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AGAINST SCHOOL SUSPENSIONS

Deborah Thompson Eisenberg*

All children deserve to learn in a safe and supportive environment. In the 1954 landmark case, *Brown v. Board of Education*, the U.S. Supreme Court recognized that “education is perhaps the most important function of state and local governments.”¹ Education, the Court wrote, “is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”² The Court emphasized: “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”³

Six decades after *Brown*, the education system fails too many children, especially poor students of color. Freddie Gray, for example, lived in one of Baltimore’s most impoverished communities. He had been lead poisoned as a child, leading to learning disabilities and impulse control problems.⁴ He was suspended several times in high school.⁵ In 2005, he entered a juvenile detention facility.⁶ He never went back to school and never graduated from high school. He bounced in and out of the criminal justice system, and ultimately died a week after a fateful ride in the back of a police van.⁷

Sadly, overly punitive “zero tolerance” disciplinary policies have pushed many children out of public schools and into the criminal justice system. Many schools default to exclusionary punishments like suspensions and expulsions to punish relatively minor behaviors that have nothing to do with safety. Students who are suspended are more

¹ *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493 (1954).

² *Id.*

³ *Id.*

⁴ Janell Ross, *Why You Should Know What Happened in Freddie Gray’s Life—Long Before His Death*, WASH. POST (Dec. 19, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/12/19/why-you-should-know-what-happened-in-freddie-grays-life-long-before-his-death>.

⁵ *Id.*

⁶ Catherine Rentz, *Freddie Gray Remembered as Jokester Who Struggled to Leave Drug Trade*, BALT. SUN (Nov. 22, 2015), <http://www.baltimoresun.com/news/maryland/freddie-gray/bal-freddie-gray-remembered-as-jokester-who-struggled-to-leave-drug-trade-20151120-story.html>.

⁷ Nicolás M. Mora, *The Short, Hard Life of Freddie Gray*, BUZZFEED NEWS (Aug. 18, 2015, 2:18 PM), <https://www.buzzfeed.com/nicolasmadinamora/what-freddie-grays-life-says-about-baltimores-justice-system>.

likely to enter the juvenile and criminal justice systems, fueling what is known as the “school-to-prison pipeline.”⁸ In 2003–04, the year before Freddie Gray dropped out of school, Baltimore City Public Schools had reached a peak of 26,000 out-of-school suspensions.⁹ Two-thirds of those suspended were boys, and nearly all were Black.¹⁰

For the vast majority of disciplinary situations that arise in school, suspensions are wholly inappropriate and counterproductive.¹¹ In many cases, suspensions are an overreaction to the adolescent behavior in question.¹² Suspended students fall dramatically behind in academic performance over time, are more likely to dropout, and less likely to graduate on time.¹³ Research has shown that schools with

⁸ See CATHERINE Y. KIM ET AL., *THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM* 4 (2010) (“The School-to-Prison Pipeline thus refers to the confluence of education policies in underresourced public schools and a predominantly punitive juvenile justice system that fails to provide education and mental health services for our most at-risk students and drastically increases the likelihood that these children will end up with a criminal record rather than a high school diploma.”); see also ADVANCEMENT PROJECT, *OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE* 3 (2000), <https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf>.

⁹ Jane Sundius & Shawn Dove, *School Reform Math in Baltimore: Fewer Suspensions Equal Better Results*, WASH. POST (Jan. 2, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/01/AR2011010102317.html>.

¹⁰ *Id.*

¹¹ American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in Schools?: An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST 852, 853–54 (2008). The American Psychological Association conducted an extensive literature review of research about zero tolerance policies and found that available data contradicted the assumptions of zero tolerance policies and that zero tolerance policies conflicted with knowledge about adolescent development. *Id.*

¹² See Amanda Ripley, *How America Outlawed Adolescence*, THE ATLANTIC (Nov. 2016), <http://www.theatlantic.com/magazine/archive/2016/11/how-america-outlawed-adolescence/501149/>.

¹³ See Anne Gregory et al., *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 EDUC. RESEARCHER 59, 60 (2010) (summarizing research that “shows that frequent suspensions appear to significantly increase the risk of academic underperformance”). One study found that students who have been suspended were three grade levels behind their peers in reading skills after one year and almost five years behind after two years. *Id.* See also Emily Arcia, *Achievement*

high suspension rates have lower school-wide achievement as well, undermining the idea that a culture of zero tolerance will improve school climate and learning outcomes for other students.¹⁴

The overuse of exclusionary punishment, especially for Black students, is not a new problem. In 1975, the Children's Defense Fund, in a report entitled *School Suspensions: Are They Helping Children?*, warned that suspensions had grown to "mammoth proportions," with schools suspending more than one million children, mostly for nondangerous, nonviolent misconduct that did not seriously disrupt the educational environment.¹⁵ The report found "pervasive intolerance" among school officials for children who were "different," especially minority students and students with disabilities.¹⁶ At the time, Black children were suspended almost twice as often as White children.¹⁷

Four decades later, the problem has spiraled out of control. The number of school suspensions nationwide grew to a whopping 2.8 million by 2014.¹⁸ Students of color receive a disproportionate number

and Enrollment Status of Suspended Students: Outcomes in a Large, Multicultural School Districts, 38 EDUC. & URB. SOC'Y 359, 367 (2006).

¹⁴ For studies that call into question the notion that exclusionary discipline will improve the school's overall learning climate, see M. Karega Rausch & Russell J. Skiba, *The Academic Cost of Discipline: The Relationship between Suspension/Expulsion and School Achievement 2* (Apr. 2005) (unpublished manuscript), <http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Academic-Cost-of-School-Discipline.pdf>; Pedro A. Noguera, *Preventing and Producing Violence: A Critical Analysis of Responses to School Violence*, 65 HARV. EDUC. REV. 189, 190–93, 205–207 (1995); see generally Linda M. Raffaele Mendez et al., *School Demographic Variables and Out-of-School Suspension Rates: A Quantitative and Qualitative Analysis of a Large, Ethnically Diverse School District*, 39 PSYCHOL. IN THE SCHOOLS 259 (2002); Russell J. Skiba & M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, in HANDBOOK OF CLASSROOM MANAGEMENT: RESEARCH, PRACTICE, AND CONTEMP. ISSUES 1063 (Carolyn M. Evertson & Carol S. Weinstein eds., 2006); see generally Johanna Wald & Daniel Losen eds., *Defining and Redirecting a School-to-Prison Pipeline*, 99 NEW DIRECTIONS FOR YOUTH DEV.: DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE (2003).

¹⁵ CHILDREN'S DEF. FUND, *SCHOOL SUSPENSIONS: ARE THEY HELPING CHILDREN?* 9 (1975).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., 2013–14 CIVIL RIGHTS DATA COLLECTION: A FIRST LOOK 3 (last revised Oct. 28, 2016),

of suspensions. A report by the U.S. Department of Education Office for Civil Rights found that in 2013–14, Black students in kindergarten through 12th grade nationwide were 3.8 times as likely to receive one or more out-of-school suspensions as White students.¹⁹

Although Black boys were more likely than any other group to get suspended, Black girls were six times more likely than white girls to receive suspensions, often for perceived “attitude” or disrespect.²⁰ And the racial disparities in school discipline start in preschool.²¹ Students with disabilities were also twice as likely to be suspended as other students.²²

Exacerbating the problem, the increasing use of police in schools has led to the criminalization of common childhood behaviors—things like defiance, disrespect, dress code violations, bad language, peer conflicts—that in the past would have been handled by the principal and parents. Nationwide, Black students are 2.2 times as likely to receive a school-related arrest or referral to law enforcement as White students.²³

<http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf> [hereinafter *A First Look*].

¹⁹ *Id.*

²⁰ KIMBERLÉ W. CRENSHAW ET AL., BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED, AFRICAN AM. POLICY FORUM 16 (2015), http://www.atlanticphilanthropies.org/app/uploads/2015/09/BlackGirlsMatter_Report.pdf.

²¹ *Id.* Black preschoolers are 3.6 times more likely to be suspended as compared to their White peers. *Id.* A study by the Yale University Child Study Center found that preschool teachers expecting challenging behavior focus more attention on Black children, especially Black boys. WALTER S. GILLIAM ET AL., DO EARLY EDUCATORS’ IMPLICIT BIASES REGARDING SEX AND RACE RELATE TO BEHAVIOR EXPECTATIONS AND RECOMMENDATIONS OF PRESCHOOL EXPULSIONS AND SUSPENSIONS?, YALE U. CHILD STUDY CENTER 2 (Sept. 28, 2016), http://ziglercenter.yale.edu/publications/Preschool%20Implicit%20Bias%20Policy%20Brief_final_9_26_276766_5379.pdf. The researchers concluded that the study demonstrated that preschool teachers have an implicit bias that Black boys will be more disruptive. *Id.*

²² *A First Look*, *supra* note 18, at 4.

²³ *Id.*

This denial of fundamental educational rights, and criminalization of childhood behavior, needs to stop. Out-of-school suspensions should be outlawed for all but the most serious safety threats to the school community. Some states have passed laws to prohibit schools from using suspensions in pre-school through the early elementary grades.²⁴ Why stop there? Suspensions should be a last resort for children of all ages, limited to situations that involve serious and imminent threats to safety.

Instead of “punishing” students with days off, students should be held accountable in ways that help them realize the impact of their behavior, give them the opportunity to make amends, and support them in changing their behavior in the future. Instead of removing students from academic class time, students could be required to attend after-school or weekend programs. These courses can support students in getting back on the right track academically and address any underlying challenges to their achievement, such as trauma, learning disabilities, substance abuse, or family stressors.

Proven strategies exist to create safe, welcoming, and engaged learning climates in schools. They require that states give schools and educators adequate resources and training. Class sizes should be manageable.²⁵ Teachers should receive classroom management training so they know how to create positive classroom climates and manage student conflicts in age-appropriate ways. Conflict management tools, such as Positive Behavioral Interventions and Supports, have been shown to effectively reinforce behavioral expectations and reduce misconduct.²⁶ Various evidenced-based

²⁴ California eliminated “willful defiance or disruption of school activities” as reasons to expel students and prevents suspensions of K-3 students for that reason. CAL. EDUC. CODE § 48900(k)(2) (West 2016). New Jersey and Oregon also have limited suspensions for early grades. N.J. STAT. ANN. § 18A:37-2a (West 2016); OR. REV. STAT. ANN. § 339.250 (West 2016).

²⁵ For a review of research about the connection between class size and student achievement, see *Class Size and Student Achievement: Research Review*, CENTER FOR PUBLIC EDUCATION, <http://www.centerforpubliceducation.org/Main-Menu/Organizing-a-school/Class-size-and-student-achievement-At-a-glance/Class-size-and-student-achievement-Research-review.html> (last visited Dec. 16, 2016).

²⁶ James K. Luiselli et al., *Whole-School Positive Behaviour Support: Effects on Student Discipline Problems and Academic Performance*, 25 EDUC. PSYCHOL. 183, 192 (2000), http://www.nhcebis.seresc.net/document/filename/348/PBIS_-_Impacts_on_Discipline_and_Academic_Performance.pdf.

curricula, such as Second Step, provide grade-appropriate lessons that support the socio-emotional development of students and teach them effective problem-solving skills.²⁷

Second, as children grow up and navigate peer and teacher relationships, conflict is inevitable. Just as many workplaces understand that conflict management programs are important, schools should offer both teachers and students a range of conflict resolution alternatives.²⁸ Some schools have peer mediation programs²⁹ or teen courts, which teach students that they have the ability to resolve their own conflicts. Some schools partner with community mediation programs, universities, or law school clinics to offer mediation for peer conflicts or truancy issues.³⁰

²⁷ See Michelle B. Cooke et al., *The Effects of City-Wide Implementation of "Second Step" on Elementary School Students' Prosocial and Aggressive Behaviors*, 28 THE J. OF PRIMARY PREVENTION 93, 94 (2007); David C. Grossman et al., *Effectiveness of a Violence Prevention Curriculum among Children in Elementary School: A Randomized Controlled Trial*, 277 JAMA 1605, 1605 (1997); Dorothy L. Espelage et al., *The Impact of a Middle School Program to Reduce Aggression, Victimization, and Sexual Violence*, 53 J. ADOLESCENT HEALTH 180, 180 (2013).

²⁸ See Deborah Thompson Eisenberg, *The Restorative Workplace: An Organizational Learning Approach to Discrimination*, 50 U. RICH. L. REV. 487 (2016).

²⁹ See Stephen K. Bell et al., *The Effectiveness of Peer Mediation in A Low-SES Rural Elementary School*, 37 PSYCHOL. IN THE SCHOOLS 505, 505 (2000); Charles E. Cunningham et al., *The Effects of Primary Division, Student-mediated Conflict Resolution Programs on Playground Aggression*, 39 J. CHILD PSYCHOL. & PSYCHIAT. 653, 659 (1998) (finding that student mediation program reduced physically aggressive playground behavior by 51% to 65%); see also Rita C. Schellenberg et al., *Reducing Levels of Elementary School Violence with Peer Mediation*, 10 PROF. SCH. COUNSELING 475, 475 (2007) (explaining three-year longitudinal study on peer mediation program in a suburban elementary school showed significant reductions in the school's out-of-school suspensions after implementation of the peer mediation program).

³⁰ *Maryland Carey Law Launches School to Prison Pipeline Legal Theory and Practice Course*, U. MD. FRANCIS KING CAREY L. SCH., http://www.law.umaryland.edu/about/features/feature_details.html?feature=468 (last visited Dec. 16, 2016). Students in the clinical law program at Maryland Carey Law, for example, work in Baltimore City schools to mediate conflicts, train peer mediators, teach conflict resolution workshops, and support restorative dialogue circles. In addition, attendance mediation brings the child's parent or guardian together with a teacher to remove barriers that have been preventing the student from attending school. *Id.*

Some school districts are moving to a whole-school restorative approach to discipline. Restorative practices are not simply a program, but a change in disciplinary philosophy from zero-tolerance punishment to supportive accountability. Studies have shown that a restorative or “authoritative” approach to discipline—which balances both limit-setting and nurturing—is highly effective in promoting positive behavior in children.³¹ In contrast, “authoritarian” or “get tough” approaches that enforce strict rules with threats of punishment lead to worse behavior and outcomes for children.³² Controlling children with fear and punishment deprives kids of the opportunity to internalize self-discipline and responsibility and teaches them to bully others, lie (to avoid punishment), and rebel against a culture they perceive to be oppressive or unfair.³³

Restorative communication tools build engaged learning communities and improve students’ empathy and personal accountability.³⁴ Proactively, teachers use classroom dialogue circles, which give every student a sense of voice, belonging, and engagement in school.³⁵ Circles increase trust between students and teachers and build community among peers.³⁶ This creates a positive climate more conducive to learning, in which classroom disruption is less likely to occur in the first place.³⁷

When misconduct occurs, administrators use a range of restorative tools to help students understand the impact of their actions and, more importantly, help them change their behavior in the future. A restorative conference brings together everyone impacted by a

³¹ Anne Gregory et al., *Authoritative School Discipline: High School Practices Associated with Lower Bullying and Victimization*, 102 J. EDUC. PSYCHOL. 483, 491 (2010) (finding that school discipline that combined structure and support reduced bullying and victimization and improved school safety).

³² See, e.g., Rick Trinkner et al., *Don’t Trust Anyone Over 30: Parental Legitimacy as a Mediator Between Parenting Style and Changes in Delinquent Behavior Over Time*, 34 J. ADOLESCENCE 119, 127 (2011).

³³ *Id.*

³⁴ Ted Wachtel, *Defining Restorative*, INT’L INST. FOR RESTORATIVE PRACTICES 7, 9 (2013), <http://www.iirp.edu/pdf/Defining-Restorative.pdf>; Thalia González, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline and the School to Prison Pipeline*, 41 J. L. & EDUC. 281, 319 (2012).

³⁵ Wachtel, *supra* note 34, at 7.

³⁶ *Id.*

³⁷ González, *supra* note 34, at 281.

situation to discuss what happened, what the impact was, and what can be done to repair the harm. This process holds children directly accountable for their actions, while providing them with an opportunity to learn from their mistakes and be reintegrated into the school community. Unlike traditional punitive approaches, restorative conferences also give those impacted by misbehavior—teachers and other students—a voice in the process.

School districts that have implemented restorative practices report positive results.³⁸ A California middle school decreased its suspension rate by 87% and expulsions to zero after implementing restorative practices.³⁹ A three-year evaluation of restorative practices in Minnesota Public Schools found high satisfaction rates, sharply increased attendance rates, and decreased suspensions, expulsions, and serious behavioral incidents.⁴⁰ The number of students identified as being on track to graduate also increased.⁴¹

Third, schools require the resources necessary to provide additional supports and services to students who need them. Pursuant to the federal Individuals with Disabilities Education Act, students with disabilities must receive the individualized special education and

³⁸ See INT'L INST. FOR RESTORATIVE PRACTICES, IMPROVING SCHOOL CLIMATE: EVIDENCE FROM SCHOOLS IMPLEMENTING RESTORATIVE PRACTICES 4 (2009), <http://www.iirp.org/pdf/IIRP-Improving-School-Climate.pdf>; see also HIGH HOPES CAMPAIGN, FROM POLICY TO STANDARD PRACTICE: RESTORATIVE JUSTICE IN CHICAGO PUBLIC SCHOOLS 2 (2012), <http://www.suspensionstories.com/wp-content/uploads/2012/03/FromPolicyToStandardPractice.pdf>; ABBEY J. PORTER, RESTORATIVE PRACTICES IN SCHOOLS: RESEARCH REVEALS POWER OF RESTORATIVE APPROACH, PART II, INT'L INST. FOR RESTORATIVE PRACTICES (June 6, 2007), http://www.iirp.edu/iirpWebsites/web/uploads/article_pdfs/schoolresearch2.pdf.

³⁹ MICHAEL D. SUMNER ET AL., SCHOOL-BASED RESTORATIVE JUSTICE AS AN ALTERNATIVE TO ZERO-TOLERANCE POLICIES: LESSONS FROM WEST OAKLAND, THELTON E. HENDERSON CTR. FOR SOC. JUST. 3 (2010), https://www.law.berkeley.edu/files/thcsj/10-2010_School-based_Restorative_Justice_As_an_Alternative_to_Zero-Tolerance_Policies.pdf.

⁴⁰ BARBARA J. MCMORRIS ET AL., APPLYING RESTORATIVE JUSTICE PRACTICES TO MINNEAPOLIS PUBLIC SCHOOLS STUDENTS RECOMMENDED FOR POSSIBLE EXPULSION: A PILOT PROGRAM EVALUATION OF THE FAMILY AND YOUTH RESTORATIVE CONFERENCE PROGRAM, PREVENTION RESEARCH CTR., U. MINN. (2013), http://www.legalrightscenter.org/uploads/2/5/7/3/25735760/lrc_exec_summ-final.pdf.

⁴¹ *Id.*

related services they need.⁴² States should increase the number of counselors and social workers in schools, especially in schools located in communities that have concentrated poverty and high rates of violence and trauma. In the 2013–14 academic year, approximately 1.6 million students in the United States attended a school that had a police officer, but no counselor.⁴³

Teachers and administrators also should be trained to recognize the warning signs for mental illness so that students can receive the help they need. Such services could be the most important in promoting school safety and deterring school shootings, as most school shooters have mental illness, often undetected or untreated until too late to prevent them from harming others.⁴⁴

Finally, for schools that have assigned sworn law enforcement officers, the role of school resource officers (SROs) should be limited to protecting the school from criminal safety threats.⁴⁵ SROs should not be involved in enforcing school discipline codes. School police can also serve as mentors for students, by, for example, sponsoring athletic intramural programs or other recreational clubs to keep students off the streets, educating high school students about the dangers of drug and alcohol abuse, or sponsoring summer camps.

In the Children Defense Fund's report published decades ago, Marian Wright Edelman wrote: "We hope that school officials, parents, students and advocates will explore alternative disciplinary approaches which help children stay in school and help them to learn and to grow."⁴⁶ We will never know if a more positive and supportive educational experience would have kept Freddie Gray in school and out of the criminal justice system. But we can and must do better for all of our children.

⁴² 20 U.S.C. § 1400 *et seq.*

⁴³ *A First Look*, *supra* note 18, at 9.

⁴⁴ *See, e.g.*, PETER LANGMAN, *WHY KIDS KILL: INSIDE THE MINDS OF SCHOOL SHOOTERS* (2010).

⁴⁵ Twenty-four percent of elementary schools (grades K-6) and 42% of high schools (grades 9-12) have law enforcement officers, including school resource officers. *A First Look*, *supra* note 18, at 5.

⁴⁶ CDF, *supra* note 15, at Foreword.