

***DIGNITY, DISPARITY AND DESISTANCE:
EFFECTIVE RESTORATIVE JUSTICE STRATEGIES TO PLUG THE
“SCHOOL-TO-PRISON PIPELINE***

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ABSTRACT

School suspensions and expulsions resulting from zero tolerance disciplinary policies have directly expanded the “school-to-prison pipeline” while disproportionately and negatively affecting minority students. This paper reviews current research on zero tolerance, evidence for the effectiveness of restorative justice in schools as an alternative to punitive disciplinary policies, and local and national policy efforts to increase use of restorative practices in schools. The evidence shows that RJ is viable school policy strategy for keeping students in school while also useful for redefining the collaborative role of justice professionals and educators in the school setting to keep youth in school and out of juvenile justice systems.

I. INTRODUCTION

In the past decade, excessive use of school suspension and expulsion as disciplinary practices has been recognized as a national concern for both education and juvenile justice systems (American Psychological Association, 2008; Stinchcomb et al., 2006). Zero tolerance policies have expanded in many school districts and been cited as a primary factor limiting the disciplinary options of educational and administrative staff (Green, 2004; Bazemore and Schiff, 2010). Aside from the deleterious impact on school climate and student progress, such exclusionary policies also have drastic effects on the students labeled

as delinquent and subsequently entering the juvenile justice system. Indeed, many suspended youth are now being referred directly from schools into juvenile justice agencies, where some end up on diversion caseloads, probation, or even in secure detention facilities for relatively minor, generally nonviolent infractions (Advancement Project, 2005; Florida Blueprint Commission, 2008). This has, tragically, become known as the "School-to-Prison Pipeline" and its most disastrous consequences are primarily felt among minority students in the poorest and most under-resourced communities (Advancement Project, 2010).

Restorative justice has emerged as one of a host of effective policies for keeping youth in school and out of the "school-to-prison pipeline." Restorative practices are based on a philosophy of reparation, holding youth accountable for their actions directly to the persons or communities they have harmed, and including all stakeholders in the decisionmaking and agreement processes about what happened and what must be done to repair the harm. Research has shown restorative justice to be effective in the United States and internationally, in both juvenile justice and school settings. As the evidence supporting its use in schools and other settings mounts, restorative justice is being increasingly used as a strategy to combat the overuse of school disciplinary referrals, suspensions and expulsions that are ultimately resulting in juvenile justice system involvement. Moreover, schools, school districts, states and congressional leaders are increasingly calling for restorative justice policy and funding to expand its use as a proven strategy to reduce school suspension, expulsion and disciplinary referral.

The purpose of this paper is to consider how and why restorative justice policies can and should be used to combat the damaging effects of zero tolerance to help keep youth in school and out of the juvenile justice system. *As a policy response, restorative justice*

shows far greater and longer-term promise than punitive, exclusionary discipline strategies that distance youth from necessary structures of support rather than engage them. The paper briefly reviews the impacts of zero tolerance, and then considers successful restorative justice policies that have been used to minimize the unnecessary use of zero tolerance in schools. Specifically, this paper examines the capacity of restorative justice to provide *dignity* to youth who are too often relegated to passive recipients of adult-made policies; the *disparity*, or disproportionate impact of zero tolerance school discipline policies on minority youth; and *desistance* – the proven ability of restorative justice strategies to reduce repeat disciplinary infractions and suspension among youth who experience it. Finally, the paper concludes that restorative justice provides an opportunity to redefine the collaborative roles and relationships of school and juvenile justice professionals.

II. DISPARATE AND DISPROPORTIONATE IMPACTS OF ZERO TOLERANCE

Similar to punitive responses in the justice arena, such as sentencing guidelines and mandatory minimum sentencing, zero tolerance disciplinary codes attempt to structure theoretically rational and equitable consequences for serious misbehavior (such as drugs and weapons in school) proportionate to the harm caused (Green, 2004). However, such policies have since expanded to include far more minor disciplinary violations that often result in juvenile justice system consequences (Sughrue, 2003; Florida Blueprint Commission, 2008). Moreover, zero tolerance practices have likewise resulted in the systematic exclusion of poorly performing and “behaviorally challenged” students from schools whose administrators must improve academic achievement scores mandated by policies such as No Child Left Behind (NCLB) that are tied to receiving , state resources (Advancement Project,

2010). A notable impact of zero tolerance is a marked lack of dignity for the offending youth who is summarily dismissed from either the classroom of the school, with little or no say in what happened nor what the appropriate consequence should be, nor effective strategies for reengagement once having been excluded from the school structure. Such students fall further and further behind as they lose capacity and resources to make up lost work and reenter the school environment.

Zero tolerance policies have been largely responsible for creating the "school to prison pipeline." Not only is there a dramatic lack of scientific evidence that zero-tolerance policies increase school safety and correspondingly foster academic achievement (American Psychological Association, 2008; Advancement Project, 2010), punishments typically associated with zero tolerance tend to put students at greater risk for decreased connectivity to school, increased participation in risky or illegal behavior, poor academic achievement and dropout and, for many, subsequent entry into the "school to prison pipeline" (Boccanfuso and Kuhlfield, 2011; Cassalla, 2003). Indeed, there is a host of evidence that exclusionary practices are applied arbitrarily, contribute to lost instructional time, limit understanding between families and schools, demonstrate poor use of school resources and lower academic achievement (Morrison & D'Incau, 1997; Raffaele Mendez, Knoff, & Ferron, 2002; Skiba, 2002). Moreover, school suspension and expulsion significantly increase the likelihood that students will be held back a grade, not graduate, and become involved in the justice system (Fabelo et al., 2011). Being suspended from school significantly decreases the likelihood of graduating on time, while increasing the chance of subsequent suspension or expulsion and dropping out (Osher, 2010; Balfanz and Boccanfuso, 2007; Skiba and Rausch, 2006).

The disparity inherent in zero tolerance policies has become alarmingly evident. Zero tolerance policies have had their most insidious impact on Black youth, whose rate of suspension or expulsion from schools is accompanied by unprecedented number of school-related referrals into the juvenile and criminal justice systems. Tragically, there is consistent and increasing evidence that students being suspended and expelled for minor infractions are considerably more likely to be Black and those with disabilities (Advancement Project, 2005; Losen and Skiba, 2010). Nationally, data suggest that Black students represented only 17 percent of public school enrollment in 2000 but accounted for 34 percent of suspensions (Advancement Project, 2005), while special education students represented 8.6 percent of public school students, but 32 percent of youth in juvenile detention nationwide (NAACP, 2005). Black students with learning disabilities are three times more likely to be suspended than similarly situated white students and four times more likely to end up in correctional facilities (Poe-Yamagata and Jones, 2000). Individual states, including Florida, Pennsylvania, Colorado, Ohio and others all have documented alarmingly high and disparate impacts of zero tolerance polices and there are similar stories from almost every state in the country. In each case, the impact has dramatically increased with the onset of zero tolerance polices and is disproportionately high among students of color and those with disabilities.¹

The cumulative result of such exclusionary discipline is that punitive justice system initiatives have become systematically welcomed and integrated within the education system context in the name of school safety and academic achievement, with the blessing of educational administrative leaders. Schools have increasingly come to rely on security measures such as metal detectors and school resource officers to help control disruptive

students, and methods of disciplinary suppression have focused primarily on accelerated enforcement of suspension and arrest. While in the short-term, this may help teachers and education administrators with classroom management and arguably, school safety, the longer-term outcome results in systematic impediments to keeping youth in school and off the street and, especially, out of court.

Juvenile justice professionals often presume that their job responsibilities involve traditional enforcement emphasizing surveillance, arrest and punishment in response to school (and other) rule violations. However, given recent trends that place too many minority students on the path from schoolhouse to jailhouse, it is becoming increasingly clear that roles and relationships between educators and justice professionals in the schools must evolve. School disciplinary policy must move beyond the limited strategies traditional enforcement, surveillance and arrest, to empower justice specialists in delinquent behavior to develop and use educational efforts, such as restorative justice, to keep youth *in* schools.

III. DIGNITY AND DESISTANCE: EFFECTIVE RESTORATIVE JUSTICE RESPONSES TO ZERO TOLERANCE IN SCHOOLS

Restorative justice approaches are increasingly being applied in schools to deal with youth misbehavior, rule violations and to improve school climate, both as individual program in schools as well as overall school district policy (Karp and Breslin, 2001; Lewis, 2009; Kane et al. 2007; Morrison et al., 2005). Restorative justice is an evidence-based practice effectively used to reduce suspensions, expulsions and disciplinary referrals.

Restorative responses to misbehavior can take a variety of forms that are centered on several core principles: 1) focus on relationships first and rules second; 2) give voice to the person harmed and the person who caused the harm; 3) engage in collaborative problem-solving; 4)

enhance personal responsibility; 5) empower change and growth; and 6) include strategic plans for restoration/reparation (Amstutz & Mullet, 2005). The cumulative effect of these strategies is to offer students, teachers and administrators the possibility of a dignified response to misbehavior and a way to make amends and repair the harm caused.

Restorative justice views crime or harm primarily as a violation of individuals, relationships and communities that "creates obligations to make things right" (Zehr, 1990, p.181). The assumption underlying a restorative response is that "justice" is more than simply punishing, or treating, rule breakers, but rather is about repairing the harm caused to victims, offenders and community. To the greatest extent possible, restorative processes seek to rebuild relationships damaged by crime and other conflicts. Achieving justice and meaningful school discipline in a restorative way suggests that holding offenders or rule-breakers accountable is not about asking them to "take the punishment," but rather about ensuring that they take *responsibility* by making amends to their victims and the community harmed. By empowering youth to be responsible for their own actions and their concomitant impacts, restorative justice offers students a means to rebuild their dignity through mature reparation of harm.

This distinction between passively accepting punishment and actively assuming responsibility for behavior that distinguishes restorative accountability from punishment, and a dignified response from a demeaning one. A restorative justice response includes two primary components: 1) a non-adversarial and dialogue-based decisionmaking process that allows affected parties (known as "stakeholders") to discuss the harm done to victims, while considering needs of all participants and, 2) an agreement for going forward based on the

input of all stakeholders about what is necessary to repair the harm directly to the persons and community (Bazemore and Schiff, 2010).

The quality of a restorative intervention is determined by the degree of adherence to three core principles addressing: 1) the extent to which the response repairs the harm directly to victim, community, offenders and their families; 2) the extent to which each stakeholder is involved in the discussion of the incident and is given input into the plan for repair; and 3) the extent to which community and government roles (e.g., the criminal justice system, education system) are transformed to allow communities a greater voice and increased responsibility for responding to conflict, while other enforcement systems (e.g., schools) assume a more facilitative role (Pranis, 2001; Van Ness and Strong, 1997). As Reistenberg (2007:10) asserts:

A restorative philosophy emphasizes problem-solving approaches to discipline, attends to the social/emotional as well as the physical/intellectual needs of students, recognizes the importance of the group to establish and practice agreed-upon norms and rules, and emphasizes prevention and early restorative intervention to create safe learning environments.

Restorative Justice Outcomes in United States and International School Settings

Prior research from Canada, the United States and Australia demonstrates that restorative justice effectively reduces recidivism rates and promotes positive relationships (Arnott, 2007; Morrison & Martinez, 2001; Porter, 2007; Riestenberg, 2003a; White, 1998). Nationally as well as internationally, there is now considerable evidence that restorative approaches can result in reduced suspension and expulsion, decreased disciplinary referrals, improved academic achievement, and other beneficial results (Karp and Breslin, 2001; Lewis, 2009).

At this time in the United States, restorative practices in schools are known to exist in California, Colorado, Georgia, Illinois, Maine, Maryland, Michigan, Minnesota, Missouri, New York, Texas, Pennsylvania and Connecticut. Jurisdictions have implemented varying strategies including restorative mediation, conferences or circles, school accountability boards, daily informal restorative meetings, classroom circles, restorative dialogue, restorative youth courts, peer mediation and other practices. In addition, School Accountability Boards (SABs) are becoming an increasingly common restorative response to school disciplinary issues. In a SAB setting, peer groups of students, along with faculty and staff, deal with one another's challenges in an inclusive and relationship-driven community (Schiff, Bazemore and Brown, 2011). Although there has been relatively little rigorous impact evaluation on restorative measures in schools, preliminary research suggests very promising results.

Prior research in both the justice and education systems, conducted in Canada, the United States and Australia, has indicated that restorative justice effectively reduces recidivism rates and promotes positive relationships (Arnott, 2007; Morrison & Martinez, 2001; Porter, 2007; Riestenberg, 2003a; White, 1998). Some examples of positive results from incorporating restorative justice from schools across the country are detailed below.

- Using restorative circles, conferences, peer mediation and other approaches, the Minnesota Department of Education significantly reduced behavioral referrals and suspensions in two schools by 45 to 63 percent, increased academic achievement and significantly reduced behavior referrals and suspensions. In a recent survey, 277 schools principals reported that their schools used restorative practices (Minnesota Department of Education, 2003, 2011).
- At Cole Middle School in Oakland, CA suspensions declined dramatically by 87 percent and expulsions declined to zero during the implementation of whole-school restorative justice (Sumner et. al, 2010),

- In Denver, Colorado, a combination of informal classroom meetings, victim impact panels and restorative conferencing resulted in a 68 percent overall reduction in police tickets and a 40 percent overall reduction in out-of-school suspensions in seventeen schools (Advancement Project, 2010).
- Upon implementing restorative circles, West Philadelphia High School saw a 50 percent decrease in suspensions, along with a 52 percent reduction in violent and serious acts during the 2007/08 school year, followed by a further reduction of 40 percent during the 2008-2009 school year (Lewis, 2009).
- Various schools in Pennsylvania saw marked reductions in fighting, cafeteria violations, misbehavior, detention, fighting, theft, classroom disruptions and suspensions after implementing restorative conferencing, circles and other practices (Mirsky, 2003).
- Successful implementation of restorative peer juries in Chicago, IL saved over 1,000 suspension days ((Dignity in Schools Fact Sheet, n.d.).
- In Palm Beach County, FL, two schools have seen reductions in suspension days of between 130-300 days (Schiff, 2012)

In addition to the results seen across the United States, schools, numerous jurisdictions in other countries are also implementing restorative practices in response to overly harsh disciplinary policies and reporting notable outcomes. For example:

- In Scotland, school "exclusions" were significantly reduced in 14 out of 18 public schools after implementing various restorative practices (Kane et al. 2007).
- In Hong Kong, a whole-school restorative approach resulted in a significantly greater reduction of bullying, higher empathetic attitudes, and higher self-esteem in comparison to a partial intervention and a control group (Wong et al. 2011).
- In several Canadian schools, suspensions went down anywhere from 12 percent to 73 percent after implementing restorative conferencing (Lewis, 2009).
- In several United Kingdom schools, decreases were seen in suspension days and negative incidents following implementation of restorative conferencing, circles and other practices (Lewis, 2009).
- Restorative conferencing was implemented within schools in Queensland, Australia in 1994, and studies since then have illustrated its effectiveness as a response to student misbehavior (Youth Justice Board, 2002).
- In England and Wales, implementation of conferences, mediation and whole school approaches resulted in 94 percent satisfactory conference outcomes, 96 percent conference agreements upheld, 89 percent student satisfaction with outcome. In

addition, teachers reported less teaching time lost due to managing behavioral problems, and a trend was identified whereby schools implementing restorative justice reduced permanent student exclusions (Shaw, 2007).

- In Brazil, a bullying study concluded that restorative practices contributed to the improvement of the school climate through reparative dialogue (Grossi and Santos, 2012).
- In Flanders, following high levels of satisfaction and compliance with restorative conferences, the Flemish Education Department decided to take steps towards implementing restorative group conferencing in Flemish schools (Bursens et al, 2006).

In addition and as a result of the positive impacts of restorative practices in individual schools, school discipline policies at the district level have been shifting as well.

- Following the exceptional results at Cole Middle School in Oakland, CA,
- the *Oakland Unified School District* passed a resolution making restorative justice its official district policy (Oakland Unified School District, 2010).
- In 2008, restorative practices were integrated into the 2007 *Chicago Public Schools* Student Code of Conduct and a school implementation guide was developed for the District (Ashley and Burke, 2009).
- The *School District of Palm Beach County* is now including restorative justice in its menu of disciplinary options available to all county public schools (Lewis, 2012; Schiff, 2012).
- In 2009, the *San Francisco Unified School District Board of Education* adopted Resolution No. 96-23A1 to replace some student suspensions with more restorative interventions.
- Since 2008, *Minneapolis Public Schools* has offered restorative justice services for students recommended for expulsion, in partnership with community organizations such as the Legal Rights Center of Minneapolis. The Safe and Healthy Learners Unit at the *Minnesota Department of Education* has promoted and used restorative measures for over a decade.
- As of August 2008, *Denver Public Schools* discipline policy includes restorative interventions that are problem-solving interventions done "with" (rather than "to") the offender, are driven by the victim as much as is possible, and focus on identifying and repairing harm.

Some state level legislation has also been introduced naming and including restorative justice options as an alternative to zero tolerance in schools. For example:

- In 2009, Florida amended Section 3. Section 1006.13 “to encourage schools to use alternatives to expulsion or referral to law enforcement agencies by addressing disruptive behavior through restitution, civil citation, teen court, neighborhood *restorative justice*, or similar programs...”
- Colorado’s 2012 School Discipline Bill SB 12-046, amended to HB 12-1345, required proportionate disciplinary interventions to reduce the number of school expulsions and referrals to law enforcement including plans for appropriate use of prevention, intervention, *restorative justice*, peer mediation, counseling, or other approaches to minimize student exposure to criminal justice system by August 2013.

Finally, as a result of the positive results of restorative justice interventions at the school and District levels, some policymakers have introduced legislation to enable funding for restorative policy at the federal level. Specifically:

- ***Restorative Justice in Schools Act*** (H.B. 415; Cohen, D-Tenn) would allow school districts to use Elementary and Secondary Education Act (ESEA) funding to train teachers and counselors in restorative justice and conflict resolution and help save countless hours lost to school discipline each school year.
- **Successful, Safe, And Healthy Students Act** (S. 919; Harkin, D-IA) includes funding and technical assistance for implementing positive, preventive approaches to school discipline like restorative justice and school wide positive behavior supports.

There is also considerable qualitative data supporting the effectiveness of restorative interventions, including outcomes such as improved school climate and culture, better relationships, increased responsibility among students, better teacher-student interaction and increased satisfaction with disciplinary outcomes (McKlusky et al, 2008; IIRP, 2009; Morrison et al., 2005). While rigorous empirical research on the quantitative impact of restorative justice in schools has yet to reach the breadth of application seen in juvenile justice settings, there is nevertheless growing evidence that restorative practices in educational settings are effective at ameliorating the impacts of poorly applied zero tolerance policies.

IV. DISCUSSION: REDEFINING "JUSTICE" IN THE EDUCATION CONTEXT

Restorative justice clearly can clearly have an impact on decreasing suspensions, expulsions, and juvenile justice system entry, as well as engage youth in the school setting and improve school climate. As educational and juvenile justice professionals agree, and research documents, adolescents are more likely to expand, rather than limit their delinquent involvement when removed from the structure of the school environment. It is critical to recognize that juvenile justice and education systems *serve the same kids*, and encouraging schools to push their more difficult charges into the justice system simply increases and expands their risk of academic failure and subsequent criminality is heightened.

An alternative approach would envision reshaping the role of juvenile justice practitioners in the academic environment as agents of positive youth development (Butts et al., 2010). It may be time to consider how educators and juvenile justice professionals can collaboratively creating true partnerships designed to strategically or potentially help keep youth *in school* and *out* of the justice system. Such transformation would include retraining School Resource Officers (SRO) as primary restorative intervention intermediaries, and consider the role of restorative probation officers once youth have already been involved in the justice system. For example, in Georgia and some schools in Illinois, a new role for probation officers involves spending a significant amount of their time *in schools* where youth on their caseload are enrolled (Bardetscher and Tagami, 2011). These jurisdictions are acknowledging the obvious fact that both systems *serve the same kids*, and communication and collaboration is an essential component of keeping such youth away from further justice system involvement.

Restorative justice is an especially effective strategy for helping to keep youth in school by redefining school disciplinary options and Codes of Conduct to minimize the use of exclusionary school discipline. While suggested elsewhere that slowing the “school-to-prison pipeline” will require more than a single disciplinary or educational strategy (Bazemore and Schiff, 2010), it is clear that educational policy alone, no matter how well grounded, is inadequate. Rather, it is essential to decrease the number and rate at which youth are being “graduated” into justice facilities by effectively comingling evidence-based education *and* youth justice interventions. Moreover, there must be a complementary relationship between well-trained education and justice professionals working collaboratively in schools to hold youth accountable for their behavior while also keeping them engaged, productive and academically successful.

V. CONCLUSION

This paper suggests that the cumulative effect of zero tolerance and other exclusionary discipline policies in schools has been generally disastrous and has resulted in unprecedented numbers of mostly minority youth entering what is now being called “the school-to-prison pipeline.” In response to failed attempts at improving school safety through increasing surveillance and expanding suspension and expulsion rates, restorative justice has been shown to be an effective, evidence-based nonpunitive response to school rules violations. Moreover, it can help integrate and redefine the collaborative roles and relationships of educators and juvenile justice professionals by offering an inclusive and responsive structure for reengaging youth in the academic setting rather than further disenfranchising them from the school community. In the end, the goal of restorative justice

in the schools is to reengage youth at risk of academic failure and juvenile justice system entry by creating restorative responses to misbehavior that help keep youth in school, off the streets and out of detention. By designing new education-justice partnerships grounded in principles of restorative justice, it is possible to stem the tide of youth currently at risk of entering in the school-to-prison pipeline.

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¹ For example, In 2007/08, the Florida Department of Juvenile Justice (FDJJ) recorded significant increases in the proportion of school-based referrals, with a misdemeanor as the most serious charge in 69 percent of these cases (Florida Blueprint Commission, 2008). Moreover, students of color (mostly Black students) in Florida represent just 22 percent of the Florida school population, but **46 percent** of both school suspensions and referrals to juvenile justice (Advancement Project, 2005). In addition, the Advancement Project (2010) reported that: In Philadelphia, Black and Latino students are far more likely to be suspended, transferred to alternative schools and arrested than White students; In Colorado, Black students were over twice as likely as White students to be referred to law enforcement and Latino students were 50 percent more likely than White students to be referred to law enforcement; In Ohio, Black students were nearly five-and-a-half times more likely to be suspended out-of-school than White students in 2007.