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Tolerance in Schools for Latino Students: Dismantling the School-to-Prison Pipeline

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Abstract

The school to prison pipeline refers to the practice of pushing students out of educational institutions, primarily via zero tolerance and harsh disciplinary policies, and into the juvenile and adult criminal justice systems. The pipeline has emerged in part as a response to media panic over youth violence and the need to keep dangerous students out of schools. To curtail the alleged surge in youth violence, school districts have adopted zero tolerance policies, which impose harsh disciplinary penalties and sanctions, and are applied regardless of the seriousness of the infraction or mitigating circumstances. Research shows that these policies have failed to make schools safer and have been linked to an increased likelihood of academic underperformance, as well as increased suspensions and expulsions rates and elevated drop-out rates. Latinos and African-American students are disproportionately represented at every stage of the school-to-prison pipeline. For example, these students are far more likely than their white peers to face suspension, expulsion or arrests for the same school based infraction. This brief addresses the history of the school to prison pipeline; the negative impact of zero-tolerance policies on students, particularly African American and Latino students; alternatives to zero-tolerance policies; and both practice and policy recommendations.

Introduction

Schools have imposed harsher sanctions on students for minor disruptive behavior, causing a systematic pushing out of students from schools and into the juvenile justice and criminal justice system.¹ This trajectory is often referred to as the school to prison pipeline. The pipeline is facilitated by several trends in education that negatively impact students of color, particularly African-American and Latino students. Some of these trends include growing poverty rates and declining school funding, high stakes testing, and over-representation in special education tracks.² The focus of this policy brief is on school administrators' reliance on zero tolerance and exclusionary policies, which play an integral role in feeding the school to prison pipeline.

Zero tolerance policies are the most severe forms of school discipline today. These policies strip school administrators of discretion and impose predetermined penalties for a given infraction, without consideration of mitigating circumstances or unique situations that may have led to the incident.³ The dramatic increase of the use of these extremely severe disciplinary practices has resulted in too many arrests and referrals of students to the juvenile and criminal justice system each year.⁴ School districts nationwide have adopted these policies because of a perceived rise in crime and violence in

primary and secondary schools.⁵ Through the application of zero-tolerance policies, schools indirectly drive children into the juvenile justice system by criminalizing a wide variety of student behavior; including, behavior as minor as tardiness, absences, noncompliance, and disrespect.⁶

History of Zero-Tolerance and Harsh Disciplinary Policies

Over the past twenty years, the rate of violence among k-12 youth has steadily declined.⁷ Schools also remain one of the safest places for the nation's children.⁸ Between 1992 and 2005, the Bureau of Justice Statistics found that annual rates of serious violent crimes were lower at school than away from school.⁹ Despite schools remaining one of the safest places for children, schools have adopted many of the punitive policies of the criminal and juvenile justice systems as a means of disciplining students.

The ideological origins of punitive policies like zero tolerance policies can be traced to the late 1980s and throughout the 1990s when youth of color were viewed as violent predators.¹⁰ During this time, the media focused on youth gangs and the rise of the teen- super predators that would come of age by 2010. Many of these teen super-predators were urban African-Americans and Latinos, and they were described as "relentlessly violent."¹¹

In 1994, Congress passed the Federal Gun Free Schools Act in response to school shootings and an alleged surge in adolescent violence.¹² The act required that every state enact a law that required districts to expel students that brought a firearm to school for at least one year.

The media's coverage exaggerated the extent of gang membership and gang violence among youth. According to the article *Framing Children in the News: The Face and Color of Youth Crime in America*, two-thirds of violent crimes covered focused on youth under the age of 25.¹²

The rhetoric of the rise of the teen-super predator set the stage for substantive policy changes in the area of student discipline.¹³ In 1994, Congress passed the Federal Gun Free Schools Act in response to school shootings and an alleged surge in adolescent violence.¹⁴ The act mandated that every state enact a law that required districts to expel students that brought a firearm to school for at least one year.

The Federal Gun Free Schools Act paved the way for more punitive disciplinary policies. The National Center for Education Statistics, found that during the 1996-97 school year, 91 percent of public schools imposed zero-tolerance policies for weapons other than firearms, 87 percent of schools used zero-tolerance policies for alcohol offenses, and 88 percent had such policies for drugs; 79 percent of schools had zero-tolerance policies for violence, and 79 percent also employed harsh policies for tobacco violations.¹⁵

Zero-Tolerance Policies Today

The original goal of the Gun Free Schools Act was to impose harsh punishments for serious violations involving weapons. Currently, school districts have expanded zero-tolerance policies beyond expulsions for firearms. According to the American Bar Association, zero-tolerance policies do not distinguish between serious and non-serious offenses and they fail at adequately separating intentional troublemakers from those with behavioral disorders.¹⁶ Students can now receive immedi-

ate suspension, expulsion, or referrals to the juvenile justice system for a myriad of infractions, which range from weapons violation to disrespecting a teacher. The following are examples from the field.

- In Louisiana, a 12-year-old diagnosed with a hyperactive disorder, warned classmates in the lunch line not to eat all the potatoes, or "I'm going to get you." The student, turned in by the lunch monitor, was suspended for two days. He was then referred to police by the principal, and the police charged the boy with making "terroristic threats." He was incarcerated for two weeks while awaiting trial.¹⁷
- In Florida, a six year old was handcuffed, arrested, and driven away from school after throwing a tantrum in her kindergarten class. Because of her small stature, the handcuffs were placed around her biceps. She was subsequently taken to county jail, fingerprinted, had a mug shot taken, and was charged with a felony and two misdemeanors.¹⁸
- A high school junior shot a paper clip with a rubber band at a classmate. The student missed and instead struck a cafeteria worker. The student was expelled from school.¹⁹
- Two 10-year-old boys from Arlington, Virginia were suspended for three days for putting soap water in a teacher's drink. The police charged the boys with a felony, which carried a maximum sentence of 20 years. The children were formally processed through the juvenile justice system before the case was dismissed.²⁰

The incidents cited above are just some examples of the unforgiving nature of zero-tolerance policies. Zero-tolerance policies are also associated with an increased presence of police officers in schools, metal

detectors, security cameras, and lockers and body searches. Violators—disproportionately Black and Latino—are suspended, expelled, and increasingly arrested and charged in juvenile court as a result of school-based behavior.²¹

For example, a student from Meridian, Mississippi, cannot recall the number of times he has been shuffled between school and the juvenile justice system. A youth court judge placed him on probation for getting into a fight when he was in the eighth grade. From that point on, additional school-based infractions were cited, such as tardiness and breaking the school dress code. These minor infractions counted as violations of the student's probation and led to his immediate suspension and incarceration into the local juvenile detention center.²² A Department of Justice (DOJ) lawsuit filed in October 2012 against the Meridian, Mississippi school district suggests that this student is not alone.²³ According to DOJ, the Meridian juvenile justice system has operated a school-to-prison pipeline that thrusts students out of school and into the juvenile justice system. The arrests of Meridian school children happens automatically, regardless of the type of offense, even if it does not merit an arrest as the police protocol was to arrest all children referred to the agency.

Feeding the Pipeline: Rates of Referrals to the Criminal Justice System

Across the nation, police make 2.2 million juvenile arrests; 1.7 million cases are referred to juvenile courts; an estimated 400,000 kids pass through juvenile detention centers; and almost 100,000 youth are confined in juvenile jails, prisons, boot camps, and other residential institutions on any given night.²⁴ A quarter of all chil-

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dren placed in secure confinement after being adjudicated juvenile delinquent were charged with violent offenses; 22 percent were incarcerated as a result of a technical violation, and 6 percent were confined due to a status offense.²⁵ A growing number of children are being referred to the system directly by their schools. In South Carolina, the single most common offense resulting in a juvenile court referral during the 2007–08 year was “disturbing schools.”²⁶

Negative Impacts of Zero Tolerance and Other Punitive Discipline Measures

Harsh disciplinary policies have failed to make schools safer and have been linked to an increased likelihood of academic underperformance. Champions of zero-tolerance policies argue that these measures create safer school environments. However, evidence based research refutes this point. In 2006, The American Psychological Association released a ten-year study of zero-tolerance policies, and found that the presence and use of exclusionary zero tolerance policies did not improve school safety.²⁷ Interestingly, schools that employed zero-tolerance policies had higher rates of suspensions and expulsions, and had less satisfactory ratings regarding overall school climate.²⁸ Rather than promoting a safe and secure educational atmosphere, harsh disciplinary policies create a culture of fear as students are in constant fear of being suspended or arrested.²⁹ Moreover, research shows a negative relationship between the use of school suspension and expulsion and school wide academic achievement, even when controlling socioeconomic status demographics.³⁰

Supporters of harsh disciplinary policies also believe that zero-tolerance policies deter future misconduct. The antithesis is

true, as the evidence shows that instead of reducing the likelihood of disruption; school suspension appears to predict higher future rates of misbehavior and suspension among those students who are suspended. School suspension is the top predictor of contact with the justice system for students who become incarcerated by the ninth grade.³¹ In the long term, school suspension and expulsion are associated with a higher likelihood of school dropout and failure to graduate on time.³² The American Academy of Pediatrics found that suspensions and expulsions not only jeopardize children’s health and safety; they also may exacerbate academic failure.³³ The Center for Disease Control & Prevention found that expelled or suspended youth are more likely to be retained a grade; drop out of school, become teen parents, and engage in delinquent behavior.³⁴ For children of color, particularly Latinos and African-Americans, the effects associated with zero tolerance policies multiply the barriers to academic and career success that are already present in their lives.³⁵ Students who have experienced suspension or expulsion are more than eight times as likely to be incarcerated as those who graduate. Dropouts are far more likely to face reduced job and income opportunities, chronic unemployment, or require government assistance.³⁶

Racial Disparities in the Pipeline

As the number of students who are disciplined has increased, disciplinary disparities between racial groups have become starker.³⁷ According the NAACP Legal Defense Fund, historical inequalities in the education system, particularly segregated schools, concentrated poverty, and entrenched stereotypes - influence how school officials and law enforcement label and treat students who misbehave.³⁸

Notably, “racially isolated schools that primarily educate students of color are more likely to be among the nation’s ‘drop out factories’ and also among those that utilize the harshest, most exclusionary means of discipline.”³⁹

Students of color account for a large number of school enforced punishment, and the majority of arrests for school-related infractions. During the 2009-2010 school year, more than 70 percent of students arrested in schools were Black or Hispanic.⁴⁰ A 2001 review of over 400 elementary and middle schools from across the country found that African-American and Latino students received harsher punishments for similar misbehavior than their white peers.⁴¹ Students of color are disproportionately disciplined for subjective offenses, like disrespect, while their white peers are disproportionately disciplined for objective offenses like smoking.⁴² This trend has resulted in the disparate treatment of African-American and Latino students. Under zero-tolerance policies, Latino youth are three times more likely to be suspended, expelled, and referred to the criminal justice system than their white peers who commit the same infraction.⁴³

According to the Children’s Defense Fund, in 2011, every 7 seconds a Latino public school student was suspended; every 27 seconds a Latino high school student dropped out; and every 58 seconds a Latino public school student was corporally punished.⁴⁴ Additionally, Latino students are 1.5 times more likely to be suspended and twice more likely to be expelled than their white peers. In 2006, Latino boys only comprised 10% of the country’s student population but accounted for 14% of all suspended students, while white males made up 29% of the nation’s student population but accounted for 28% of all suspended students.⁴⁵

Restorative justice is based on the following core principles: repairing the harm, stakeholder involvement, and transforming community relationships.⁴³ When implemented in educational facilities, the concept of restorative justice develops to meet the needs of the whole school community.⁴⁴

Alternatives to Zero-Tolerance Policies and Closing the School-To-Prison Pipeline

Thus far this brief has highlighted the devastating effects of zero-tolerance policies. The goal of any effective disciplinary system must be to ensure a safe school environment while avoiding practices that suspend students and facilitate their entry into the criminal justice system. The following practices and policies are alternatives to zero-tolerance policies and should be considered by schools districts in lieu of existing zero-tolerance policies.

1. Restorative Justice

Restorative justice is based on the following core principles: repairing the harm, stakeholder involvement, and transforming community relationships.⁴⁶ When implemented in educational facilities, the concept of restorative justice develops to meet the needs of the whole school community.⁴⁷ The underlying assumption of restorative justice models is that when a student misbehaves, their behavior breaches the social contract between the student and the school community. Under these circumstances, it is the school community's responsibility to ensure the student is held accountable. This approach reintegrates the student into the community, instead of deferring to the juvenile justice system to resolve a school-based issue.⁴⁸

Several cities have incorporated restorative justice principles in student codes of conduct. The City of Chicago Board of Education's Student Code of Conduct specifically provides for the use of peacemaking or circles of understanding, community service, peer juries, restorative group conferencing, victim impact panels, and victim offender conferencing. The city of Peoria, Illinois has replaced zero-tolerance policies and referrals to law enforcement with a restorative approach to conflict.⁴⁹

The schools in Peoria implemented Community Peace Conferencing, with great success.⁵⁰ As of 2008, detention referrals dropped by 35 percent in those schools, and the percentage of referrals dropped more dramatically among African-American students with a decrease of 43 percent.⁵¹ The Children's Home Association of Illinois implemented peacemaking circles at the Children's Home Kiefer School, an alternative school for children with severe emotional and behavioral problems. Peacemaking Circles help set the standard for classroom behavior and provide a means of resolving classroom disputes.⁵²

2. Behavioral Interventions & Supports

Positive Behavioral Interventions and Supports ("PBIS") also known as School Wide Positive Behavior Support (SWPBS), is a three-tiered prevention model focused on: prevention, multi-tiered support, and data based decision-making.⁵³ According to Daniel Lose the author of *Discipline Policies, Successful Schools and Racial Justice*, the goal of PBIS is "to ensure a safe and effective learning environment by emphasizing appropriate student behavior and simultaneously working to reduce punitive disciplinary measures." According to Jeffrey R. Sprague and Robert H. Horner from the University of Oregon the "evidence shows that [PBIS] can change the trajectory of at-risk children toward destructive outcomes, and prevent the onset of risk behavior in typically developing children. It is expected that effective and sustained implementation of [PBIS] will create a more responsive school climate."⁵⁴

At the first tier, the prevention level, the focus is on establishing safe and effective learning environments in which behavioral expectations for students are "predictable, directly taught, consistently acknowledged, and actively monitored."⁵⁵ At this tier there is frequent monitoring

of disciplinary referrals and emphasis on reducing the number of these referrals occurs. Similar to the restorative justice model, at the prevention level PBIS is intended to shift the focus from the individual student who is misbehaving to the whole school.

The second level, multi-tiered support, is designed for students with at-risk and antisocial behavior who require more support beyond the prevention level, and thus "the greater the student's need for support the more intense the support provided."⁵⁶ Ultimately, Data-based decision making, the third level, is premised on the assumption that school administrators, family, and students will be most effective in the design of a preventative disciplinary model if they have accurate information about the behavior of students.

The Los Angeles Unified District, through a board resolution, issued a directive mandating the development of a school-wide positive behavior support and discipline plan.⁵⁷ The plan outlines the responsibilities of students, parents, teachers, administrators, staff and community members, and it also mandates that school administrators must consistently apply reasonable alternatives to student suspension and expulsion, and opportunity transfers. Some alternatives include: restitution, community service, negotiation and problem solving techniques. PBIS are a welcome change from zero-tolerance policies that strip school administrators of discretion and impose predetermined penalties for a given infraction.

3. Curtail Referrals to Juvenile Courts

Schools should only reserve referrals to the juvenile justice systems for the most serious and severe disruptive behaviors.

⁵⁸ In Clayton County, Georgia members of

The Clayton Cooperative Agreement ensures that misdemeanor delinquent acts, such as: fighting, disrupting the public school disorderly conduct, obstruction of police, and criminal trespass, do not result in a criminal complaint unless the student commits a third or subsequent similar offense during the same school year.⁵⁵

the juvenile justice system, law enforcement, school administrators, and social services group joined forces to draft a cooperative agreement aimed at limiting the overall number of school referrals to the juvenile courts. The Clayton Cooperative Agreement ensures that misdemeanor delinquent acts, such as: fighting, disrupting the public school, disorderly conduct, obstruction of police, and trespassing, do not result in a criminal complaint unless the student commits a third or subsequent similar offense during the same school year.⁵⁹ Moreover, once the misbehaving student has committed their third or similar offense, the principal is required to conduct a review of the student's behavior plan to determine appropriate action before filing a criminal complaint.⁶⁰ Students with one offense are referred to mediation and students with a second offense are directed to a conflict-training program along with their parents.⁶¹

In addition, the Clayton Cooperative Agreement recognizes that the intermingling of elementary age children with adolescent youth is not the best practice. Thus, under the agreement, elementary school-aged children cannot be referred to law enforcement if they commit misdemeanor delinquent acts on school premises because other interventions within the school or other social service agencies are more effective at dealing with the behavior than the juvenile justice system.⁶²

The agreement was implemented in 2004, and since that time, the presence of dangerous weapons on school grounds has decreased by 70%.⁶³ According to the Clayton County Public Schools Blue Ribbon Commission, after the cooperative went into effect, there was an 87% decrease in fighting offenses and a 36% decrease in disorderly conduct. The relationship between officers and students has

also improved. Students are more willing to engage with officers when their cooperation is needed to solve serious school based offenses. Lastly, since the implementation of the agreement graduation rates have increased by 20%.⁶⁴

Similar to the Clayton Cooperative Agreement, *Padres & Jóvenes Unidos*, a Latino advocacy group from Denver, Colorado, recently reached an agreement with the Denver Public Schools and Denver Police Department.⁶⁵ The new agreement will attempt to distinguish between misbehaviors that should be addressed by schools officials and those that constitute a crime.⁶⁶ Dialogue between police officers and school administrators will also increase as the agreement calls for the two parties to convene multiple times a year to discuss school discipline.⁶⁷

In 2000, *Padres & Jóvenes Unidos* began to push the Denver school district to pay attention to zero-tolerance policies and their negative impacts. As a result of their efforts, during the 2003–2004 academic school year school suspensions dropped 44%, expulsion dropped 75%, and students referred to police or arrested while in schools dropped 63%.⁶⁸ The advocacy group was still not satisfied as African-American and Latino students were still overrepresented within the number of school based arrests. In 2008, the district implemented a number of policy changes, which included tracking the racial disparities in student, suspension, expulsions and arrests.⁶⁹ Stakeholders believe the current agreement will help keep more children in school and out of the jail.⁷⁰

4. Federal Efforts

On July 21, 2011 during a meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention, Attorney General Eric Holder and Secretary of Educa-

tion Arne Duncan announced the launch of the Supportive School Discipline Initiative (SSDI).⁷¹ SSDI encourages “effective disciplinary practices that ensure safe, supportive, and productive learning environments and promotes evidence-based practices that keep students in schools and out of the courts.”⁷² The initiative will be implemented in coordination with the efforts of other nonprofits and philanthropic communities that are also working to reduce the use of zero-tolerance policies. During the meeting, Attorney General Holder acknowledged that “[e]nsuring that our educational system is a doorway to opportunity—and not a point of entry to our criminal justice system—is a critical and achievable goal.” He emphasized that the goals of the initiative are to: build consensus for action among federal, state, and local education stakeholders; collaborate on research and data collection that may be needed to inform this work, such as evaluations of alternative discipline policies and interventions; develop guidance to ensure that school discipline policies and practices comply with the nation's civil rights laws and to promote positive disciplinary options to both keep kids in school and improve the climate for learning; promote awareness and knowledge about evidence-based and promising policies and practices among educators and justice stakeholders.⁷³

The alliance of key federal government stakeholders is a step forward towards closing the school to prison pipeline. Though there have been no reports or statistics released on the effectiveness of the SSDI, it is noteworthy that the federal government recognizes that encouraging community organizations, educators and nonprofits to come together is the best way to dismantle the school to prison pipeline.

The Department of Justice is also attempt-

Because schools have relied on zero-tolerance policies for years, effectuating reform will require policy makers, community advocates, and school administrators, to work together to change existing policies and practices.

ing to dismantle the school to prison pipeline through law enforcement and policy work.⁷⁴ In schools, the Department of Justice tackles racially discriminatory student discipline through enforcement of Title IV of the Civil Rights Act of 1964, which prohibits discrimination against students in public schools based on race and national origin.⁷⁵ The Department is dealing with complaints of racially discriminatory discipline, including discriminatory referrals to law enforcement agencies, as part of its enforcement of existing school desegregation orders, as well as new investigations under Title IV.⁷⁶

Conclusion

This brief has sought to describe the negative impacts of zero-tolerance policies on students, particularly African-American and Latinos, and how these policies funnel students into the juvenile and criminal justice system. School administrators rely on zero-tolerance policies because they believe these policies are an effective means of maintaining student safety and encouraging productive learning environments. The evidence shows that zero-tolerance policies have failed to make schools safer and are not effective at handling disciplinary issue.

Because schools have relied on zero-tolerance policies for years, effectuating reform will require policy makers, community advocates, and school administrators, to work together to change existing policies and practices. The following recommendations balance the needs of schools to maintain safety while reducing the number of school-based referrals to the juvenile justice system.

First, school districts should establish a disciplinary policy that clearly outlines disciplinary actions and consequences

based on the severity of the misbehavior. This will ensure that only students who pose a serious safety threat are suspended or arrested. This practice will also guarantee that school administrators are not stripped of discretion when disciplining students and unique and mitigating circumstances are considered before punishment is imposed.

Also, following the example of school districts like Denver and Clayton, schools should draft agreements between police officers and school officials for the purpose of limiting the overall number of school based referrals to the juvenile justice system.

Schools should also strive to incorporate restorative justice principles into their disciplinary codes in order to appropriately address a student's misconduct. By incorporating restorative justice principles schools can prevent or deal with conflict before it escalates. Following the lead of districts like Chicago and Peoria, restorative justice program models can include: peacemaking circles, mediation and conferencing, and peer juries.

Dismantling the school to prison pipeline and implementing alternatives to zero-tolerance policies will take time. However, if school districts make a concerted effort to implement the aforementioned strategies, and community advocates and parents keep schools accountable, schools can cease producing inmates and instead prepare students to succeed.

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