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**IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

M.G., by and with his Guardian ad Litem, Priscilla G.,
Appellants,
v.
Yakima School District No. 7, a municipal corporation,
Respondent.

**BRIEF OF *AMICUS CURIAE*
NORTHWEST JUSTICE PROJECT, ACLU-WA, AND
SOAR BEHAVIOR SERVICES**

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I. INTRODUCTION

Amici Northwest Justice Project, ACLU of Washington, and SOAR Behavior Services are public interest organizations committed to ensuring access to education for all of Washington's students. This case highlights a tragic situation that affects many students across the state. Amici provide the Court with information and context regarding the critical importance of educational placements, the importance of balancing discipline and safety concerns by providing required process that protects all students (both those who are disciplined and those who are not), and race equity concerns about disproportionate discipline and implementation of gang contracts which are inherently racially biased.

II. INTERESTS OF AMICI CURIAE

Northwest Justice Project is the largest statewide nonprofit law firm providing free civil legal aid to low-income people in Washington State. Every year, we serve hundreds of crime

victims, students experiencing school discipline, and their parents. We actively litigate systemic education issues.

The ACLU of Washington (ACLU-WA) is a statewide, nonpartisan, nonprofit organization of over 135,000 members and supporters, dedicated to the preservation of civil liberties and civil rights. ACLU-WA strongly supports due process and other limits on exclusionary school discipline, and strongly supports the state constitutional right to an education. It has a longstanding interest in eliminating the racial disparities that have plagued school discipline in Washington. ACLU-WA has worked for years on both policy and legal advocacy related to this issue, and it has also participated as amicus in numerous Washington cases on issues related to those raised in this case.

SOAR Behavior Services provides therapy to students with disabilities in the Spokane area at three locations, one elementary school, and one high school being opened soon. We work with students often alleged to present safety concerns and experience disproportionate discipline, including students of

color. Appropriate educational placement is crucial to their success.

III. STATEMENT OF FACTS; ISSUES PRESENTED FOR REVIEW

Amici agree with Appellant's Statement of Facts and Issues Presented for Review.

IV. ANALYSIS

A. Appropriate educational placement is critical for students to obtain their constitutionally protected right to an education.

Where and how a student receives an education is a critical decision that impacts student learning and, ultimately, success. The importance of a student's educational placement is evidenced both by the emphasis and safeguards placed on selecting an appropriate placement for students in the special education context and the frequently negative academic and health outcomes that often result from placement in online or remote settings for general education students. This issue is especially of concern when, as in this case, race inequity concerns are an issue.

1. Online learning is not equivalent to in-person learning and can result in negative educational outcomes, particularly for students who are involuntarily pushed out of neighborhood schools into online placements.

Washington state discipline laws mandate that students excluded from their regular educational setting for behavioral violations receive educational services in an alternative setting during an exclusion.¹ Alternative settings must be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline.² Chapter 392-400 WAC provides this safeguard for students who are disciplined and temporarily excluded from their regular placements during the exclusion. It does not allow the alternative placement to be utilized in perpetuity once the initial period of suspension ends; nor does it contemplate that the alternative setting truly constitutes an equivalent

¹ WAC 392-400-610(1)(d).

² *Id.*

educational experience to the one the student would receive in their regular educational placement.

Indeed, in this case, as noted by M.G., the District admitted that the online alternative learning model did not meet M.G.'s specific educational needs.³ M.G. faced many barriers to even accessing his education online, and he was not offered or enrolled in any core academic classes in the online program.⁴

M.G.'s experience is not unique. Online learning programs are not a substitute for in-person education. Online schools began to open in the United States in the 1990s, some run by states and districts and others by private companies or nonprofit charter management organizations.⁵ Since these schools have been in operation, multiple studies have reported

³ App.'s Br. 8.

⁴ *Id.* at 9.

⁵ Natasha Singer, *Online Schools Are Here to Stay, Even After the Pandemic*, N.Y. TIMES (April 11, 2021), <https://www.nytimes.com/2021/04/11/technology/remote-learning-online-school.html>.

that children in full-time online schools have more negative educational results than peers in traditional public schools.⁶ These negative outcomes are evident in data collected by the Washington Office of Superintendent of Public Instruction (OSPI). OSPI collects data on Washington state schools and makes the information publicly available via a tool called the “Washington State Report Card.”⁷ As of Fall 2021, Yakima Online, where M.G. was placed after his suspension ended, served 294 Washington students.⁸ As measured during the 2019-2020 school year, 64% of Yakima Online students graduated in four years, 15% met English Language Arts standards, 4.3% met math standards, and 7.3% met science

⁶ *Id.*

⁷ Wash. Off. of Superintendent of Pub. Instruction, *Washington State Report Card*, <https://washingtonstatereportcard.ospi.k12.wa.us/> (last visited February 24, 2022).

⁸ Wash. Off. of Superintendent of Pub. Instruction, *Washington State Report Card, Yakima Online, Yakima School District*, <https://washingtonstatereportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/104803> (last visited February 24, 2022).

standards.⁹ By contrast, at Eisenhower High School, where M.G. attended school at the time he was suspended, and where he sought to return when his suspension ended, 77% of students graduated in four years, 31.9% met English Language Arts standards, 10.5% met math standards, and 29.9% met science standards.¹⁰

While these statistics are useful to highlight the worse outcomes and general deficiencies of online schools like Yakima Online,¹¹ they also do not tell the whole story, as some

⁹ *Id.*

¹⁰ Wash. Off. of Superintendent of Pub. Instruction, *Washington State Report Card, Eisenhower High School, Yakima School District*,

<https://washingtonstatereportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/103194>(last visited February 24, 2022).

¹¹ Washington OSPI, *Superintendent Reykdal's Statement on School District Plans for Reopening School Fully Online*, Washington State Wire (July 22, 2020), <https://washingtonstatewire.com/superintendent-reykdals-statement-on-school-district-plans-for-reopening-school-fully-online/> (“Taking learning online presents challenges that districts will need to face. The methods of teaching and learning that were implemented across the state this spring will need to improve substantially.”).

students who enroll in Yakima Online elect to do so and have the tools, resources, and desire to succeed in that online setting.¹² As in Yakima Online, nationwide, a small percentage of parents and students prefer online learning for a variety of personal reasons and opt into it.¹³ This is not the case for students like M.G. who are pushed out of their regular educational setting and do not have the resources and support to navigate online classes successfully. Indeed, Yakima Online boasts that it attracts “highly-motivated, high-achieving students who want to attend a school that will allow them to complete high school graduation requirements early.”¹⁴ Therefore, this data likely underrepresents the deficiencies of a

¹² See *Yakima Online*, <https://www.ysd7.org/cms/lib/WA02219114/Centricity/Domain/105/YOL%20Brochure.pdf> (last visited February 24, 2022).

¹³ Natasha Singer, *Online Schools Are Here to Stay, Even After the Pandemic*, N.Y. TIMES (April 11, 2021), <https://www.nytimes.com/2021/04/11/technology/remote-learning-online-school.html> .

¹⁴ See *Yakima Online*, <https://www.ysd7.org/cms/lib/WA02219114/Centricity/Domain/105/YOL%20Brochure.pdf> (last visited February 24, 2022).

school like Yakima Online for students, similar to M.G., who were initially enrolled involuntarily because of a disciplinary push-out or other reasons.

2. COVID-19 school closures have illuminated the negative outcomes associated with online learning.

If there were uncertainties about the efficacy and adequacy of online and remote learning prior to March 2020, the COVID-19 pandemic and resulting school closures have highlighted many poor outcomes that are associated with an online learning model.

First, studies show that educational progress and engagement were down during the 2020-2021 school year. Instructional time and curriculum coverage during 2020-2021 were significantly lower in schools that were fully remote for the majority of the school year, principals in fully remote schools estimated that their students' average achievement in mathematics was below grade level in Spring 2021, and remote teachers' estimates of student assignment incompleteness and

absenteeism were almost twice as high as those of teachers in fully in-person settings.¹⁵ Similarly, data and studies collected by the Washington Student Achievement Council illustrate the profound, negative impact the shift to remote learning has had on educational progress nationally and in Washington (e.g. below grade level scores in testing and a higher proportion of students receiving failing grades or incompletes).¹⁶

Additionally, data has highlighted that online learning can have a disproportionately negative impact on certain populations' academic progress. Diagnostic testing results indicate the students who attended schools with a higher

¹⁵ Julia H. Kaufman & Melissa Kay Diliberti, *Divergent and Inequitable Teaching and Learning Pathways During (and Perhaps Beyond) the Pandemic: Key Findings from the American Educator Panels Spring 2021 COVID-19 Surveys*, RAND Corporation, RR-A168-6 (2021), https://www.rand.org/pubs/research_reports/RRA168-6.html .

¹⁶ Isaac Kwakye & Emma Kibort-Crocker, *Facing Learning Disruption: Examining the Effects of the COVID-19 Pandemic on K-12 Students*, Washington Student Achievement Council 3-4 (March 2021), <https://wsac.wa.gov/sites/default/files/2021-03-30-COVID-Learning-Disruption-Report.pdf> .

proportion of Black, Indigenous, or People of Color students experienced a greater increase in students testing below grade level than their peers at schools with fewer Black, Indigenous, or People of Color students.¹⁷ Students who attended schools with lower median household incomes were also more likely to test below grade level than their higher-income peers.¹⁸

Similarly, the data in Washington illustrates that approximately a quarter of American Indian/Alaskan Native, Native Hawaiian/Other Pacific Islander, and Hispanic students received at least one failing grade—a rate that is substantially higher than some of their peers.¹⁹ English language learners, low-income students, and students with disabilities all had more failing grades than their counterparts.²⁰

In addition to a decline in immediate academic progress, school closures and online learning have also resulted in

¹⁷ *Id.* at 6 (referring to third-grade students).

¹⁸ *Id.*

¹⁹ *Id.* at 7.

²⁰ *Id.*

negative long-term outcomes.²¹ During the 2020-2021 academic year, low-income students and first-generation students prepared to enroll in postsecondary programs at a lower rate.²² Additionally, national data indicated that fewer students were completing financial aid applications, which suggests that they did not plan to enroll in college.²³

Unfortunately, school closures and online learning have had a significant negative impact not only on students' academic progress, but also on students' mental health and well-being. Nationally, students are struggling with mental health issues at an unprecedented rate.²⁴ In fact, in March 2021, the Federal Centers for Disease Control and Prevention published findings that suggested that virtual learning presents

²¹ *Id.* at 10.

²² *Id.*

²³ *Id.*

²⁴ Christine Vestal, *COVID Harmed Kids' Mental Health—And Schools Are Feeling It*, PEW (Nov. 8, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/11/08/covid-harmed-kids-mental-health-and-schools-are-feeling-it> .

more risks than in-person instruction on mental and emotional health.²⁵ According to the CDC, emergency department visits for suspected suicide attempts among adolescents jumped 31% in 2020 compared with 2019.²⁶ And, later, in Fall 2021, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, and the Children's Hospital Association declared that the pandemic-related decline in child and adolescent mental health had become a national emergency.²⁷ Educators attribute much of this emotional distress to the shift to online learning, as it can cause students to

²⁵ Jorge V. Verlenden, Sanjana Pampati, Catherine N. Rasberry, et al, *Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID-19 Pandemic – COVID Experiences Survey, United States, October 8-November 13, 2020*, CDC (Mar. 19, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7011a1.htm?s_cid=mm7011a1_w#suggestedcitation .

²⁶ Christine Vestal, *COVID Harmed Kids' Mental Health—And Schools Are Feeling It*, PEW (Nov. 8, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/11/08/covid-harmed-kids-mental-health-and-schools-are-feeling-it> .

²⁷ *Id.*

give up on school and show signs of depression, loneliness, and anxiety.²⁸ In addition to being cut off from peers and educators, which leads to negative mental health outcomes, remote learning cuts certain students off from critical resources such as additional dedicated mental health supports, which may be received exclusively from a school setting.²⁹ Remote learning can also cut off families and unaccompanied youth experiencing homelessness from critical resources that they depend on, including a safe place for students to be and learn during the day and free school meals.³⁰

²⁸ See *2021 Social and Emotional Learning Report*, McGraw Hill (2021), <https://www.mheducation.com/unitas/school/explore/sel-report-2021.pdf>.

²⁹ Heather Stringer, *Zoom School's Mental Health Toll on Kids*, APA (Oct. 13, 2020), <https://www.apa.org/news/apa/2020/online-learning-mental-health>.

³⁰ U.S. Interagency Council on Homelessness, *Supporting Children and Youth Experiencing Homelessness During the COVID-19 Outbreak: Questions to Consider* (Mar. 16, 2020), <https://www.usich.gov/tools-for-action/supporting-children-and-youth-experiencing-homelessness-during-the-covid-19-outbreak-questions-to-consider/>.

In short, a placement in online school or a placement that centers on remote learning when other in-person options are available, as was the case with M.G., effectively denies Washington students their constitutionally-protected right to receive an education.³¹ A placement in an online setting can also result in many short-term and long-term negative outcomes and consequences that should not be ignored.

3. Educational placement of students with or suspected of having disabilities is of paramount importance for educational success.

School Districts have an affirmative duty to find and assess students with or suspected of having disabilities to ensure an appropriate educational placement under the Individuals with Disabilities Education Act (IDEA).³² It is unclear from the record whether Appellant M.G. is IDEA eligible, but it is clear that his academic functioning was below

³¹ WA. Const. Art. IX; *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012).

³² 20 U.S.C. Ch. 33; 34 C.F.R. § 300.111(a)(1)(i); WAC 392-172A.

his age and grade level.³³ This situation should have triggered an evaluation and assessment at a minimum. A district's failure to comply with the IDEA can constitute a denial of a Free and Appropriate Public Education (FAPE).³⁴

Appropriate educational placements are dependent on public schools, such as the Yakima School District, adhering to their affirmative, ongoing obligations to identify, locate, and evaluate students who are suspected of having disabilities or who have disabilities and need special education services as a result.³⁵ COVID-19 and remote learning does not modify or

³³ App.'s Br. 8.

³⁴ See WAC 392-172A-02000, 02040, 02055, 02060, 03115; *Dep't of Educ. v. Cari Rae S.*, 158 F.Supp.2d 1190, 1196-97 (D. Hawaii 2001); *Spring Branch Indep. Sch. Dist. v. O.W.*, 961 F.3d 781, 797, 799 (5th Cir. 2020) *cert. denied sub nom.* 141 S.Ct. 1389, 209 L.Ed.2d 129 (2021).

³⁵ 34 C.F.R. § 300.8; 34 C.F.R. § 300.111(a)(1)(i). This includes students who are advancing from grade to grade, who are highly mobile, and students attending private schools.

eliminate a school district's duty to identify students who are or may be eligible for special education.³⁶

These protections are particularly relevant for racial minorities. Among racially diverse students with disabilities,³⁷ one in four boys and nearly one in five girls receive an out-of-school suspension.³⁸ Suspended or expelled students are more likely to be held back, drop out, or enter the juvenile justice system when compared to their peers.³⁹ Only around 65% of Black, Hispanic and Native American students with disabilities graduate from high school with a diploma, compared to 75% for Asian and White students with disabilities.⁴⁰ Missing school or being segregated from classmates can have significant

³⁶ *Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act*, 79 IDELR 140 (OSERS 2021).

³⁷ This includes Black, Native Hawaiian, Pacific Islander, American Indian and Alaska Native students.

³⁸ *Significant Disproportionality in Special Education: Current Trends and Actions for Impact*, National Center for Learning Disabilities 5 (2020).

³⁹ *Id.* at 5-6.

⁴⁰ *Id.* at 6. (explaining results for 2014-2015 school year)

negative implications on students' academics.⁴¹ Being suspended from school even once increases the odds of dropping out of school from 16% to 32%.⁴² Furthermore, suspensions and expulsions send a message to both students who are excluded and their peers who do remain in school that it is acceptable to miss school.

Complying with procedural protections is critically important both for students with disabilities or suspected of having disabilities and for students without disabilities. It is critical for students to be educated in an appropriate educational placement that meets their needs to ensure a positive

⁴¹ *Id.* at 7.

⁴² Robert Balfanz, Vaughan Byrnes & Joanna Fox, *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, Everyone Graduates Ctr., Sch. of Educ., Johns Hopkins Univ. 1, 9 (2012), <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/sent-home-and-put-off-track-the-antecedents-disproportionalities-and-consequences-of-being-suspended-in-the-ninth-grade/balfanz-sent-home-ccrr-conf-2013.pdf> .

educational experience both academically and socially. Failing to identify and assess potential special education students is a violation of the IDEA and Districts, such as Yakima School District, prevent educational success when they circumvent identification or disregard the importance of selecting the appropriate educational placement.

B. Districts do not have the power or authority to evade state discipline laws and due process protections because of alleged safety concerns.

Washington has recently made significant changes to its school discipline regulations to provide greater due process and other protections to all students.⁴³ These comprehensive changes were the first time the regulations had been updated since the 1970s.⁴⁴ The regulations in Chapter 392-400 are

⁴³ See WAC 392-400-010 (outlining the purpose of Chapter 392-400 WAC, which became effective in 2018).

⁴⁴ Wash. Off. of Superintendent of Pub. Instruction, *State Adopts Updated Rules on Student Discipline*, <https://www.k12.wa.us/about-ospi/press-releases/state-adopts-updated-rules-student-discipline> (last visited February 24, 2022).

plainly written and are intended to protect the rights of all students in Washington—even those who engage in behavioral violations or who may be a perceived threat—and to ensure that they receive an appropriate education.

Chapter 392-400 WAC establishes the minimum procedural and substantive rights of students when they are subject to discipline in Washington school districts.⁴⁵ The chapter invites school districts to establish *additional* protections for students consistent with federal statutes and regulations, state statutes, and common law, and rules prescribed by OSPI.⁴⁶ However, nothing in the chapter allows the District to reduce or take away the due process and other protections specified in the rules.

As discussed extensively by appellants, WAC 392-400-430(8) provides clear conditions and limitations on suspensions like the one at issue in this case. However, despite this, the

⁴⁵ WAC 392-400-020.

⁴⁶ *Id.*

District argues that its “paramount concern for safety” allows it to discipline and exclude arbitrarily based on perceived continued safety concerns.⁴⁷ The District made this same argument below by citing to concerns that it did not have a “reasonable expectation” that it was safe for M.G. to return to school and that failing that reasonable expectation of safety, it had the authority to continue to preclude M.G. from returning to campus.⁴⁸

School districts do not have such unfettered discretion. In fact, one of the stated purposes of Chapter 392-400 is to provide a safe learning environment for all students,⁴⁹ and the chapter specifically considers that students may, at times, pose a threat or danger to other students and teachers and that the threat may be alleged to be continuing. That there is an emergency or that a student allegedly poses a threat to other

⁴⁷ Resp.’s Br. 31, 43.

⁴⁸ RP at 21-22.

⁴⁹ WAC 392-400-010(8).

students or school personnel does not operate as an invitation for a district to ignore procedural protections while disciplining and excluding students. Instead, Chapter 392-400 lays out specific steps the district must take before and after doing so.

For example, WAC 392-400-335 generally governs classroom exclusions when a student's presence allegedly poses an immediate and continuing danger to other students or school personnel. When a teacher administers a classroom exclusion on these grounds, the teacher must immediately notify the principal and the principal must meet with the student as soon as reasonably possible before administering appropriate discipline.⁵⁰ Nothing in this regulation allows a district to unilaterally decide that its safety concerns outweigh the need to provide procedural protection.

Similarly, WAC 392-400-510 governs conditions and limitations on emergency expulsions. Even though a school

⁵⁰ WAC 392-400-335(3).

district may immediately remove a student from the current school placement if it has sufficient cause to believe that the student's presence poses an immediate and continuing danger to other students or school personnel, the emergency expulsion may not exceed ten school days and it must be converted into another form of discipline within ten school days from the start of the expulsion.⁵¹ That the danger might be determined to be a "continuing danger" is not cause to extend the emergency expulsion or decide not to follow the conditions and limitations associated with that form of discipline.

Moreover, even in a situation where an emergency expulsion or other alleged safety concern results in longer-term exclusionary discipline, these laws provide specific and clear guidance on the safeguards and protections that are afforded a student regarding reentry into school. A stated purpose of Chapter 392-400 is to "[f]acilitate collaboration between school

⁵¹ WAC 392-400-510.

personnel, students, and families *to ensure successful reentry into the classroom following a suspension.*”⁵² WAC 392-400-710 provides extensive guidance on how districts must manage student reengagement after the end of a long-term suspension or expulsion. Nothing in that section permits a district to unilaterally decide that the student continues to pose a threat, decide to skip the required steps, and then decide to place the student wherever it sees fit. In fact, WAC 392-400-810 outlines the limited “exceptions” for when the district may preclude a student from returning to the student’s regular educational setting following the end date of a suspension. The exceptions are limited to protecting victims of certain crimes not at issue in this case and, even then, the exceptions are limited to keeping the alleged offender away from the alleged victims’

⁵² WAC 392-400-010(7) (emphasis added).

classrooms—not excluding the alleged offender from an entire school altogether as the District did here.⁵³

C. The use of vague gang contracts invites racial bias and deprives students of their right to an education.

Gang contracts utilized by school districts, often vague and overbroad, adversely affect students of color at a higher rate than white students. Vague policies can lead to discriminatory enforcement because they do not provide clear standards for such enforcement.⁵⁴ The Eighth Circuit found that school regulations about gang activity were overly vague when it did not provide a definition of the term, “gang.”⁵⁵

⁵³ See WAC 392-400-810; App.’s Br. 4-5; Resp.’s Br. 4-5 (pointing to colors and a haircut signifying “willingness to engage in gang related violence” as reasoning for school exclusion).

⁵⁴ *City of Chicago v. Morales*, 527 U.S. 41, 42, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) (holding a gang loitering ordinance was unconstitutionally vague in failing to provide fair notice of prohibited conduct when it covered a significant amount of activity and intimidating conduct).

⁵⁵ *Stephenson v. Davenport Cmty. Sch. Dist.*, 110 F.3d 1303, 1308-10 (8th Cir. 1997) (finding the Davenport Community School District’s regulation prohibiting “[g]ang related

Gang contracts punishing students based on perceived gang memberships or affiliations that exist outside the educational setting result in discrimination based on aspects of a student's identity, including race and ethnicity.⁵⁶ As in *Morales*, vague policies and contracts can lead to discriminatory enforcement because they do not provide clear standards for enforcement and allow bias to operate instead.⁵⁷ Such policies can also confuse school teachers and administrators who may not understand the students' cultural backgrounds and thus misinterpret behavior.⁵⁸ This results in a high potential for

activities such as display of 'colors,' symbols, signals, signs, etc." to be void for vagueness).

⁵⁶ Jesse Christopher Cheng, *Gang-Specific Policies and Regulations in the K-12 Educational Context*, 2 Whittier J. Child & Fam. Advoc. 55, 76 (2003).

⁵⁷ *City of Chicago v. Morales*, *supra*, 527 U.S. at 42 ; *Stephenson v. Davenport Cmty. Sch. Dist.*, *supra*, 110 F.3d at 1308-10 , (holding that school regulations about gang activity were overly vague when they did not provide a definition of the term, "gang").

⁵⁸ Jesse Christopher Cheng, *Gang-Specific Policies and Regulations in the K-12 Educational Context*, 2 Whittier J. Child & Fam. Advoc. 55, 77 (2003).

teachers and administrators to interpret "gang activity" in a racially-biased manner.

Here, the District's gang contract is a one-page form prohibiting students from *any* gang related behavior or activity such as "colors or distinctive clothing *of any type*," "nicknames or secret names," and "tattoos, haircuts, shaved eyebrows, or other body markings or piercings *with distinctive meanings*."⁵⁹ The highlighted terms contain no limitations, inviting biased stereotypes to be used to exclude students from school rather than applying clear and even-handed rules. There is no specific shirt color nor "Mongolian" haircut identified as a violation in M.G.'s gang contract yet any such perceived violation results in immediate short-term suspension and "progressive discipline."⁶⁰ Even considering only the two most prominently known gangs (Bloods and Crips) you would have to eliminate the colors red, black, brown, pink (Bloods) and blue, gray,

⁵⁹ COA 8165-0-III CP 000030 (emphasis added).

⁶⁰ See COA 8165-0-III CP 000030.

orange, and purple (Crips),⁶¹ meaning the contract purportedly outlaws two-thirds of primary colors, one third of secondary colors, and leaves unclear a student's ability to wear tertiary colors (a combination of primary and secondary colors).

Because the Yakima School District's gang contract is vague and overly broad, it resulted in arbitrary enforcement and assumptions that M.G.'s style choices were gang related.⁶²

Gang contracts, like the one here, make it virtually impossible to know what is "gang activity" and what is not. Misinterpretation of "gang activity" results in a higher number of students of color being adversely impacted, discriminated against, and denied an appropriate public education.

⁶¹ <https://www.nj.gov/lps/gang-signs-bro.pdf>

⁶² See, e.g., Resp.'s Br. 3-5 (citing declarations as the only sources for their claims and providing no source for the specific allegations of his shirt and haircut being gang related).

D. Imposition of school discipline without adherence to due process exacerbates race inequity, harming both students who are excluded and students who remain in school.

While children and youth may not always be knowledgeable about the specific legal and due process protections in Chapter 392-400 WAC and in local district policies, they place a high value on fairness in their interactions with adults at school. In our experience, *all* students—not just those who experience or are at risk of discipline—are hurt by educators’ failure to adhere to legally-required process before drastic, long-term changes are made to educational placement.

The Washington State Constitution creates an affirmative right to education for all students in Washington, yet students of color are disproportionately more likely to be suspended, expelled, and arrested than white students for school-based

behavior.⁶³ The District’s failure to provide processes required by law has a cumulative impact that leads to racial inequity.⁶⁴

The Washington State Legislature, troubled by disproportionate suspension and expulsion of students of color, stated an intention to “[r]educe the length of time students of color are excluded from school due to suspension and expulsion.”⁶⁵ Nonetheless, students of color, like M.G.,

⁶³ App.’s Br. 34-35 (citing Laws of 2013, 2d Spec. Sess., ch. 18 §§ 302 & 303; Laws of 2016, ch. 72, § 1); Wash. Const. art. IX, § 1; *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 511-12, 516-18, 585 P.2d 71 (1978) (stating the constitutionally required minimum education includes providing opportunities for learning essential skills to prepare children for the future); *McCleary v. State*, *supra*.

⁶⁴ See e.g., Off. Of Superintendent of Pub. Instruction, *Equity in Discipline Theory of Action 4*, https://www.k12.wa.us/sites/default/files/public/cisl/images/2019_08%20Equity%20in%20Discipline%20Theory%20of%20Action%20Background%20Document.pdf (last visited Feb. 24, 2022) (explaining the racial inequity that results from subjective discipline); Erik J. Girvan, Cody Gion, Kent McIntosh & Keith Smolkowski, *The Relative Contribution of Subjective Office Referrals to Racial Disproportionality in School Discipline*, 32 Sch. Psych. Q. 392, (discussing racial disparity in discretionary discipline).

⁶⁵ Laws of 2013, 2d Spec. Sess., ch. 18 §§ 302 & 303; Laws of 2016, ch. 72, § 1.

continue to be disproportionately suspended and expelled from public schools, including Eisenhower High School, M.G.'s home school.⁶⁶

Northwest Justice Project advocates both for children and adults who are crime victims and students who are subject to exclusionary discipline. When students of color are excluded from school, their peers who remain in school suffer.⁶⁷ Students who remain in school when their peers are excluded in ways that appear race-based and arbitrary lose trust and faith in the fairness of educators, risking disengagement from education.⁶⁸ Furthermore, when a misguided focus on school

⁶⁶ App.'s Br. 33 *et seq.*

⁶⁷ David S. Yeager, Valerie Purdie-Vaughns, Sophia Yang Hooper & Geoffrey L. Cohen, *Loss of Institutional Trust Among Racial and Ethnic Minority Adolescents: A Consequence of Procedural Injustice and a Cause of Life-Span Outcomes*, 88 Child Dev. 658, 666 (discussing how African American students outnumbered white students for subjective discipline problems and likely felt a sense of procedural injustice).

⁶⁸ Evie Blad, *When School Doesn't Seem Fair, Students May Suffer Lasting Effects*, EducationWeek (Feb. 14, 2017),

safety results in high rates of discipline in racially diverse schools, students who are not disciplined but attend schools with elevated rates of discipline experience negative academic outcomes.⁶⁹ In other words, aggressive, unfair discipline reduces trust by students who are not disciplined, and is associated with lower academic achievement by those students.

V. CONCLUSION

M.G.'s case raises legal and policy issues of great interest both to students who are subject to exclusionary discipline and to students who continue to attend their neighborhood schools.

VI. CERTIFICATE OF COMPLIANCE

<https://www.edweek.org/leadership/when-school-doesnt-seem-fair-students-may-suffer-lasting-effects/2017/02> .

⁶⁹ Odis Johnson Jr., Jason Jabbari, Maya Williams, Olivia Marcucci, *Disparate Impacts: Balancing the Need for Safe Schools with Racial Equity in Discipline*, 6(2) Pol'y Insights from the Behav. and Brain Scis.162(2019), <https://journals.sagepub.com/doi/abs/10.1177/2372732219864707> .

Appellant certifies that the foregoing document conforms to new requirements contain in RAP 18.17 and that the word count for the foregoing document is 4,792 words.

RESPECTFULLY SUBMITTED this 25th day of
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**COURT OF APPEALS FOR THE STATE OF
WASHINGTON
DIVISION III**

No. 38165-0-III

M.G. v. Yakima School District

CERTIFICATE OF SERVICE

I certify that on February 25, 2022, I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts' Secure Portal.

Signed this 25th day of February, 2022 at Seattle, WA.

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Disparate Impacts: Balancing the Need for Safe Schools With Racial Equity in Discipline

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Abstract

Policy responses to gun violence within K-12 school systems have not stopped the increasing frequency of their occurrence, but have instead increased racial and ethnic disparities in multiple forms of discipline. The crisis prevention policies that follow school shootings tend to exacerbate racial and ethnic discipline disparities (a) within schools as practitioners enact policies with discretion and bias, (b) between schools where policy is complicated by racial segregation, and (c) indirectly where academic consequences accrue to those who are not disciplined but attend schools with elevated school rates of discipline. Among the most promising policy alternatives to punitive disciplinary policy is restorative justice.

Keywords

schools, race, discipline, disparities, shootings, restorative justice

Tweet

Policy responses to school shootings have not prevented increases in their rate of occurrence, but restorative justice has the potential to avert bad behavior and school shootings.

Key Points

- Policy responses to gun violence in school have not stopped the rising frequency of school shootings.
- Crisis prevention policies enacted in response to school shootings have exacerbated racial and ethnic disparities in discipline.
- Racial and ethnic disparities exist among all school discipline metrics including dress code violations, suspensions, and referrals.
- Most of the disciplinary disparity exists between schools, suggesting that more uniformity in school discipline could reduce the disciplinary divide.
- Restorative justice has the potential to avert not only bad behavior but also tragic school shootings.

Introduction

Introduction Safety and racial/ethnic inequality in school are two recurrent issues on the national policy agenda. In the 1980s, for example, the phrase “zero tolerance” emerged from the “War on Drugs,” as the federal government aimed to “get tough” on drug enforcement. Policies were later enacted in schools to discourage drug abuse and gang

activity (Skiba & Peterson, 1999). In the 1990s, the Columbine High School tragedy was preceded by five highly publicized school shootings (Lawrence, 1998), which elicited concerns regarding an “epidemic” of deadly school violence (Muschert, 2007). Subsequently, an array of security measures were implemented in public schools, including school resource officers (SROs), metal detectors, and security cameras (Addington, 2009).

Although the effectiveness of these reforms in improving school safety is questioned with each additional school shooting, much less debate concerns their relation to increased contact with law enforcement in schools and higher rates of disciplinary exclusion for students of color. Research has documented the emergence of the school-to-prison pipeline, whereby excessive suspensions, expulsions, and referrals to law enforcement increase students’ contact with the criminal justice system (Curtis, 2014; Nance, 2016), most notably for students of color (Skiba, Arredondo, & Williams, 2014). Although empirical investigations have begun to reveal the relationships between school safety and racial/ethnic inequality, much is still unknown. We lack models of how school safety policies are effective/ineffective at producing safer schools (Hirschfield, 2018) *and* how they

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mitigate or exacerbate social stratification (Welsh & Little, 2018).

This article aims to address those questions by undertaking a critical review of research on disparate school discipline from 1999 (Columbine) to 2018 (Parkland). We frame this review with interests in the multiple ways racial/ethnic disparities in discipline manifest (e.g., between schools, within schools, directly, and indirectly), the policy phase in which these inequalities emerge (i.e., policy formulation and implementation), and the specific policy tools that are used to create racial disparities in school discipline, among them, the presence of law enforcement (e.g., SROs), exclusionary discipline (e.g., suspensions), mandatory sentencing (e.g., zero tolerance consequences), and cultural expression regulations (e.g., dress code). Although we clarify how these policy approaches vary between and within schools (Johnson, 2012), their effects when aggregated create the macro-structural concern of disparate racial and ethnic discipline. Finally, we consider policy alternatives for school safety and conclude that restorative justice (RJ) reforms may function between and within schools to decrease racial inequity.

Conceptualizing Disparities in Discipline

Using available research, we demonstrate how crisis prevention approaches in the formulation and implementation of school safety policies have led to racial inequalities in discipline between and within schools. Specifically, *policy formulation* refers to a system-level process in which resources are identified to achieve the goals of a specific educational agency (Dunn, 1994); *policy implementation* refers to the point at which the interpretation and enactment of regulations within schools may vary according to the knowledge and social backgrounds of school personnel and students (Lipsky, 1980). Ultimately, both between-school variation in policy formulation and within-school variation in its implementation directly and indirectly increase racial and ethnic disparities in discipline. This section introduces our conceptual model; the following sections then analyze research relevant to each part.

Schools have employed a variety of safety strategies (e.g., SROs and metal detectors) in response to mass shootings that aim to prevent crises (Muschert, Henry, Bracy, & Peguero, 2014). Although the actual impacts that these crisis prevention strategies have had on mass shootings are equivocal (Price & Khubchandani, 2019), these strategies have a collateral effect: When not being used to thwart the uncommon school shooting, they instead serve to increase the capacity of schools to identify and punish students for less serious offenses. These less serious offenses, like disorderly conduct and disruption of an educational environment, have consequently become more common than assault and weapons violations (Advancement Project, 2018; Theriot, 2009). For example, in the 2010-2011

school year, half of all California suspensions were for “willful defiance” (Watanabe, 2013). As the disruption of a school function is a criminal offense in California and 20 other states, the number of school-based arrests have skyrocketed. From 2005 to 2014, for example, police in San Bernardino, CA, arrested 6,923 minors on streets but more than 30,000 in schools (Ferriss, 2015). These increases are remarkable because national school victimization rates (Butts, 2000), homicides (Roberts, Kemp, Rathbun, Morgan, & Snyder, 2014), and teacher reports of threats (Fox & Burstein, 2010) have declined and stabilized since the early 1990s.

At the school level, variation in policy formulation between schools has created learning environments that subject all students to more stringent technologies of surveillance, and subsequently more frequent and severe punishments (Shedd, 2015). These high social-control schools—with high rates of surveillance and punishment relative to the level of disorder and misbehavior—also subject non-offending students to negative, indirect, or collateral effects (Perry & Morris, 2014). An excessive reliance on discipline produces racial disparities when it occurs in schools with higher rates of segregation for Black and Latinx students, which increases their rates of exposure to surveillance and punishments (see Jabbari & Johnson, 2019a). As racial segregation tends to characterize entire metropolitan areas (Johnson, 2017) and segregated schools tend to have higher levels of social control (Jabbari & Johnson, 2019a), segregation severely limits the ability of Black and Latinx families to choose schools with proportionate rates of discipline and less racial disparity.

Exemplifying variation in policy *implementation within* schools, some schools disproportionately target Black and Latinx students for perceived misbehavior (Barrett, McEachin, Mills, & Valant, 2017) and treat them more harshly than White students for committing the same offenses (Young, Yancey, Betsinger, & Farrell, 2011). This targeting can occur (a) at the level of surveillance, in which minority students may be watched more closely within a given school (see Rios, 2011), (b) at the level of detection, in which minority students may be “caught” more frequently within a given school (Skiba et al., 2011), and (c) at the level of sanction, in which minority students may be punished more harshly within a given school (Young et al., 2011). Whether explicit or implicit, racial bias evidently explains disparities in discipline policy implementation within schools (Riddle & Sinclair, 2019). In fact, Riddle and Sinclair (2019) found the results of 1.6 million implicit bias test-takers were associated with racial disciplinary disparities in the 96,000 schools that serve test-takers’ communities and enroll roughly 32 million students.

There are many policy options that can be adopted to address the aforementioned disparities. Yet, the analysis that follows shows how many of them, such as reducing racial segregation or eliminating zero tolerance policies, have less

potential than RJ approaches to curb racial disciplinary disparities. We begin with an overview of crisis prevention policy.

Crisis Prevention and Punishment

In our model, school safety concerns are addressed through crisis prevention strategies; however, in the absence of an emergency, these security measures yield excessive punishment. Although these policies may have stopped some shootings from occurring, they seem ineffective in mitigating the factors that cause them, because a recent study reports that more people have died or been injured in mass school shootings in the past 18 years than in the entire 20th century (Katsiyannis, Whitford, & Ennis, 2018). In 2018, for example, at least 24 mass shootings in K-12 settings had occurred, leaving 114 students killed or injured (Blad & Peele, 2019). Although metrics of school safety other than gun violence should be considered, little evidence shows that increasing punishment improves student behavior or academic performance (Losen & Skiba, 2010). Ironically, stronger evidence suggests that these policies are related to decreased mathematics outcomes and increased dropout rates, especially for racialized students, even after controlling for prior math achievement (Ibrahim & Johnson, 2019; Jabbari & Johnson, 2019b). The next sections describe how racial and ethnic inequalities in discipline arise within schools and between schools, directly and indirectly.

Policy Variation Within Schools

Disciplinary policy variation within schools matters for a few important reasons. First, disciplinary policy may be interpreted inconsistently or applied more harshly, loosely, or discriminately by school personnel according to the circumstances of the situation or student background (Lipsky, 1980). The enactment of varied and subjective definitions of what constitutes “order,” and educator discretion in the application of these definitions, often amounts to nontrivial racial and ethnic disparities when aggregated to the school and system levels. Although order might promote norms that enhance safety, it often extends from educational institutions’ mission in “character and moral education” to socialize youth in accordance with the habits and values (i.e., culture) that are often rewarded with social advancement (i.e., “cultural capital”). Research has extended the concept of cultural capital to include bodily self-representations (e.g., manners, comportment, and dress), with individuals who mirror normative cultural styles being given greater social resources and leniency for deviations from school protocols (Morris, 2005). When crisis prevention resources are applied to students who have been found in violation of cultural norms through these ostensibly subjective practices of cultural discernment, the phenomenon of “cultural policing” is

formed and racial and ethnic inequality in discipline emerges. Recent manifestations of cultural policing include suspensions and expulsions for having natural hair (e.g., an afro), “locks/dreads” (i.e., a braided Black hairstyle), or hair extensions (Tate, 2017); “hoodies” (i.e., a shirt with an attached hood; Zacarias, 2019); and saggy pants (Broach, 2015).

Second, practitioner views about culture are associated with racial and gendered differences in student outcomes. For example, educators tend to associate students exhibiting Black culture, especially boys’ movement styles, with lower academic outcomes, higher aggression, and the need for special education services (Neal, McCray, Webb-Johnson, & Bridgest, 2003). Second, the perception of Black girls as not “ladylike” is significantly related in research to disciplinary referrals about gender-appropriate dress and manners (Morris, 2005). Third, research has shown that school administrators often perceive Latino boys as threatening and warranting punitive discipline (Morris, 2005). The racial/ethnic divide in discipline is only made greater by the discretion and exemption from cultural policing that school personnel enact for White and Asian students, who may have similar or worse behavior, but who receive less frequent and less severe penalties (Barrett et al., 2017).

Zero tolerance policy has been widely criticized because, in theory, it limits the professional discretion of school personnel in matters of discipline by standardizing responses to violations of school authority and law. However, the occurrence of cultural policing suggests that enhancing professional discretion through the elimination of zero tolerance would not resolve racial/ethnic disparities in discipline and may in fact further aggravate them. Ultimately, the culture of discipline in public schools aligns with a greater social order replicated in policy, which requires stricter adherence to a stereotypical construction of normative child and adolescent behavior from racialized youth than nonracialized students (Wun, 2016). These within-school variations suggest that parents using school choice policies to enroll their children in schools that have fewer punitive policies may not be able to escape the risk of discipline due to cultural policing.

Policy Variation Between Schools

In addition to within-school variation in policy implementation, discipline disparities also extend from between-school variation in policy formulation. Recent studies demonstrate that the majority of the disproportionality in discipline occurs *between* rather than *within* schools (Anderson & Ritter, 2017; Skiba et al., 2014). Thus, analyzing how school discipline policies vary between schools is essential in understanding how disparate impacts materialize. The origins of between-school differences in the formulation of discipline policy could consider (a) the built environment (e.g., metal detectors vs. open campuses), (b) school composition (e.g., racial segregation vs. integration), (c) student culture and behavior

(e.g., strict vs. permissive regulation of dress and hairstyles), and (d) instruction and pedagogies (e.g., disseminating knowledge vs. exploration and the creation of knowledge), with many of these dimensions reflected in individual schools. Consider, for example, that schools with higher proportions of racial/ethnic minority students tend to have increased levels of surveillance in the built environment (Kupchik & Ward, 2014), more restrictions on dress and hairstyles (DaCosta, 2006; Ibrahim, Barnes, Butler-Barnes & Johnson, 2019), and more regimented and regulated approaches to learning (Goodman, 2013). These heightened regulations of behavior relate to higher dropout rates in predominantly minority schools (Jabbari & Johnson, 2019a).

In addition, although a segregated school's higher proportion of students of color triggers an increase in the use of disciplinary measures (Blalock, 1967), racially heterogeneous schools may incur demands for increased safety measures from White parents (see Jencks & Mayer, 1990), due to their racial views and pervasive stereotypes of Black and Latino youth. Empirically, an increase in the percentage of Black students within a school directly relates to increased discipline and suspensions and decreased restorative practices, even after adjusting for school levels of disorder and misbehavior (Payne & Welch, 2010; Welch & Payne, 2010).

Although race/ethnicity is not the only mechanism of stratification between schools that informs discipline policies and outcomes, it seems to be a fundamental one. For example, many of the same policy tools used in schools with high proportions of minority students (e.g., increased surveillance, restrictions on dress and hairstyles, and regimented learning) are used inequitably within the distributions of other school-level metrics. For example, when schools are defined according to their socioeconomic status, these policies and practices are most prevalent in schools that are low-income (Mendez, Knoff, & Ferron, 2002). Similarly, schools that are urban (Shedd, 2015), Southern (Smith & Harper, 2015), charter (Losen, Keith, Hodson, & Martinez, 2016), "no-excuse" (Golann, 2015), large (Stewart, 2003), low achieving (Skiba et al., 2014), and have fewer teachers of color (Lindsay & Hart, 2017) tend to rely more heavily on punitive discipline. As most of these dimensions characterize the schools that Black and Latinx students attend, and do not fully account for racial disparities once they are considered (Peguero, Varela, Marchbanks, Blake, & Eason, 2018; Skiba et al., 2014), one could conclude that they merely proxy the pervasiveness of racial disparity in discipline. In sum, between-school variation in racial segregation leads to pronounced racial disparities in discipline, and the pervasiveness of segregation makes it difficult for parents to access less segregated schools where hyper-discipline could be less common.

Indirect Effects

What remains largely unacknowledged and worthy of policymakers' attention are the unintended consequences of

surveillance and punishment for non-offending students. For example, with the technologies of surveillance and exclusion in place—often under the guise of "safety"—a culture of control can dominate a learning environment (Nolan, 2011). No-excuse schools, for example, can cause children to "monitor themselves, hold back their opinions, and defer to authority" (Golann, 2015, p. 103), which limits important college and labor market skills, such as taking initiative, asserting one's needs, and negotiating with authority (Golann, 2015). High schools with higher levels of exclusionary discipline not only lower the achievement of disciplined and non-disciplined students alike (Perry & Morris, 2014, p. 1071) but also their college attendance (Jabbari & Johnson, 2019a).

Indirect discipline effects also magnify racial and ethnic disparities in discipline. For example, criminological research shows that distrust of authority arises in Black youth vicariously as they see or hear about the troubling experiences of other African Americans with state agents (Brunson, 2007). The awareness of racial bias in school discipline may encourage future disciplinary infractions—ultimately leading to lower college enrollment (Yeager, Purdie-Vaughns, Hooper, & Cohen, 2017). In both high social control settings and environments with discipline disparities, the threat of undeserved punishment can increase anxiety (Kupchik, 2010), which can, in turn, undermine the moral authority of schools (Arum, 2003), affecting both well and poorly behaved students alike (Perry & Morris, 2014).

Policy Alternatives

Whether between or within schools, discipline policies have both direct and indirect effects that oftentimes disproportionately affect minority students (Ibrahim & Johnson, 2019; Jabbari & Johnson, 2019b). As a result, interventions must address the tendency for discipline policies to vary in both their formulation between schools and their implementation within schools. One alternative would alter how policies stemming from crisis prevention strategies are formulated and implemented, with an intent to reduce punishments in schools with high rates of surveillance and disciplinary sanctions.

The Philadelphia schools, for example, recently banned out-of-school suspensions (OSS) for low-level offenses and reduced the length of OSS for more serious offenses. These reforms, however, did not (a) receive compliance from the majority of schools, (b) reduce the number of suspensions for low-level conduct, (c) improve achievement for previously suspended students, and, ultimately, (d) increased racial disparities in discipline (Steinberg & Lacoe, 2017). Even alternatives to OSS, such as in-school-suspensions (ISS), have negative direct and indirect effects that rival those of OSS (Cholewa, Hull, Babcock, & Smith, 2018; Ibrahim & Johnson, 2019; Jabbari & Johnson, 2019a). Although Philadelphia's approach might be consistent with disciplinary reform, it suffered from incomplete implementation and unintended policy outcomes (i.e., increased ISS).

Another policy option calls on schools with disproportionate rates of discipline to implement implicit bias training for their personnel. Although racial bias may drive discipline disparities both between and within schools, explicit and implicit bias training, alone, as a way to effectively curb school discipline has yet to be validated (Marcucci, 2019). However, at least two studies have found mandatory implicit training may increase employee resentment toward the groups it is supposed to ease (Dobbin & Kalev, 2016; Legault, Gutsell, & Inzlicht, 2011).

A third policy option prioritizes RJ to attain both safer schools and greater racial/ethnic equity. RJ is an alternative approach to the creation of safe and equitable communities. It centers on repairing harm if a wrongdoing occurs. Howard Zehr (2015) outlines three central questions of a restorative philosophy: “Who has been hurt? What are their needs? Who has the obligation to address the needs, to put right the harms, to restore relationships?” In contrast, normative, punitive approaches to justice ask, “What rules were broken? Who did it? What do they deserve?” (p. 91). Although crisis prevention attempts to address a narrow definition of school safety, restorative approaches understand school safety holistically (Zehr, 2015; see also Marcucci, 2016).

When applied in schools, RJ is a spectrum of practices, from informal restorative conversations to structured restorative curricula (Amstutz & Mullet, 2015). The most well-known restorative practice is the circle process, which is central to both preventive and reactive uses of RJ. Talking circles, or community circles, are preventive practices that educators can use to build up relationships and community within school environments. Just as exclusionary discipline sets the tone of the school culture, so can RJ. In this case, RJ practitioners have codified practices to proactively build up a positive school community. Harm circles, however, occur after a wrongdoing has taken place. Both the offender and the victim, as well as other impacted community members, come together in a circle to discuss the event and decide on an appropriate response.

These restorative practices have been gaining momentum in American schools since the 1990s (Winn, 2018). Recently, major urban districts (Oakland Unified School District, Denver Public Schools, and Los Angeles Unified School District) have adopted some form of restorative initiative. In a few urban areas, restorative initiatives in schools have even been facilitated by local police, rather than school or district officials. For example, the Philadelphia Police Department spearheaded a collaboration with the local school district to implement a restorative initiative called Philadelphia Police School Diversion Program (City of Philadelphia, 2019). This program suggests that school-to-prison pipeline solutions may rest outside of educational policy as well.

Although complex, investigations into school-based restorative approaches indicate that restorative practices could both reduce overall rates of discipline and mitigate underlying racial disparities. In the first-ever randomized

control trial of RJ, the RAND corporation (2018) and Pittsburgh Public Schools found that schools adopting restorative practices reduced the number of days suspended by 36% in the study time frame (compared with 18% reduction in the control group of schools, which was using alternative disciplinary reforms). In addition, racial discipline disparities, particularly for African American students, were reduced in schools that adopted restorative practices. In restorative schools, teachers reported a more positive climate overall, perhaps mitigating some of the indirect impacts of punitive environments. These school-level findings are supported by student-level findings (Anyon et al., 2016), showing that when students received more restorative interventions in the first semester, their chances of receiving a disciplinary referral the second semester were lower, regardless of student race. Restorative approaches may be disparity-mitigating, as well. Rehabilitative approaches to school discipline, including RJ, were more robust against teacher implicit bias (Marcucci, 2019). Regardless of school policy, teachers’ implicit bias influenced their punitive disciplinary behaviors more than their rehabilitative disciplinary behaviors. Policy variation within schools (i.e., which results from racial bias) may be mitigated with restorative initiatives. Restorative practice could produce more equitable schools, without compromising school safety.

Policymakers can use their position to prioritize restorative practices. First, policymakers can mandate the use of suspensions for only the most extreme misbehaviors. This will encourage schools and educators to use other tools—namely, restorative practices—to address more everyday, mundane issues of student misbehavior and school safety. A number of states have begun limiting schools’ use of OSS. For example, Illinois’s Public Act 99-0456 limits OSS over 3 days to those students who pose a threat to the safety of the school and bans the use of zero tolerance except when required by federal law. Policymakers can consider supporting similar legislation in their jurisdiction. Suspension bans should target unnecessary in-school suspensions as well.

Second, policymakers can support funding that will offer educators the training to implement and utilize restorative practices well. One of the main criticisms of the Illinois legislation is that it removes a primary tool of classroom management without offering educators alternatives. If policymakers couple suspension-limiting legislation with funding for training and professional development, school safety policies can become both more effective and more racially equitable.

Finally, policymakers can earmark research funds to continue to explore the impact of restorative initiatives in school communities. Although the initial evidence is exciting, additional research can show how to optimize implementation in certain communities, as well as the specific mechanisms that would make restorative practices produce positive student and school outcomes, particularly around school safety.

Conclusion

Moments of extreme school violence violate the basic assumption that students should be safe in schools. Tragic shootings in Columbine, Newtown, and Parkland are moments that foment school safety policies. However, the school safety policies that implemented after these moments (e.g., law enforcement, zero tolerance, metal detectors) do not avoid these tragic events. School shootings, while rare, still occur despite these crisis prevention policies, which inadvertently lead to harsher punishment of racialized students, exacerbating racial inequity in American schools. The current model showcases how school safety policies exacerbate racial inequity via between- and within-school policy variation. It also highlights how the detrimental effects of crisis prevention policies extend beyond the misbehaving student to impact their peers, as entire school communities become punitive environments focusing on social control over academic learning. These indirect effects of crisis prevention policies, therefore, contribute as significantly to racial inequity as the direct effects on disciplined students.

Given the shortcomings of the current crisis prevention approach to school safety, policymakers must consider alternative approaches. RJ provides an approach to school safety that could encourage investment in school communities, allow developmentally appropriate reactions to normative child and adolescent behavior, lower interpersonal and intergroup tensions, and, ultimately, promote safer school environments. In addition, restorative approaches could begin to mitigate the racial disparities in school discipline. The article outlines steps that policymakers could take to protect and encourage RJ in schools, including professional development funding, legislation that prohibits long suspensions for nonviolent offenses, and funding for relevant research.

Racial equity and safe schools are not in opposition. Racial equity is not a societal luxury, so it is not a reasonable sacrifice for safer schools. Instead, policies should promote safer schools and more equitable outcomes for students of all races, allowing children and youth to become contributing citizens to American democracy. These aims are bedrock for sustainable democracies and thriving economies.


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