiatives started paying off ... We need to think about suspension and when it’s used and why it’s used and what is the most effective way to change the behavior” (Paulson, 2015). Individual schools have made dramatic progress as well; Garfield High School in Los Angeles, for example, recently announced it had nearly eliminated all suspensions while improving graduation rates (Anderson, 2015).

CONCLUSION

Research, practice, and the actions of federal, state, and local leaders make it clear that schools can successfully and substantially reduce exclusionary and punitive discipline rates and racial disparities. Doing so in a manner that keeps students in the classroom and builds positive relationships among students and faculty can enhance teaching and learning and lead to better academic outcomes—in short, improving educational equity in both opportunity and outcomes. While more research on disciplinary alternatives is needed to further refine these reform efforts, there is enough information for policymakers to act now. Three essential steps will be important for federal, state, and local policymakers to take:

1. *Collect, analyze and report discipline data to the public at least annually.* Discipline data can help to gauge the quality of the school environment for students as well as educators. When reported annually, this data can help educators and the public to identify patterns of disciplinary exclusion and to assess the kinds of alternative interventions and practices that are needed. Reports should include the number of students that are suspended in-school, suspended out of school, arrested or referred to law enforcement, as well as the counts of suspensions, broken down by reasons for removal, and days of lost instruction. To monitor disparities, it is essential that data be disaggregated by race/ethnicity, gender, English Learner status, and disability status, and provided to the public in a manner that facilitates cross-sectional analyses (e.g., Black students with disabilities). Public reporting of state and local expenditures for resource officers and high-security measures can further help to inform policymakers’ decisions. Educators at all levels also need to fully implement provisions of Individuals with Disabilities Education Act (IDEA) regarding the review of racial disparities in discipline for

- students with disabilities and the triggering of resources for early intervening services. More frequent data collection and analysis throughout a school year may provide critical opportunities for intervention to reduce disparities and the number of suspensions overall.
2. *Invest in alternatives to punitive exclusion.* Funding for alternatives must include: training for teachers and administrators, revising codes of conduct, supporting students with special needs who exhibit behavioral challenges, and expanding monitoring and enforcement by federal and state civil rights agents. Research suggests that teacher in-service preparation should build skills in promoting higher levels of student engagement (see Gregory, Bell, & Pollock, this volume). In addition, all school employees who interact with students should be trained on the impact of explicit and implicit or unconscious bias.
 3. *Align discipline policies, practices, and responses with the educational mission.* With accurate information in hand and funding available to support meaningful reforms, educators can evaluate whether school discipline policies and practices are aligned with the educational mission of public schools and are successfully fostering student engagement. Leaders at all levels of the educational system should routinely review and revise policies where necessary to eliminate racial disparities or reduce the number of exclusions from the classroom.

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