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KEEPING KIDS IN SCHOOLS: RESTORATIVE JUSTICE, PUNITIVE DISCIPLINE, AND THE SCHOOL TO PRISON PIPELINE

Thalia González¹

INTRODUCTION

Although the use of restorative justice in schools is hardly new globally, the emergence of school-based restorative justice in the United States as an educational practice to address the far-reaching negative impacts of punitive discipline policies is a more recent phenomenon. School-based restorative justice programs in the United States have grown exponentially in the last five years. Within the school context, restorative justice is broadly defined as an approach to discipline that engages all parties in a balanced practice that brings together all people impacted by an issue or behavior.² It allows students, teachers, families, schools, and communities to resolve conflict, promote academic achievement, and address school safety. Restorative justice practice in schools is often seen as building on existing relationships and complementary with other non-discipline practices, such as peer mediation or youth courts.

To understand the powerful impact of school-based restorative justice practice, one must consider the far-reaching negative impacts of zero tolerance and other punitive discipline measures.³ It has been consistently documented that punitive school discipline policies not only

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² Gilean McCluskey, Gwynedd Llyod, Jean Kane, Shelia Riddel, Joan Stead & Elisabeth Weedon, *Can Restorative Practices in Schools Make a Difference*, EDUCATIONAL REV. 405, 407-408 (2008); Peta Blood & Margaret Thorsborne, *The Challenges of Culture Change: Embedding Restorative Practice in Schools*, paper presented at the Sixth International Conference on Conferencing, Circles and other Restorative Practices: Building a Global Alliance for Restorative Practices and Family Empowerment (Mar. 3-5, 2005); Jeanne B. Stinchcomb, Gordon Bazemore & Nancy Riestenberg, *Beyond Zero Tolerance* 4(2) YOUTH VIOLENCE AND JUV. JUST. 123, 124 (2006); Lyn Harrison, *From Authoritarian to Restorative Schools*, RECLAIMING YOUTH AND CHILDREN, 17-18 (2007); David R. Karp & Beau Breslin, *Restorative Justice in School Communities*, 33(2) YOUTH & SOC'Y 249, 251-266 (2001); Sally Varnham, *Seeing Things Differently: Restorative Justice and School Discipline*, 17 EDUC. AND THE LAW 87, 88 (2005); Lorraine Amstutz & Judy Mullet, *The Little Book of Restorative Discipline for Schools: Teaching Responsibility; Creating Caring Climates* (2005); Brenda Morrison, *Regulating Safe School Communities: Being Responsive and Restorative*, 41(6) J. OF EDUC. ADMIN. 689, 690-694, 701-702 (2003).

³ Aaron Kupchik, *Homeroom Security: School Discipline in an Age of Fear*, NEW YORK UNIV. PRESS 8 (2010); Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis* 11 (2010), S. POVERTY LAW CTR., available at http://www.splcenter.org/sites/default/files/downloads/publication/Suspended_Education.pdf; Michael P. Krezmien, Peter E. Leone, Mark S. Zablocki & Greg S. Wells, *Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States*, 26 J. CONTEMP. CRIM. JUST. 273, 274 (2010); Nkechi Taifa & Catherine Beane, *Integrative Solutions to Interrelated Issues: A Multidisciplinary Look Behind the Cycle of Incarceration*, 3 HARV. L. & POL'Y REV. 283, 289-90 (2009) ("There is considerable evidence that educational failure is a significant risk factor for delinquent or criminal behavior. Deficiencies in educational systems, destructive school discipline policies, truancy, and the seeming inability of schools to identify and service disadvantaged youth who are in need of special educational services are directly related to the cycle of

deprive students of educational opportunities, but fail to make schools safer places.⁴ The presence of zero tolerance and punitive discipline policies within schools also have negative effects on the offending student, by increasing the likelihood of future disciplinary problems, and ultimately increasing contact with the juvenile justice system.⁵ For example, in its 2010 report, *Test, Punish & Push Out: How “Zero Tolerance” and High Stakes Testing Funnel Youth Into the School-Prison-Pipeline*, The Advancement Project documented that punitive discipline policies have led to a tripling of the national prison population from 1987 to 2007.⁶ Additionally, in many school districts across the United States children are more likely to be arrested at school than they were a generation ago⁷ and the number of students suspended from school each year

incarceration.”); Jessica Feierman, Marsha Levick & Ami Mody, *The School-to-Prison Pipeline and Back: Obstacles and Remedies for the Re-enrollment of Adjudicated Youth*, 54 N.Y.L. SCH. L. REV. 1115, 1123 (2009-2010); Nathan von de Embse, Daniel von der Embse, Meghan von der Embse & Ian Levine, *Applying Social Justice Through Principles Through School-Based Restorative Justice*, COMMUNIQUE 1 (2009).

⁴ Advancement Project, *Education on Lockdown: The Schoolhouse to Jailhouse Track*, ADVANCEMENT PROJECT (2005), available at <http://www.advancementproject.org/sites/default/files/publications/FINALEOLrep.pdf> [hereinafter Advancement Project, *education*]; Augustina Reyes, *The Criminalization of Student Discipline Programs and Adolescent Behavior*, 21 ST. JOHN’S J. LEGAL COMMENT. 73, 77-78 (2006); Mississippi Youth Justice Project, Southern Poverty Law Center, *Effective Discipline for Student Success: Reducing Student and Teacher Dropout Rates in Mississippi*, SOUTHERN POVERTY LAW CENTER (2008), available at http://www.splcenter.org/sites/default/files/downloads/effective_discipline_MS.pdf; Heather Cobb, Symposium Response, *Separate but Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*, 44(2) HARV. C.R.-C.L. L. REV. 581, 582-588 (2009); Deborah N. Archer, *School-to-Prison Pipeline Symposium – Introduction: Challenging the School-to-Prison Pipeline*, 54(4) N.Y.L. SCH. L. REV. 867, 868-870 (2010); Louisiana School-to-Prison Reform Coalition, *Effective Discipline for Student Success: Reducing Student and Teacher Dropout Rates in Louisiana*, SOUTHERN POVERTY LAW CENTER (2009), available at http://www.splcenter.org/sites/default/files/downloads/LA_Reducing_Student_Dropout.pdf; Advancement Project, *Test, Punish, and Push Out: How “Zero Tolerance” and High-Stakes Testing Funnel Youth into the School to Prison Pipeline*, ADVANCEMENT PROJECT (2010), available at http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf [hereinafter Advancement Project, *test*]; Russell John Skiba & Kimberly Knesting, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*, INDIANA EDUCATION POLICY CENTER (2000); Stinchcomb et al., see note 2; American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, 63(9) THE AM. PSYCHOLOGIST 852, 852-862 (2008); Heather A. Cole & Julian Vasquez Heilig, *Developing a School-Based Youth Court: A Potential Alternative to the School to Prison Pipeline*, J.L. & EDUC. (2011).

⁵ Advancement Project, *Education*, see note 4; Advancement Project, *Test*, see note 4; American Psychological Association Zero Tolerance Task Force, see note 4; Cobb, see note 4; Reyes, see note 4; Children’s Defense Fund, *America’s Cradle to Prison Pipeline*, CHILDREN’S DEFENSE FUND (2007), available at <http://www.childrensdefense.org/child-research-data-publications/data/cradle-prison-pipeline-report-2007-full-highres.pdf>; Joseph B. Tulman & Douglas M. Weck, *Shutting off the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, 54(4) N.Y.L. SCH. L. REV. 875, 877 (2010); Ronald C. Lewis, *A Multi-System Approach to Dismantling the “Cradle to Prison” Pipelines*, THE HOUSTON LAWYER 1, 1-4 (2009); Christine A. Christle, Kristine Jolivet & C. Michael Nelson, *Breaking the School to Prison Pipeline: Identifying School Risk and Protective Factors for Youth Delinquency*, 13 EXCEPTIONALITY 69-88 (2005).

⁶ Advancement Project, *Test*, see note 4, at 9.

⁷ Archer, see note 4, at 868.

has nearly doubled from 1.7 million in 1974 to 3.1 million in 2000.⁸ In 2006, one in every fourteen students was suspended at least once during the academic year.⁹ In the same year, according to the Legal Defense Fund, African-American students representing only 17.1 percent of public school students “accounted for 37.4 percent of total suspensions and 37.9 percent of total expulsions nationwide.”¹⁰ Between the 2002-2003 and 2007-2008 school years, the number of suspensions in New York City schools more than doubled, rising from 31,880 to 72,518, respectively.¹¹ More than one in five (22%) of the students suspended during the 2007-2008 school year in New York City had a superintendent’s suspension.¹²

The first documented use of restorative justice in schools began in the early 1990s with initiatives in Australia.¹³ Since this time, school based restorative justice programs have been studied most extensively internationally¹⁴, but more scholars have begun preliminary analysis of

⁸ Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 99 NEW DIRECTIONS FOR YOUTH DEV. 9, 10 (2003).

⁹ Advancement Project, *Education*, see note 4.

¹⁰ NAACP Legal Def. & Educ. Fund, Inc., Annual Report of the NAACP Legal Defense and Educational Fund, Inc. (2007-2009) 40 (2009) [hereinafter *Legal Defense Fund*], available at http://naacpldf.org/files/publications/NAACPLDF_2007-2009_Annual_Report.pdf.

¹¹ NYC Department of Education response to Advocates for Children and DLA Piper December 2007 & January 2008 Freedom of Information Law (FOIL) Requests; NYC Department of Education. School Demographics and Accountability Snapshot SY2006-SY2009, available at [http:// print.nycenet.edu/accountability/default.htm](http://print.nycenet.edu/accountability/default.htm).

¹² *Id.* Superintendent suspensions can last up to one year. Principal’s suspensions can last from one to five days. The FOIL request also found that Suspensions disproportionately affect African American students. For example, during the 2006 -2007 school year in New York City, Black students accounted for 53% of the suspensions, but made up only 32% of the student population. Suspensions disproportionately affect students receiving special education services. During the 2006-2007 school year in New York City, students receiving special education services accounted for 28% of the suspensions, but only made up 9% of the student population.

¹³ Lisa Cameron & Margaret Thorsborne, *Restorative Justice and School Discipline: Mutually Exclusive?*, CAMBRIDGE UNIVERSITY PRESS, 180-194 (2001); Avery Calhoun & Gail Daniels, *Accountability in School Responses to Harmful Incidents*, JOURNAL OF SCHOOL VIOLENCE 21-47 (2008).

¹⁴ Cameron et al., see note 13; Eliza Ahmed & Valerie Braithwaite, *Forgiveness, Reconciliation, and Shame: Three Key Variables in Reducing School Bullying*, JOURNAL OF SOCIAL ISSUES 363-366 (2006); Avery Calhoun, *Calgary Community Conferencing School Component 1999-2000: A Year in Review* available at <http://www.calgarycommunityconferencing.com>; Stinchcomb et al., see note 2; National Evaluation of the Restorative Justice in Schools Programme, Youth Justice Board for England and Wales (2004), available at <http://www.youth-justice-board.gov.uk>; Blood et al., see note 2; John Boulton & Laura Mirsky, *Restorative Practices as a Tool for Organizational Change*, 15 RECLAIMING CHILDREN AND YOUTH, HEALTH MODULE 89 (2006); Calhoun et al., see note 13; Avery Calhoun & William Pelech, *Responding to Young People Responsible for Harm: A Comparative Study of Restorative and Conventional Approaches*, CONTEMPORARY JUSTICE REVIEW 287 (2010); Tom Cavanagh, *Creating Schools of Peace*, JOURNAL OF SCHOOL VIOLENCE 64 (2009); Wendy Drewery, *Conferencing in Schools: Punishment, Restorative Justice, and the Productive Importance of the Process of Conversation*, J. COMMUNITY APPL. SOC. PSYCHOL. 332 (2004); Wendy Drewery & John Winslade, *Developing Restorative Practices in Schools: Flavour of the Month or Saviour of the System?*, Paper Presented to the AARE/NZARE Conference (Dec. 2003); Janice Wearmoth, Rawiri McKinney & Ted Glenn, *Restorative Justice in Schools: Two Examples from New Zealand Schools*, BRITISH JOURNAL OF SPECIAL EDUCATION 196 (2007); Mark S. Umbreit,

United States based programs.¹⁵ School-based restorative justice practice is a whole-school approach focused on inclusion in the school community, rather than exclusion, to address issues of student discipline¹⁶, student performance¹⁷, school safety¹⁸, student dropout¹⁹, and the school

Restorative Justice: An Empirically Grounded Movement Facing Many Opportunities and Pitfalls, CARDOZO J. CONFLICT RESOL. 1 (2007); Kristin Reimer, *An Exploration of the Implementation of Restorative Justice in an Ontario Public School*, CANADIAN JOURNAL OF EDUCATIONAL ADMINISTRATION AND POLICY 1-42 (2011); McCluskey et al., *see note 2*; Harrison, *see note 2*.

¹⁵ Julie Ashworth, Steve Van Bockern, Julie Ailts, Jason Donnelly & Kelsey Ericks, *Reclaiming Children and Youth*; 17 HEALTH MODULE 22-26 (2008); Monique Bouregois, *A Secondary School Cooperative: Recovery at Solace Academy, Chaska, Minnesota*, 2 JOURNAL OF GROUPS IN ADDICTION AND RECOVERY 180, 180-197 (2007); Wesley Jennings, Angela Gover & Diane M. Hitchcock, *Localizing Restorative Justice: An In-Depth Look at a Denver Public School Program*, 11 SOCIOLOGY OF CRIME, LAW AND DEVIANCE 167, 173 (2008); Carol Chmelynski, *Restorative Justice for Discipline with Respect*, School Board News 17-20 (2005); Thalia González, *Restoring Justice: Community Organizing to Transform School Discipline Policies*, 15 UCDJLP 1 (2011); David T. Deal, *Stretch Your Meditation Wings: School-Based Restorative Justice*, VIRGINIA ADR 4-5 (2010); David T. Deal, *School-Based Restorative Justice: Ten Lessons Learned*, Third National Conference on Restorative Justice 1-9 (2011); Donald DeVore & Kevin Gentilcore, *Balanced and Restorative Justice and Educational Programming for Youth At-Risk*, 73 THE CLEARING HOUSE 96-100 (1999); Drewery et al., *see note 14*; Barry A. Fields, *Restitution and Restorative Justice*, 22 YOUTH STUDIES AUSTRALIA 44-51(2003); Leah M. Christensen, *Sticks, Stones, and Schoolyard Bullies: Restorative Justice, Mediation and a New Approach to Resolution in Our Schools*, 9 NEV. L.J. 545-579 (2008); William Haft, *More Than Zero, The Cost of Zero Tolerance and the Case for Restorative Justice in Schools*, 77 DENV. U. L. REV 795 (2000); Von der Embse et al., *see note 3*; Michael D. Sumner, Carol J. Silverman & Mary Louise Frampton, *School-Based Restorative Justice as an Alternative to Zero-Tolerance Policies: Lessons from West Oakland*, THELTON B. HENDERSON CENTER FOR SOCIAL JUSTICE, U.C. BERKELEY L. REV. 1-36 (2010); *Restorative Justice Initiative: End of Year Report 2008-2009*, Santa Fe Public Schools, available at www.sfps.info [hereinafter *Restorative Justice Initiative*]; Thalia González & Ben Cairns, *Moving Beyond Exclusion: Integrating Restorative Practices and Impacting School Culture in Denver Public Schools*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM (forthcoming fall 2011, New York University Press).

¹⁶ Fields, *see note 15*; Sam Halstead, *Educational Discipline Using the Principles of Restorative Justice*, 50 JCE 42-47 (1999); Harrison, *see note 2*; Belinda Hopkins, *Restorative Justice in Schools*, 17 (3) SUPPORT FOR LEARNING 144-149 (2002); Boulton et al., *see note 14*.

¹⁷ Brenda E. Morrison, Peta Blood & Margaret Thorsborne, *Practicing Restorative Justice in School Communities: The Challenge of Culture Change*, 5(4) PUB. ORG. REV. 335, 337-338 (2005); Morrison, *see note 2*; Jennings et al., *see note 15*; Boulton et al., *see note 14*.

¹⁸ Tom Cavanagh - *Creating Schools of Peace and Nonviolence in a Time of War and Violence*, 8 Journal of School Violence 64-80 (2009); American Psychological Association Zero Tolerance Task Force, *see note 4*, at 853-854; Allison Ann Payne, Denise C. Gottfredson & Gary D. Gottfredson, *Schools as Communities: The Relationships Among Communal School Organization, Student Bonding, and School Disorder*, 41(3) CRIMINOLOGY 749, 751-753 (2003); Roger D. Goddard, *Relational Networks, Social Trust, and Norms: A Social Capital Perspective on Students' Chances of Academic Success*, 25(1) EDUC. EVALUATION AND POL'Y ANALYSIS 59, 59-62 (2003); Mark T. Greenberg, Roger P. Weissberg, Mary Utne O'Brien, Joseph E. Zins, Linda Fredericks, Hank Resnik & Maurice J. Elias, *Enhancing School-Based Prevention and Youth Development Through Coordinated Social, Emotional, and Academic Learning*, 58(6) THE AM. PSYCHOLOGIST 466, 468-469 (2003); Stinchcomb et al., *see note 2*, at 132-142; Interview with Daniel Fuentes, Student Advisor, North High Sch., in Denver, Colo. (May 26, 2010); Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (June 12, 2011); Morrison, *see note 2*; Morrison et al., *see note 17*; Michael Wenzel, Tyler Okimoto, Norman Feather & Michael Platow, *Retributive and Restorative Justice*, 32(5) LAW & HUM. BEHAV. 375, 376-378 (2008); Maria M. Ttofti & David P. Farrington, *Bullying: Short-Term and Long-Term Effects, and the Importance of Defiance Theory in Explanation and Prevention*, 3 VICTIMS AND OFFENDERS 289-312 (2008).

to prison pipeline²⁰ without a disproportionate reliance on suspensions and expulsions. As restorative justice models have evolved within schools, it is clear they contribute to the aims of education by emphasizing accountability, restitution, and restoration of a community. Similar to restorative justice programs in general²¹, school-based restorative justice practices use varying models of conferences, mediations, and circles to repair the relationships between students, teachers, administrators, and the school community.²² Thus, the primary function of restorative practice is to reintegrate the student into the school community, rather than removing the student and increasing the potential for separation, resentment and recidivism.²³ Schools, in contrast to the legal system, provide a unique context in which the injury to the community is clearly defined and restitution can be formulated. For example, in schools, it is easier to identify members of the community who can play a positive role in the restorative justice process. Moreover, schools, unlike the legal system, have the capacity and knowledge to implement strategies that are long-term and sustainable.

This Article explores the implementation, development, and impact of a school-based restorative justice program across the United States with a specific case study of North High School in Denver, Colorado. Part I details the impact of punitive discipline policies in schools as a framework for understanding the critical importance for schools to adopt alternative practices in addressing student behavior. Part II presents the practice of restorative justice in schools. Specifically, Part II provides a foundation for understanding the emergence of school-based restorative justice, the philosophy of restorative justice, and models of restorative justice in schools. Part II also discusses preliminary data collected from school-based restorative programs. Part III contextualizes the school-based restorative justice practice in the Denver Public School District. This article concludes in Part IV with reflections on the need for reform of punitive schools discipline policies as integral to a fight for educational equity.

¹⁹ Morrison et al., *see note 17*; Von der Embse et al., *see note 3*.

²⁰ Haft, *see note 15*; Stinchcomb et al., *see note 2*; Varnham, *see note 2*; Cole et al., *see note 4*; Greg Volz, *An Idea Whose Time Has Come?*, 33 APR PA. LAW 16 (2011); Katayoon Majd, *Students of Mass Incarceration Nation*, 54 HOW L.J. 343, 343, 362, 366, 391-392 (2011); Kathleen DeCataldo & Toni Lang, *Keeping Kids in School and Out of Court*, NYSTBJ 26, 29 (2011).

²¹ Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2003); Ted Watchel, *Restorative Justice in Everyday Life: Life Beyond the Formal Ritual*, 12 RECLAIMING CHILDREN AND YOUTH 83-87 (2003).

²² Morrison et al., *see note 17*; Belinda Hopkins, *Just Schools: A Whole School Approach to Restorative Justice*, (Jessica Kingsley 2004); Morrison, *see note 2*; Peta Blood & Margaret Thorsborne, *Overcoming Resistance to Whole-School Uptake of Restorative Practices*, Paper presented at the International Institute of Restorative Practices “The Next Step: Developing Restorative Communities, Part 2” Conference (2006); Payne et al., *see note 18*; Varnham, *see note 2*; Umbreit, *see note 14*; Frida Rundell, *Re-Story-ing Our Restorative Practices*, 16 RECLAIMING CHILDREN AND YOUTH 52-59 (2007); Declan Roche, *Dimensions of Restorative Justice*, 62 JOURNAL OF SOCIAL ISSUES 217-238 (2006).

²³ John Braithwaite, *Restorative Justice and Responsive Regulation*, OXFORD UNIV. PRESS (2002); Karp et al., *see note 2*; Morrison et al., *see note 17*.

PUNITIVE DISCIPLINE AND THE SCHOOL TO PRISON PIPELINE

Over the last two decades, youth crime has steadily declined.²⁴ However, public school districts have approached discipline through increasingly punitive policies. Schools have imposed harsher sanctions on students for minor disruptive behavior, such as tardiness, absences, noncompliance and disrespect, resulting in a systematic and pervasive pushing out of students from schools and into the school-to-prison pipeline.²⁵ Even though schools remain among the safest places for youth²⁶, they have embraced many of the punitive policies of the criminal and juvenile justice systems incorporating them into their responses to student discipline.²⁷ In their meta-analysis of studies involving juvenile delinquency, Martin and Loeber found that use of frequent disciplinary actions that remove students from the school community and academic instruction contributed to delinquency.²⁸ Further, they determined that exclusionary practices, such as suspension, interfered with educational progress and perpetuated a cycle of failure. In fact, this research on suspension indicated that despite frequent use, it is not effective in reducing

²⁴ Jeffery Butts & Daniel Mears, *Trends in American Youth Crime*, JUVENILE JUSTICE AND DELINQUENCY 23 (David Springer & Albert Roberts eds., 2011); Majd, *see* note 20.

²⁵ *See generally* notes 4, 5, 20.

²⁶ AP Report 2005, *see* note 4 at 11; Kupchik *see* note 3 at 15; For example, 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. *See* Rachel Dinkes, Thomas D. Snyder, Emily Forrest Cataldi & Wendy Lin-Kelly, *Indicators of School Crime and Safety*, U.S. DEP'T OF EDUC. & U.S. DEP'T OF JUSTICE 6 (2007).

²⁷ *See* notes 3-12; Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed Democracy and Created a Culture of Fear* 220 (Oxford Univ. Press 2007); ACLU of N. Cal., *Balancing the Scales of Justice: An Exploration into How Lack of Education, Employment, and Housing Opportunities Contribute to Disparities in the Criminal Justice System* (2010) [hereinafter *Balancing the Scales of Justice*], available at http://www.aclunc.org/docs/racial_justice/balancing_the_scales_of_justice.pdf (explaining that students who have law enforcement presence on campus are more likely to be arrested, arrested at a young age, expelled, and suspended); Clayton Cnty. Pub. Sch., *Blue Ribbon Commission on School Discipline: Executive Report* 47 (2007), available at <http://www.clayton.k12.ga.us/departments/student-services/handbooks/BlueRibbonExecutiveReport.pdf> (attributing a jump in school-referred delinquency cases in Clayton County, Georgia, from ninety in 1996 to twelve hundred in 2004 to the presence SROs at schools); Elora Mukherjee, *Criminalizing the Classroom: The Over-Policing of New York City Schools*, N.Y. Civ. Lib. Union 17-18 (2007), available at http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf. A recent longitudinal study of SROs revealed that between 1995 and 2004, in four of five states studied, the proportion of juvenile court referrals from schools increased. *See* Krezmien et al., note 3, at 286. The researchers found “a strong possibility that schools are using the juvenile courts to handle school misbehavior without consideration of the negative and deleterious effects on children or the juvenile delinquency system.” *Id.* at 290 (noting that such practice “unduly burdens the police, the juvenile courts, and the juvenile corrections systems”). In New York City, on any given day, over ninety-three thousand children--predominantly students of color--have to pass through security stations with metal detectors, bag-searches, and pat-downs administered by police personnel before getting to class. *See* Advancement report, *test*, *see* note 4, at 4, 16; Hirschfield, *infra* note 61, at 3 (noting that between 1999 and 2006, the percentage of schools nationwide using one or more video surveillance cameras increased from 19% to 43%).

²⁸ Eugene Maugin & Rolf Loeber, *Academic performance and delinquency*, 20 CRIME AND JUSTICE 145-264 (M. Tonry ed., University Press Chicago 1996).

problematic behaviors.²⁹

In addition, many schools have manifested punitive crime control measures by relying on surveillance technologies and full-time law enforcement officers³⁰ despite the fact that there is little to no evidence that these measures or zero tolerance policies served as an effective deterrent. For example, Schreck, Miller and Leone's study found that these approaches are ineffective in increasing school safety.³¹ Similarly, Mayer and Leone found that school "security measures" are actually associated with an increase in school disorder.³² In fact, it is reported that public school students are "outside of prison and jail inmates, perhaps the most policed group in the country right now."³³ Currently, forty-one states require schools to report students to law enforcement for various misbehaviors on campus.³⁴ Over the last decade, the number of law enforcement officers stationed permanently on campuses has significantly increased.³⁵ For example, the New York Police Department's School Safety Division is larger than the entire police forces of the District of Columbia, Detroit, Boston, and Las Vegas.³⁶ School districts, such as Los Angeles Unified School District, have established their own police departments.³⁷ This collaboration between schools and law enforcement coupled with the presence of surveillance equipment has increased the number of youth referred to juvenile courts for minor misbehaviors that in the past would have likely been handled by school administrators.³⁸ While

²⁹ Christle et al., *see note 5* at 70.

³⁰ Majd, *see note 20*; Kupchik, *see note 3* at 85 ("The surveillance over students by the police is far greater than they face outside school."); Krezmien et al., *see note 3*; Advancement Project *test*, *see note 4* at 10; Losen et al., *see note 3*.

³¹ Christopher Schreck, J. Mitchell Miller & Chris L. Gibson, *Trouble in the Schoolyard: A Study of the Risk Factors of Victimization at School*, 49(3) CRIME AND DELINQUENCY 460-484 (2003).

³² Matthew J. Mayer & Peter E. Leone, *School Violence and Disruption Revisited: Establishing Equity and Safety in the School House*, 40 FOCUS ON EXCEPTIONAL CHILDREN 1-27 (2007).

³³ Advancement Project, *test*, *see note 4*.

³⁴ Losen et al., *see note 3*.

³⁵ Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 978 (2009-2010); Nicole L. Bracy, *Circumventing the Law: Students' Rights in Schools with Police*, 26 J. CONTEMP. CRIM. JUST. 294, 295-296 (2010); Dinkes et al., *see note 26*.

³⁶ Advancement Project, *test*, *see note 4*. While police presence has slowly become accepted on South Los Angeles school campuses; it has actually become commonplace to include policing authorities among school faculty. For example, students involved in the juvenile justice system often report to probation officers stationed at their respective high schools and middle schools. There are a few benefits to having probation officers, however the issues posed can have a serious affect on their cases. *See* Interview with Ariel Wander, Attorney Children's Rights Project, Public Counsel in L.A., Cal. (July 26, 2011).

³⁷ *Id.*

³⁸ Thureau et al., *see note 35*, at 978; *see also* Advancement Project, *Opportunities Suspended: The Devastating Consequences of Zero-Tolerance and School Discipline* 1, 13-15 (July 15, 2002), available at <http://www.advancementproject.org/sites/default/files/publications/opsusp.pdf>; Kupchik, *see note 3* at 85, ("[S]chool

data on arrests of students at school are not regularly reported, the available data suggest that surveillance at school is associated with more student arrests and that large numbers of youth are being referred for minor, not serious, offenses.³⁹ As a recent study of school resource officers revealed, between 1995 and 2004 in four of five states studied, the proportion of juvenile court referrals from schools increased.⁴⁰ The researchers found “a strong possibility that schools are using the juvenile courts to handle school misbehavior without consideration of the negative and deleterious effects on children or the juvenile delinquency system.”⁴¹ In Clayton, Georgia, when police officers were introduced into the schools, school-based referrals to juvenile court in the county increased 600% over a three-year period.⁴² During that same time period there was no increase in the number of serious offenses or safety violations.⁴³ Such an increase is not unique. Similarly, in Pennsylvania, the number of school-based arrests almost tripled in seven years.⁴⁴ In Philadelphia, between the 1999-2000 school year and the 2002-2003 school year, the number of arrests in schools increased from 1632 to 2194.⁴⁵ In Denver, juvenile court referrals rose 71% from 818 in 2000-2001 to 1401 in 2003-2004.⁴⁶ Likewise, in Florida there were over 21,000 arrests and referrals of students to the state’s Department of Juvenile Justice in 2007-2008, and 69% of them were for misdemeanor offenses.⁴⁷ In Los Angeles, 12,000 students were fined up

resource officers often look for ways to redefine misbehavior as criminal, even when the label doesn't apply.”); Marsha L. Levick & Robert G. Schwartz, *Changing the Narrative: Convincing Courts to Distinguish Between Misbehavior and Criminal Conduct in School Referral Cases*, 9 U.D.C. L. REV. 53 (2007).

³⁹ Johanna Wald & Lisa Thureau, *First, Do No Harm: How Educators and Police Can Work Together More Effectively to Preserve School Safety and Protect Vulnerable Students*, CHARLES HAMILTON HOUSTON INST. FOR RACE & JUSTICE (2010), available at <http://www.charleshamiltonhouston.org/assets/documents/news/FINAL%20Do%20No%20Harm.pdf>; *Balancing the Scales of Justice*, see note 27 (explaining that students who have law enforcement presence on campus are more likely to be arrested, arrested at a young age, expelled, and suspended); Clayton County Public Schools, *Blue Ribbon Commission on School Discipline: A Written Report Presented to the Superintendent and Board of Education*, 1-67 (2007), available at <http://www.clayton.k12.ga.us/departments/student-services/handbooks/BlueRibbonExecutiveReport.pdf> (attributing a jump in school-referred delinquency cases in Clayton County, Georgia, from ninety in 1996 to twelve hundred in 2004 to the presence SROs at schools); Mukherjee, see note 27.

⁴⁰ Krezmien et al., see note 3 at 286.

⁴¹ *Id.* at 290.

⁴² M. Lynn Sherrod, Bryan Huff & Steven Teske, *Childish Behavior; Criminal Behavior*, HUNTSVILLE TIMES (Ala.), June 1, 2008, at A23.

⁴³ Neelum Arya & Ian Augarten, *Critical Condition: African-American Youth in the Justice System*, 33 THE CAMPAIGN FOR YOUTH JUSTICE (2008), available at http://www.njjn.org/media/resources/public/resource_852.pdf.

⁴⁴ Advancement Project, *test*, see note 4.

⁴⁵ Advancement Project, *report*, see note 4 at 23.

⁴⁶ Mukherjee, see note 27 at 6.

⁴⁷ Advancement Project, *test*, see note 4.

to \$250 each just for being late or away from school in 2008.⁴⁸ Additionally, in 2004-2005 in Los Angeles Unified School District Local District 7 there were 9,251 suspensions, at 34% of the student enrollment.⁴⁹ Furthermore, in 2007-2008, over 45% of Los Angeles Unified School District Local District 7 suspensions were to African American students; in 2008-2009, that percentage rose to over 47%.⁵⁰ In both instances, these percentages were over twice the proportion of African American students in LD7 schools.⁵¹ Moreover, between 2004 and 2009, the Los Angeles School Police Department gave out 13,118 citations, summons, and/or tickets, and the Los Angeles Police Department dispensed nearly 34,000 tickets between 2004 and 2007.⁵² Maryland also represents the alarming trend of increasing disciplinary action for non-violent offenses such as disrespect, insubordination, and absenteeism. In 2006-2007, out-of-school suspensions for non-serious, non-violent offenses accounted for 37.2% of suspensions in Maryland, whereas only 6.7% of suspensions were issued for dangerous substances, weapons, arsons, and sex offenses combined.⁵³ Similar data was reported for the 2007-2008 school year as disrespect, insubordination, and disruption accounted for 37.4% of out-of-school suspensions, while suspensions for dangerous substances, weapons, arsons, and sex offenses represented only 7.1% of total suspensions.⁵⁴ In Baltimore City, disrespect, insubordination, and disruption were the primary reasons for suspension, accounting for 32.9% of out-of-school suspensions.⁵⁵

⁴⁸ Lisa Adler, *Problems of Los Angeles Daytime Curfew Law*, COMMUNITY RIGHTS CAMPAIGN (2009), available at <http://www.thestrategycenter.org/report/problems-los-angeles-daytime-curfew-law>

⁴⁹ Community Asset Development Re-defining Education (CADRE), *Parents Document Suspensions and Pushouts in Los Angeles Schools*, DIGNITY IN SCHOOLS (2006), [hereinafter *Dignity in Schools*] available at <http://www.dignityinschools.org/content/parents-document-suspensions-and-pushouts-los-angeles-schools-0>

⁵⁰ *Id.*

⁵¹ Community Asset Development Re-defining Education (CADRE), Mental Health Advocacy Services, Inc. & Public Counsel Law Center, *Redefining Dignity in Our Schools: A Shadow Report on School-Wide Positive Behavior Support Implementation in South Los Angeles 2007-2010, Executive Summary*, CMTY ASSET DEV. RE-DEFINING EDUC. 3, 5-6 (2010), [hereinafter CADRE, *executive summary*] available at http://www.cadre-la.org/media/docs/9995_RedefDignityShadowReptExecSumm.final2.pdf.

⁵² Ragini Kathall, *CRC In the News: Truancy Ticket Campaign Attracts Community Media Attention*, COMMUNITY RIGHTS CAMPAIGN (2011), available at <http://www.thestrategycenter.org/blog/2011/04/04/crc-news-truancy-ticket-campaign-attracts-community-media-attention>.

⁵³ Donald Stone & Linda Stone, *Dangerous and Disruptive or Simply Cutting Class; When Should Schools Kick Kids to the Curb?: An Emperical Study of School Suspension and Due Process Rights*, 13 JOURNAL OF LAW AND FAMILY STUDIES 1, 27-31 (2011).

⁵⁴ *Id.*

⁵⁵ *Id.*

Zero Tolerance Policies

Emerging in the late 1980s, zero tolerance policies became widespread in the early 1990s.⁵⁶ Zero tolerance can be viewed comprehensively as a composite of perspectives related to punishment, deterrence, and incapacitation.⁵⁷ Beginning with a national focus on drug-related offenses, the concept of zero tolerance has been aligned with crime-related politics.⁵⁸ As a result, zero tolerance became the rallying cry in the war against youth crime. This war spread quickly from the streets into the schools and intolerance was declared against serious offenses, such as possession of weapons, to minor offenses, such as talking back to teachers.⁵⁹ These concerns about school crime, despite their disconnection from actual crime rates, created a powerful demand for tougher policies to make schools safer and have contributed to the physical and ideological transformation of public schools into regimented, high-security environments. Zero tolerance policies in schools clearly reflect an approach to discipline that mirrors the criminal justice system. As in the criminal context, the mandatory punishments of school zero tolerance policies are designed to be highly punitive in order to send a strong deterrent message. Although zero tolerance resonates politically, studies have shown it is ineffective as a corrective measure.⁶⁰ Instead, students are put at a greater risk for entering the juvenile justice system and become disconnected from the school community.⁶¹

⁵⁶ Advancement Project, *education*, see note 4, at 15-16; Advancement Project, *test*, see note 4, at 9-11, 17; Archer, see note 4, at 868-869; American Psychological Association Zero Tolerance Task Force, see note 4, at 852; Tonya M. Boyd, Symposium Response, *Confronting Racial Disparity: Legislative Responses to the School-to-Prison Pipeline*, 44(2) HARV. C.R.-C.L. L. REV. 571, 573-575 (2009); Ralph C. Martin, *Zero Tolerance Policy Report*, AM. BAR ASS'N (2001), available at <http://www.abanet.org/crimjust/juvjus/zerotolreport.html>; Johanna Wald & Daniel J. Losen, *Out of Sight: The Journey Through the School-to-Prison Pipeline*, in INVISIBLE CHILDREN IN THE SOCIETY AND ITS SCHOOLS 23, 25 (Sue Books ed., 2d ed. 2006); Am. Civil Liberties Union, *Dignity Denied: The Effect of "Zero Tolerance" Policies on Students' Human Rights*, ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, YALE LAW SCHOOL 1-47 (2008), available at http://www.aclu.org/pdfs/humanrights/dignitydenied_november2008.pdf; Am. Civil Liberties Union & the ACLU of Conn., *Hard Lessons: School Resource Officer Programs and School-Based Arrests in Three Connecticut Towns* (2008).

⁵⁷ Stinchcomb et al., see note 2, at 125-128.

⁵⁸ Advancement Project, *education*, see note 4 at 15; Advancement Project, *test*, see note 4, at 9; Stinchcomb et al., see note 2, at 124; Boyd, see note 56.

⁵⁹ Advancement Project, *test*, see note 4, at 13-14; Stinchcomb et al., see note 2, at 127; Christopher Sullivan, Norin Dollard, Brian Sellers & John Mayo, *Rebalancing Response to School-Based Offenses: A Civil Citation Program*, YOUTH AND JUVENILE JUSTICE 8(4) 279, 280-281 (2010); Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* (Harvard University Press 2008).

⁶⁰ Advancement Project, *test*, see note 4, at 17; American Psychological Association Zero Tolerance Task Force, see note 4; Stinchcomb et al., see note 2, at 130; Russell Skiba & M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, in HANDBOOK OF CLASSROOM MANAGEMENT: RESEARCH, PRACTICE, AND CONTEMPORARY ISSUES 1063-1077 (Carolyn M. Evertson & Carol S. Weinstein eds., Lawrence Erlbaum Associates 2006); Morrison, see note 2.

⁶¹ Advancement Project, *education*, see note 4; Reyes, see note 4; Mississippi Youth Justice Project, see note 4; Cobb, see note 4; Archer, see note 4; Louisiana School-to-Prison Reform Coalition, see note 4; Advancement Project, *test*, see note 4; American Psychological Association Zero Tolerance Task Force, see note 4; Boyd, see note

Underlying zero tolerance, suspension, and expulsion is the belief that punishment is a just consequence for misbehavior.⁶² As research has consistently shown, there is a continuum of entry points into the school-to-prison pipeline ranging from early school-based behavior problems that result in suspensions, expulsions, or alternative education program placements, to more serious law breaking and probation violations which involve the juvenile justice system and, ultimately, criminal prosecution and incarceration by the adult penal system.⁶³ Scholars, lawyers, policymakers, educators, and activists have labeled the school-to-prison pipeline one of the most pressing civil and human rights challenge.⁶⁴ Given that school-based referrals to the juvenile court system represent such an important entry point into the prison system, understanding methods through which students are referred are critical.⁶⁵ It is well documented

56; Losen et al., *see note 3*; Kupchik, *see note 3*; Majd, *see note 20*; Paul Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the United States*, 12 THEORETICAL CRIMINOLOGY 79, 84 (2008).

⁶² Stinchcomb et al., *see note 2*, at 125-126.

⁶³ Advancement Project, *education*, *see note 4*; Reyes, *see note 4*; Mississippi Youth Justice Project, *see note 4*; Cobb, *see note 4*; Archer, *see note 4*; Louisiana School-to-Prison Reform Coalition, *see note 4*; Advancement Project, *test*, *see note 4*; American Psychological Association Zero Tolerance Task Force, *see note 4*; Boyd, *see note 56*; Martin, *see note 56*; Wald et al., *see note 56*; Hirschfield, *see note 61* at 79-91 (2008); CADRE, *executive summary*, *see note 51*.

⁶⁴ Interview with Fuentes, *see note 18*; Interview with Cairns, *see note 18*; Interview with Maisie Chin, Dir./Co-Founder, CADRE, in L.A., Cal. (June 23, 2011); Interview with Daniel Garcia Restorative Justice School Mediation Specialist, Parkrose Sch. District (May 10, 2010); Interview with Bob Tallman, Sch. Res. Officer, Parkrose Sch. District (May 10, 2010); Archer, *see note 4* at 868; Advancement Project, *test*, *see note 4*, at 15-16; Advancement Project, *Opportunities Suspended*, *see note 38*; NAACP Legal Defense and Education Fund, Inc., *Dismantling the School-to-Prison Pipeline*, NAACP LDF (2006), available at http://naacpldf.org/files/case_issue/Dismantling_the_School_to_Prison_Pipeline.pdf; Anthony V. Alfieri, Essay, *Post-Racialism in the Inner City: Structure and Culture in Lawyering*, 98(4) GEO. L.J. 921, 957-960 (2010); Interview with Robert Schwartz, Exec. Dir., Juvenile Law Center, in Gainesville, Fla. (Feb. 19, 2010); Fla. State Conference, *Arresting Development: Addressing the School Discipline Crisis in Florida*, NAACP (2006), available at <http://www.advancementproject.org/sites/default/files/full%20report.pdf>; *Deprived of Dignity: Degrading Treatment and Abusive Discipline in New York City & Los Angeles Public Schools*, NAT. ECON. & SOC. RIGHTS INITIATIVE, [hereinafter NESRI], available at <http://www.nesri.org/resources/deprived-of-dignity-degrading-treatment-and-abusive-discipline-in-new-york-city-and-los-angeles-public-schools>, ACLU of Oregon, Report, *Oregon's School to Prison Pipeline* 1-6 (2008).

⁶⁵ DMC/Juvenile Justice Action Network, *Introducing the DMC Action Network* (Nov., 12, 2008), available at http://www.cclp.org/documents/DMC/DMC_eNews_001.pdf; Amber Evenson, Brooklyn Justinger, Elizabeth Pelischek & Sarah Schultz, *Zero Tolerance Polices and Public Schools: When Suspension Is No Longer Effective*, 37 COMMUNIQUE 5, 1-2 (Jan./Feb. 2009); Michael Rocque, *Office Discipline and Student Behavior: Does Race Matter?*, 116 AMERICAN JOURNAL OF EDUCATION 557, 575-576 (2010); Michael Rocque & Raymond Paternoster, *Understanding the Antecedents of the "School-to-Jail" Link: The Relationship Between Race and School Discipline*, 101 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 633, 633-634 (2011); Russell Skiba, Robert Horner, Choong-Guen Chung, M. Karega Raush, Seth May & Tary Tobin, *Race is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCHOOL PSYCHOLOGY REVIEW 85, 104 (2011); Ashley Nellis & Brad Richardson, *Getting Beyond Failure: Promising Approaches for Reducing DMC*, YOUTH VIOLENCE AND JUVENILE JUSTICE 8(3) 266, 267 (2010); Alex R. Piquero, *Disproportionate Minority Contact*, THE FUTURE OF CHILDREN, 18, 59-80 (2008).

that punitive discipline practices and zero tolerance policies have dramatically increased the representation of minority and disabled students in the juvenile justice system.⁶⁶ As numerous studies have clearly illustrated, punitive disciplinary practices impact minority students disproportionately to their white counterparts.⁶⁷ For example, in the 2006-2007 school year, there was no state in which African American students were not suspended more often than white students.⁶⁸ Similarly, in 40 states and the District of Columbia, Latino students experienced negative unequal application of discipline policies.⁶⁹

Pushout Crisis

Significant qualitative research has been conducted to examine the impact of discipline policies that result in student removal or “push out” from the school community, either through suspension or expulsion.⁷⁰ Once removed from schools, students experience decreased academic achievement, further fueling negative attitudes and leading to increased dropout rates.⁷¹ As

⁶⁶ Advancement Project, *test*, *see* note 4, at 21-24 (For example, in Ohio the number of out-of-school suspensions per Black student increased by 34% in three years, from 2004-2005 to 2007-2008); Michael Krezmien, Peter Leone, & Georgianna Achilles, *Suspension, Race, and Disability: Analysis of Statewide Practices and Reporting*, 14(4) J. OF EMOTIONAL AND BEHAV. DISORDERS 217, 217 (2006); Pamela Fenning & Jennifer Rose, *Overrepresentation of African American Students in Exclusionary Discipline: The Role of School Policy*, 42(6) URBAN EDUC. 536, 541-549 (2007); Ruth Zweifler & Julia De Beers, *The Children Left Behind: How Zero Tolerance Impacts Our Most Vulnerable Youth*, 8 MICH. J. RACE & L. 191, 204-06 (2002); Anthony V. Alfieri, *Integrating Into a Burning House: Race and Identity Conscious Visions in Brown’s Inner City*, 84 S. CAL. L. REV. 541, 579 (2011); Majd, *see* note 20 at 360-386; ACLU of Oregon, Report, *see* note 64; CADRE, executive summary, *see* note 51.

⁶⁷ Wald et al., *see* note 8, at 10-11; Advancement Project, *test*, *see* note 4, at 15, 20-24; Brown, *see* note 9, at 436; Alfieri, *see* note 64; Adira Siman, Note, *Challenging Zero Tolerance: Federal and State Legal Remedies for Students of Color*, 14 CORNELL J.L. & PUB. POL’Y 327, 329 (2005); Russel J. Skiba, Robert S. Michael, Abra Carroll Nardo & Reece Peterson, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, INDIANA EDUCATION POLICY CENTER (2000), available at <http://www.indiana.edu/~safeschl/cod.pdf>; Robin L. Dahlberg, Am. Civ. Liberties Union, *Locking Up Our Children: The Secure Detention of Massachusetts Youth After Arraignment and Before Adjudication*, AM. CIV. LIBERTIES UNION (2008), available at http://www.aclu.org/pdfs/racialjustice/locking_up_our_children_web_ma.pdf; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* 95-101 (New Press 2010); Majd, *see* note 20; ACLU of Oregon, Report, *see* note 64.

⁶⁸ Advancement Project, *test*, *see* note 4, at 21.

⁶⁹ *Id.*

⁷⁰ *See generally* note 20, Christle et al., *see* note 5, Elisa Hyman, *School Push-Outs: An Urban Case Study*, 38 CLEARINGHOUSE REVIEW 684, 685 (2005); Reginald R. Shuford, *Why Affirmative Action Remains Essential in the Age of Obama*, 31 CAMPBELL LAW REVIEW 503, 514-515 (2009).

⁷¹ Tara Brown, *Lost and Turned Out*, 42(5) URB. EDUC. 432, 437-439 (2007); Elizabeth Stearns & Elizabeth Glennie, *When and Why Dropouts Leave High School*, 38(1) YOUTH & SOC’Y 29, 31-32 (2006); Robert Balfanz, Lisa Herzog & Douglas J. Mac Iver, *Preventing Student Disengagement and Keeping Students on the Graduation Path in Urban Middle-Grades Schools: Early Identification and Effective Interventions*, 42(4) EDUC. PSYCHOLOGIST 223, 228 (2007); Robert Balfanz, *What Your Community Can Do to End its Drop-Out Crisis: Learnings from Research and Practice*, CENTER FOR SOCIAL ORGANIZATION OF SCHOOLS, (2007); Robert Balfanz, Joanna Hornig Fox, John M. Bridgeland, Mary McNaught & America’s Promise Alliance, *Grad Nation: A Guidebook to Help Communities Tackle the Dropout Crisis*, EVERYONE GRADUATES CENTER (2009), available at

researchers have consistently emphasized, understanding how punitive discipline serves as a pushout factor for many students is an important first step in developing and implementing plans to reduce the number of dropouts and increasing graduation rates.⁷² While many of the factors leading to student disengagement are not school-related, the behavioral indicators of student disengagement, such as poor attendance and suspensions, manifest themselves directly at school. Early warning indicators for student dropout include receiving an unsatisfactory behavior grade or suspension at the middle school level or suspension in ninth grade.⁷³ For example, analysis of the 2006-2007 dropouts in the Denver Public Schools indicated that 10% had been suspended at least once during the two-year period 2005-2007, compared to 6% of graduates.⁷⁴ The data across the country reflects similar trends. In 2009, the Southern Poverty Law Center reported that the annual average dropout rate for each grade of high school (9th-12th grades) in Louisiana is 6.9%, which totaled more than 14,000 students, placing Louisiana fifth highest in the nation in percentage of high school dropouts.⁷⁵ The report found that significant numbers of Louisiana students dropped out due to disproportionate reliance on punitive discipline, such as suspension and expulsions, placement in alternative schools, and referrals to law enforcement.⁷⁶ In 2009, the American Civil Liberties Union of Oregon reported that current data shows a trend of criminalizing, rather than educating the state's children.⁷⁷ The report presented clear data how the growing use of zero-tolerance discipline, disciplinary alternative schools, and juvenile arrests

http://www.every1graduates.org/PDFs/GradNation_Guidebook_Final.pdf.

⁷² Brown, *see note 71*; Stearns et al., *see note 71*; Balfanz et al., *see note 7*; Valerie E. Lee & David T. Burkam, *Dropping out of High School: The Role of School Organization and Structure*, 40(2) AM. EDUC. RES. J. 353, 358-360 (2003); ACLU of Oregon, Report, *see note 64*; Dignity in Schools, *see note 49*.

⁷³ Martha Mac Iver & Douglas Mac Iver, *Beyond the Indicators: An Integrated School-Level Approach to Dropout Prevention*, MID-ATLANTIC EQUITY CENTER, THE GEORGE WASHINGTON CENTER FOR EQUITY AND EXCELLENCE IN EDUCATION 9, 24 (2009). For example, data collected in five Colorado districts with high numbers of dropouts showed that students who dropped out were roughly twice, and sometimes nearly three times as likely to have been suspended at least once over the four-year period of 2003-2004 to 2006-2007. *See* Martha Abele Mac Iver, Robert Balfanz & Vaughan Byrnes, *Dropouts in the Denver Public Schools: Early Warning Signals and Possibilities for Prevention and Recovery*, THE CENTER FOR SOCIAL ORGANIZATION OF SCHOOLS, JOHNS HOPKINS UNIVERSITY, 14, 19 (2009).

⁷⁴ Mac Iver et al., *see note 73*.

⁷⁵ Louisiana School-to-Prison Reform Coalition, *see note 4*, at 2; 2006-2007 Louisiana State Education Progress Report, LA. DEP'T OF EDUC. 17, 20-21 (2008), *available at* http://www.louisianaschools.net/LDE/pair/StateReport0607/09-Louisianas_students.pdf. *See also* <http://www.aclu.org/human-rights-racial-justice/aclu-speaks-out-against-school-pushout>.

⁷⁶ Louisiana School-to-Prison Reform Coalition, *see note 4*, at 3. Similarly, the 2007 Texas Appleseed report, *Texas' School-to-Prison Pipeline: Dropout to Incarceration*, found that school discipline policies had a major, deleterious impact on the rate of school dropouts and juvenile involvement with the criminal justice system. The report found that more than a third of Texas public school students dropped out in 2005-2006, one in three juveniles sent to the Texas Youth Commission were school dropouts,⁷⁶ and more than 80% of Texas prison inmates are dropouts. *See Texas' School-to-Prison Pipeline: Dropout to Incarceration*, TEXAS APPLESEED (2007), *available at* <http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf>.

⁷⁷ ACLU of Oregon, Report, *see note 64* at 1.

contributed significantly to student dropout rates.⁷⁸ The report found that in 2007-2008 African Americans represented 2.97% of the total 9-12 grade student population and 5.71% of the dropouts.⁷⁹ Hispanic or Latinos represented 13.87% of the total high school student population and 24.12% of the dropouts.⁸⁰ Native Americans represented 2.24% of all the 9-12 grade students and 3.52% of the dropouts.⁸¹ In Massachusetts, nearly 8,600 high school students dropped out of public schools in 2009.⁸² Similar to findings in Denver, absence from school was found to be a significant predictor of dropping out⁸³, as well as discipline and behavioral problems.⁸⁴ As established in a recent education policy report, considering the impact of school discipline practices in Massachusetts, testimony from three public hearings⁸⁵ provided that excessive disciplinary action for non-violent offenses, such as tardiness and truancy, exacerbates the dropout crisis. Testimony indicated that students already behind in school are often forced to miss additional days through suspensions, which leads to a loss of credits and an inability to catch up. Similar testimony has been documented in Los Angeles. The Community Rights Campaign has interviewed students in the Los Angeles Unified School District who have received tickets and concludes that zero tolerance policies create ‘pre-prison’ conditions in schools. Furthermore, national data shows that current disciplinary rates are the highest in our nation’s history and have more than doubled over the past three decades, and fewer than seven out of ten students graduate from high school nationwide.⁸⁶

School Safety

Supporters of punitive discipline policies often suggest that they create safer school environments. This is simply not true. As the 2006 American Psychological Association ten-

⁷⁸ *Id.* at 2.

⁷⁹ *Id.* at 4.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² MA Report on School Discipline, *Dropout Rates in Massachusetts Public Schools: 2008-09*, MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION (2010), available at <http://www.doe.mass.edu/info-services/reports/dropout/>.

⁸³ John M. Bridgeland, John J. DiJulio & Karen Burke Morison, *The Silent Epidemic: Perspectives of high school dropout*, Civic Enterprises, available at <http://www.civicerprises.net/pdfs/thesilentepidemic3-06.pdf>; Boston Youth Transitions Task Force (2006). *Too Big to be Seen: The Invisible Dropout Crisis in Boston and America*, BOSTON PRIVATE INDUSTRY COUNCIL, available at www.bostonpic.org/resources/too-big-be-seen-invisible-dropout-crisis-boston-and-america.

⁸⁴ *Id.*

⁸⁵ MA Report, *see* note 82.

⁸⁶ *Id.*; *Voices from the Students: Testimonies from Students Receiving Daytime Curfew “Truancy Tickets”*, COMMUNITY RIGHTS CAMPAIGN, available at www.thestrategycenter.org; *A Shadow Report on School-Wide Positive Behavior Support Implementation*, *see* note 51.

year evidentiary review of zero tolerance policies concluded, the presence and use of exclusionary zero tolerance policies did not improve school safety.⁸⁷ Additionally, the study concluded that schools with higher suspensions and expulsions resulting from zero tolerance policies had less satisfactory ratings of overall school climate.⁸⁸ The study also found that out-of-school suspensions and expulsions did not reduce the likelihood of future student misconduct.⁸⁹ Other studies have also determined that suspension and expulsion policies cannot be correlated with any certainty with overall school safety or improved student behavior.⁹⁰ Instead of promoting learning in a safe environment, zero tolerance policies promote an irrational climate of fear.⁹¹ Studies focused on school safety find that when schools approach discipline through responsive, reintegrative, and restorative mechanisms they are more effective at maintaining safe communities.⁹² By developing more balanced responses, such as restorative justice, to student behavior, schools can promote stronger academic environments, which in turn improve school safety.⁹³ Policies that focus on repairing the harm, establishing accountability, and developing a strong school community have been found to prevent future actions.⁹⁴ As research has shown, students feel safer and more connected to schools when they perceive their teachers to have high expectations for positive behavior, demonstrate that they care, and

⁸⁷ American Psychological Association Zero Tolerance Task Force, *see* note 4, at 853-854.

⁸⁸ *Id.* at 854.

⁸⁹ *Id.* at 854-856.

⁹⁰ Skiba et al., *see* note 4. They attribute this finding, and the suspension recidivism rate, to the fact that school exclusion, in and of itself, offers students no help in addressing the behaviors that got them in trouble. *See* Brown, note 71, at 435.

⁹¹ Morrison et al., *see* note 17; Interview with Fuentes, *see* note 18; Interview with Cairns, *see* note 18; Interview with Garcia, *see* note 64; Interview with Bob Tallman, School Resource Officer, Parkrose Sch. District (May 10, 2010).

⁹² Allison Ann Payne, Denise C. Gottfredson & Gary D. Gottfredson, *Schools as Communities: The Relationships Among Communal School Organization, Student Bonding, and School Disorder*, 41(3) *CRIMINOLOGY* 749, 751-753 (2003); Roger D. Goddard, *Relational Networks, Social Trust, and Norms: A Social Capital Perspective on Students' Chances of Academic Success*, 25(1) *EDUC. EVALUATION AND POL'Y ANALYSIS* 59, 59-62 (2003); Greenberg et al., *see* note 18; Stinchcomb et al., *see* note 2, at 132-142; Interview with Fuentes, *see* note 18; Morrison, et al., *see* note 17; Michael Wenzel, Tyler Okimoto, Norman Feather & Michael Platow, *Retributive and Restorative Justice*, 32(5) *LAW & HUM. BEHAV.* 375, 376-378 (2008).

⁹³ Stinchcomb et al., *see* note 2; Interview with Garcia, *see* note 64; Interview with Tallman, *see* note 64; Interview with Kenneth Chavez, Officer, Sch. Res. Office, North High Sch., Denver Police Dep't, in Denver, Colo. (Nov. 12, 2009); Karp et al., *see* note 2; Interview with Timothy Turley, Program Manager, Denver Public Sch. Prevention and Intervention Services, in Denver, Colo. (June 12, 2011); Interview with Robert Anderson, Director Denver Public Sch. Prevention and Intervention Services, in Denver, Colo. (June 13, 2011); Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (June 11, 2011).

⁹⁴ Interview with Fuentes, *see* note 18; Interview with Cairns, *see* note 18; Interview with Turley, *see* note 93; Interview with Anderson, *see* note 93; Interview with Garcia, *see* note 64; Interview with Tallman, *see* note 64; Gordon Bazemore, *The Fork in the Road to Juvenile Court Reform*, 564(7) *THE ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI.* 81, 81-108 (1999); Gordon Bazemore, *Young People, Trouble, and Crime: Restorative Justice as a Normative Theory of Informal Social Control and Social Support*, 33(2) *YOUTH & SOC'Y* 199, 199-226. (2001); Christle et al., *see* note 5.

implement discipline fairly and tolerantly.⁹⁵

RESTORATIVE JUSTICE IN SCHOOLS

Background and Philosophy

The first documented use of restorative justice in schools began in the early 1990s with initiatives in Australia led by Margaret Thorsborne in response to issues raised by a serious assault after a school dance.⁹⁶ Reflecting on the early trials of restorative justice in Australian schools, Cameron and Thorsborne suggested that a key characteristic of restorative justice was an “attention to relationships between all members of the school community.”⁹⁷ Since this time, school based restorative justice programs have been studied internationally and in the United States.⁹⁸ Schools as an institution at the societal level and as communities at the micro level are the cornerstone for youth socialization and the social control of delinquent behavior.⁹⁹ Thus, restorative justice programs in school settings prioritize building school community capacity over punitive responses to behaviors to create safer environments.¹⁰⁰ One of the goals of school-based restorative practice is for all individuals involved in a conflict, and those in the larger community, to recognize and understand the harmfulness of their behaviors and to prevent the reoccurrence of the behavior in the future.¹⁰¹

Restorative justice is a diverse multi-layered concept, which requires a philosophical shift away from punitive and retributive control mechanisms. Restorative justice is based on core principles: repairing the harm, stakeholder involvement, and transforming the community relationship.¹⁰² When implemented in school settings, the concept of restorative justice develops

⁹⁵ Clea A. McNeely, James M. Nonnemaker & Robert W. Blum, *Promoting School Connectedness: Evidence from the National Longitudinal Study of Adolescent Health*, 72(4) J. OF SCH. HEALTH 138, 144-46 (2002).

⁹⁶ Cameron et al., *see* note 13.

⁹⁷ *Id.*

⁹⁸ *See* note 2.

⁹⁹ Karp et al., *see* note 2; Janice Wearmouth, Rawiri McKinney & Ted Glynn, *Restorative Justice: Two Examples from New Zealand schools*, 34 BRITISH JOURNAL OF SPECIAL EDUCATION 196-203, 196 (2007); Stinchcomb, et al., *see* note 2 at 124-125.

¹⁰⁰ David Karp & Todd R. Clear, *Community Justice: A Conceptual Framework*, 2 NATIONAL INSTITUTE OF JUSTICE 323-368 (2000); Interview with Timothy Turley, Program Manager, Denver Public Sch. Prevention and Intervention Services, in Denver, Colo. (Mar. 12, 2009); Interview with Anderson, *see* note 93; Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (Nov. 22, 2009); Interview with Daniel Garcia Restorative Justice School Mediation Specialist, Parkrose Sch. District (May 10, 2010); Interview with Fuentes, *see* note 18.

¹⁰¹ Stinchcomb, et al., *see* note 2 at 127.

¹⁰² Stinchcomb, et al., *see* note 2 at 131; Daniel W. Van Ness & Karen Heetderks Strong, *Restoring Justice* (Anderson Publishing Company 1997).

to meet the needs of the whole school community.¹⁰³ As restorative justice models have evolved within schools, it is clear that they contribute to the aims of education by emphasizing accountability, restitution, and restoration of a community.¹⁰⁴ More specifically, the underlying assumption of restorative justice is that when a student commits a delinquent or offending act their behavior breaches the social contract between them and the school community.¹⁰⁵ Therefore, it is ultimately the school community's responsibility to ensure the student is held accountable in order to correct or restore the harm. This focus acts to reintegrate the student as a productive member of the school community, rather than further exiling the student and thereby increasing the potential for separation, resentment and recidivism. In primary and secondary schools, restorative justice has been used as a response to crime, bullying, and disciplinary violations, often providing an alternative to the use of more traditional processes.¹⁰⁶ In this context, restorative justice practices convert the misbehavior from one of zero tolerance to interventions that accentuate accountability, fairness, and situational responses to unique events. The framework of school-based restorative justice is therefore in sharp contrast to exclusionary discipline policies, which rather than correct student misbehavior, actually promote increased student suspensions, increased poor academic achievement, loss of reputation among peers, social isolation, psychological problems, and ultimately juvenile delinquency.¹⁰⁷ Such practices also undermine the development of social capital within a school community.¹⁰⁸ Restorative practices, proactive or reactive, emphasize the importance of relationships, in other words, social capital.¹⁰⁹ Schools that adopt restorative practices as alternatives to punitive policies establish environments where members of the community take responsibility to repair harm when it occurs, hold each other accountable, and build skills in collective problem solving. In such an

¹⁰³ Hopkins, *see note 22*; Reimer, *see note 14* at 20-29 (2011); Varnham, *see note 2*; Interview with Efreem Martin, Restorative Justice Coordinator, Montbello High Sch., in Denver, Colo. (Jun. 14, 2011); Interview with Sarah Hartman, Sch. Social Worker, George Washington High Sch., in Denver, Colo. (Jun. 14, 2011); Interview with Josh Lynch, Restorative Justice Coordinator, George Washington High Sch., in Denver, Colo. (Jun. 14, 2011).

¹⁰⁴ Morrison et al., *see note 17*; John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, CRIME AND JUSTICE: A REVIEW OF RESEARCH 25-30 (ed. M. Tonry, 1999). Chicago: University of Chicago Press; Braithwaite, *see note 23*; Blood et al., *see note 22*.

¹⁰⁵ Morrison et al., *see note 17* at 98-104; Interview with Turley, *see note 100*; Interview with Anderson, *see note 93*; Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (May 13, 2009); Interview with Garcia, *see note 64*; Interview with Fuentes, *see note 18*.

¹⁰⁶ Stinchcomb et al., *see note 2* at 125.

¹⁰⁷ Varnham, *see note 2*; Virginia Costenbader & Samia Markson, *School Suspension: A Study with Secondary Students*, JOURNAL OF SCHOOL PSYCHOLOGY, 36(1), 59, 59 (1998). *See also*, discussion in Part I of this article.

¹⁰⁸ Morrison et al., *see note 17*; Roche, *see note 22* at 217, 224; McCluskey et al., *see note 2*; Harrison, *see note 2*; Tom Macready, *Learning Social Responsibility in Schools: A Restorative Practice*, 25 EDUCATIONAL PSYCHOLOGY IN PRACTICE 216-219 (2009).

¹⁰⁹ Morrison et al., *see note 17*.

environment, shared values of prosocial behavior are learned through modeling, conflict resolution, and mutual support.¹¹⁰

Models of Practice

The practice of restorative justice in schools has changed in response to the institutional framework of education.¹¹¹ Early incorporation of restorative justice in schools used victim-offender mediation, which involved a structured group, family, or circle conferencing aimed at conflict resolution.¹¹² In the victim-offender mediation model a trained mediator facilitates discussions between the victim and the offender.¹¹³ Comparatively, in family and group conferencing, another model implemented in initial school-based restorative justice programs, members of the school community and family members of those involved are invited to participate. In this model of restorative practice, the aim is to include input from not only the victim and offender, but from everyone involved in the incident or conflict.¹¹⁴ This practice was characterized by community-created sanctions.¹¹⁵ Similar to family and group conferencing in schools, circle conferencing has also been used within schools. Under this model of practice, the conference includes students directly harmed or involved in the incident, additional students, teachers, parents, coaches, administrators, and any other member of the school community who was involved or indirectly harmed by the incident.¹¹⁶

A significant development in the field of school-based restorative justice practice was a movement beyond conferencing models and the establishment of a continuum of restorative approaches. A continuum model allows school communities to adopt restorative practices ranging from the informal to formal.¹¹⁷ While the continuum model requires more holistic integration within the school community to address issues and offenses such practices have been found to have the highest level of impact.¹¹⁸ Within the continuum model restorative practices include affective statements, questions, informal conferences, large group circles and formal conferences. The use of diverse restorative practices is consistent with the whole-school approach, or in the case of Denver, whole district, to address negative impacts of punitive school

¹¹⁰ Stinchcomb et al., *see note 2* at 131; Macready, *see note 108*.

¹¹¹ Morrison et al., *see note 17* at 85; Jennings et al., *see note 15* at 172.

¹¹² Bazemore, *see note 94*; Jennings et al., *see note 15*.

¹¹³ Bazemore, *see note 94*.

¹¹⁴ Robert Coates, Betty Vos & Mark Umbreit, *Restorative Justice Circles: An Exploratory Study*, CONTEMPORARY JUSTICE REVIEW, 6(3), 265, 274 (2003).

¹¹⁵ *Id.*

¹¹⁶ *Id.*; Jennings et al., *see note 15* at 173.

¹¹⁷ Ted Wachtel, *Restorative Justice in Everyday Life: Beyond Formal Ritual*, CAMBRIDGE UNIV. PRESS 114-130 (2001); Morrison et al., *see note 17* at 109-111.

¹¹⁸ Wachtel, *see note 117*; Stinchcomb, et al., *see note 2* at 131; *See generally* notes 140-252.

discipline policies.¹¹⁹ Guided by Braithwaite's work on responsive regulation, a whole-school model of restorative justice was developed based on three levels of intervention: primary, secondary and tertiary.¹²⁰ In a whole-school approach, restorative practices include, but are not limited to, restorative inquiry, mediation, community conferences, small group conferences, problem-solving circles, and family conferences. The whole-school approach is grounded in a shared set of values, respect, openness, empowerment, inclusion, tolerance, integrity and congruence.¹²¹ From these values, participants learn the skills of remaining impartial and non-judgmental, respecting the perspective of all involved, developing rapport, actively and empathically listening, creative questioning, empowerment, compassion and patience.¹²² Together these skills and values seek to involve the school community in the restorative process in order to collectively address the needs and obligations of the entire school. Thorsborne and Vinegrad also envisioned a continuum of restorative practices to include both proactive and reactive processes.¹²³ They differentiate between two types of conference models: proactive, which functions to enhance teaching and learning; and reactive, which responds to harm and wrongdoing.¹²⁴ The proactive classroom conference focuses on supporting learning outcomes, setting boundaries and developing relationships.¹²⁵ These processes link curriculum, pedagogy, and behavior management. The reactive classroom conference provides an interpersonal and disciplinary link in the classroom.¹²⁶ School-based restorative justice practices, developed within a framework of responsive regulation, presents an opportunity for schools to adopt a range of institutional mechanisms to address of student discipline, student performance, school safety, student dropout, and the school to prison pipeline without a disproportionate reliance on punitive policies.

Implementation of Restorative Justice in Schools

It is important to understand that the implementation of restorative practice in every school will be different.¹²⁷ Some schools will turn to restorative practices to address high suspension or

¹¹⁹ Hopkins, *see note 22*; Interview with Turley, *see note 93*; Morrison et al., *see note 17* at 112; Interview with Anderson, *see note 93*; Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (Jun. 29, 2011); Interview with Martin, *see note 103*; Interview with Hartman, *see note 103*; Interview with Lynch, *see note 103*.

¹²⁰ Braithwaite, *see note 23*; Morrison et al., *see note 17*.

¹²¹ Morrison et al., *see note 17* at 351-352.

¹²² Hopkins, *see note 22*; Morrison et al., *see note 17* at 112.

¹²³ Morrison et al., *see note 17* at 125.

¹²⁴ *Id.* at 125.

¹²⁵ *Id.* at 126.

¹²⁶ *Id.* at 113.

¹²⁷ *Id.* at 114-115. *See generally* notes 140-252.

expulsion rates.¹²⁸ Others schools will implement restorative practice to address issues of school safety, disrespectful relationships and behaviors¹²⁹ or to improve academic success and student performance.¹³⁰ As Blood and Thorsborne note in *Overcoming Resistance to Whole-School Uptake of Restorative Practices*, for implementation of restorative practice to be successful there must be a shift in value placement on developing relationships and connectedness across the school community, rather than promoting exclusion and separation from the school community.¹³¹ Undoubtedly, developing alternatives to punitive policies demands an investment of time and effort. Such efforts are often met with resistance and require changes in school discipline codes and policies.¹³² The central point for school communities to recognize is that cultural change does not happen quickly and a long-term sustainable approach must be taken. Schools should envision a three to five year implementation plan that focuses on five key areas.¹³³ First, gaining commitment from the school community. This process requires establishing the reasons for implementation, as well as buy-in from key members of the school community. Second, developing a clear institutional vision with short, medium and long-term goals. Third, establishing responsive and effective practice. Fourth, developing policies that align with restorative practice to transition into a whole school approach, rather than a program based model. Fifth, investing in an ongoing system of growth and development for all members of the school community.¹³⁴ Ultimately, in the context of sustaining school-wide behavioral change, it is important for schools to recognize that the implementation of restorative practice is not simply a case of overlaying the justice model of conferencing and achieving sustained outcomes.¹³⁵ Unlike criminal justice settings, where victims and offenders may not see each other again, members of a school community often see each other the next day. As a consequence, minor incidents can quickly escalate if not addressed fully. Thus, restorative practices must be clearly embedded in the culture of the school for successful and sustained implementation to occur.

¹²⁸ Nancy Riestenberg, *Aides, Administrators and all the Teachers You Can Get*, 13 VOMA CONNECTIONS (2003); Morrison, *see note 2*; Stinchcomb et al., *see note 2* at 125-128; *Findings From Schools Implementing Restorative Practices*, INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES GRADUATE SCHOOL (2009) [hereinafter *IIRP 2009*].

¹²⁹ Stinchcomb et al., *see note 2* at 125; Morrison, *see note 2*; *IIRP 2009*, *see note 128*; *See generally* notes 140-252; Morrison et al., *see note 17* at 89.

¹³⁰ Morrison et al., *see note 17*; Morrison, *see note 17* at 119; Jennings et al., *see note 15* at 173; Interview with Martin, *see note 103*; Interview with Hartman, *see note 103*; Interview with Lynch, *see note 103*.

¹³¹ Blood et al., *see note 22*.

¹³² Brenda Morrison, *The School System: Developing Capacity in the Regulation of a Civilized Society*. RESTORATIVE JUSTICE AND CIVIL SOCIETY 195-201 (2001).

¹³³ Morrison et al., *see note 17* at 336.

¹³⁴ *Id.* at 339.

¹³⁵ *Id.* at 339-341.

Not all efforts to implement restorative justice in schools have been successful. Furthermore, few studies have been conducted of the implementation of restorative in urban schools comprised of low-income students of color. For the most part, successful outcomes seem to be related to linking restorative justice to broader school reform¹³⁶ or at least a larger strategic vision that extends beyond one isolated program model.¹³⁷ Additionally, findings from Denver Public Schools suggest that the use of a full-time restorative justice coordinator who is an employee of the district, not an outside consultant or project contractor, promotes increased commitment from the school community.¹³⁸ Consistent with Morrison, Blood and Thorsborne's earlier findings, districts that adopt school discipline code policies, which incorporate restorative justice within the discipline matrix, face decreased resistance during the initial phases of implementation and whole-school adoption.¹³⁹ Consider, the examples discussed *infra* where efforts to implement restorative justice were connected to district-wide training programs, workshops, and additional funding opportunities to establish a restorative culture within the schools and district.

California

In 2005, the principal and disciplinary case manager of Cole Middle School in West Oakland, California began consideration of alternative discipline practices to move away from traditional discipline policies, which they believed were detrimental both to the students and to the school's culture.¹⁴⁰ After discussions with teachers and staff about how to implement a restorative justice program, the school received permission from the Oakland Unified School District to begin a pilot restorative justice program.¹⁴¹ Similar to implementation in US-based¹⁴² and international settings¹⁴³ all teachers and staff took part in the initial training sessions. The restorative practice began with students involved as participants in disciplinary circles.¹⁴⁴ Within the first year pilot, a restorative justice framework was adopted into to non-disciplinary community building activities.¹⁴⁵ In the second year of the pilot project, the disciplinary case manager began whole-

¹³⁶ *Id.* at 350-356; Stinchcomb, et al., *see* note 2 at 140-142; Morrison et al., *see* note 17 at 170-176; Interview with Turley, *see* note 93; Interview with Anderson, *see* note 93.

¹³⁷ Thelton E. Henderson Center for Social Justice, *see* note 15 (discussing the limits of the Cole Middle School study as a one school pilot).

¹³⁸ Interview with Turley, *see* note 93; Interview with Anderson, *see* note 93; Interview with Cairns, *see* note 100; Interview with Garcia, *see* note 64; Interview with Fuentes, *see* note 18; *See also* Part III of this Article.

¹³⁹ Morrison et al., *see* note 17 at 336; Morrison, *see* note 2 at 112; Interview with Turley, *see* note 93; Interview with Anderson, *see* note 93; Interview with Fuentes, *see* note 18.

¹⁴⁰ Thelton E. Henderson Center for Social Justice, *see* note 15.

¹⁴¹ *Id.*

¹⁴² *See* note 14.

¹⁴³ *See* note 15.

¹⁴⁴ Thelton E. Henderson Center for Social Justice, *see* note 15.

¹⁴⁵ *Id.*

school implementation, teaching a restorative justice class to seventh grade and eighth grade students.¹⁴⁶ Suspension rates decreased significantly in 2007, the year that restorative justice was introduced to the entire school. The average suspension rate in the three years before restorative justice was implemented was fifty suspensions per one hundred students.¹⁴⁷ In the two years after restorative justice was implemented, the rate fell to only six suspensions per one hundred students. Additionally expulsions at Cole Middle School also decreased.¹⁴⁸ At the same time the Cole Middle School restorative justice program was being piloted and studied the Oakland Unified School District passed a resolution adopting restorative justice as a system-wide alternative to zero tolerance discipline and as an approach to creating healthier school communities.¹⁴⁹

In October 2009, the San Francisco Unified School District Board of Education adopted Resolution No. 96-23A1, incorporating a restorative approach into the district education policy. Recognizing both a sharp rise in suspensions and expulsions within the district and a disproportionate percentage of minorities being suspended, San Francisco Unified School District recommended an “accelerated ‘culture shift’” in how the district handles discipline issues in schools.¹⁵⁰ The Board created the Restorative Justice Framework & Alternatives To Suspensions & Expulsions, with the goal of building a “culture of fair and caring schools in San Francisco Unified School District.”¹⁵¹ In its first year of implementation, 2010-2011, the initiative aimed to familiarize the San Francisco Unified School District community with the restorative approach, and offer in-depth training and professional development in restorative practices.¹⁵² The program held presentations and workshops on restorative practices and the implementation plan to numerous groups, including, but not limited to, middle and high school principals, the Parent Advisory Council, the San Francisco Unified School District Instructional Cabinet, and the Boys and Girls Club.¹⁵³ Additionally, restorative justice was introduced at 15 different schools to identify three school-sites to become restorative practices demonstration schools. In collaboration with the Institute for Restorative Practices and Educators for Social

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 31.

¹⁴⁸ *Id.* Figure 3 indicates that after restorative justice was implemented at Cole Middle School the expulsion rate at Cole Middle School was even lower than the district average.

¹⁴⁹ Board of Education, Oakland Unified School Resolution No. 0910-0120 (Jan. 27, 2010)(on file with author); *See also* <http://www.rjoyoakland.org/programs.php> (Discussion the role of Restorative Justice for Oakland at West Oakland Middle School and relationship with Oakland Unified School District officials to institutionalize restorative discipline alternatives)

¹⁵⁰ San Francisco Unified School District, Board of Education, Substitute Motion, amended and adopted by the Board of Education at its Regular Meeting of October 13, 2009, at 2.

¹⁵¹ *Id.*, at 4.

¹⁵² San Francisco Unified School District, *2010-2011 SFUSD Restorative Practices: Overview and Outcomes*, at 1.

¹⁵³ *Id.*

Responsibility, professional development trainings were held throughout the district. As a part of this effort, central district supervisors, administrators, student support service staff, and selected site Leadership teams from all San Francisco Unified School District school-sites received a six-hour introductory training to restorative practices.¹⁵⁴ A total of 823 San Francisco Unified School District employees participated in restorative practices trainings and professional development during the 2010-2011 academic year.¹⁵⁵ In the upcoming school year, three selected school sites will begin a two-year restorative justice project, undergoing an intensive school-wide training and implementation of restorative practices.¹⁵⁶ The program will also focus on expanding training to reach the wider school community, including teachers and parents, and the San Francisco Unified School District Restorative Coordinator will shift from a part-time to full-time position. Implementing restorative practices is currently one of the top 13 initiatives for the school district.¹⁵⁷

Florida

The Institute of Youth and Justice Studies at Florida Gulf Coast University has helped implement restorative practices at numerous Florida schools. Currently four school districts, Collier County Public Schools, Duvall County Public Schools, Lee County Public Schools, Marion County Public Schools, and Leon County Schools, have implemented restorative justice programs.¹⁵⁸ Varying by district, a continuum of restorative practices is employed, ranging from more informal peer mediation, to formal community conferencing. Collier County Public Schools, for example, located in Everglades City, Immokalee, Marco Island, and Naples, began implementing restorative practices during the 2004-2005 school year.¹⁵⁹ Several Collier County schools utilize Student Accountability Boards, a prevention program comprised of five students, a School Resource Officer and a Faculty Facilitator.¹⁶⁰ The purpose of the program is to identify at-risk youth, and utilizing a restorative approach, divert them from the juvenile justice system.¹⁶¹ Students referred to Student Accountability Boards participate in a conference with representatives of the school community, in which the impact caused by the incident is discussed and an agreement is created. The Student Accountability Boards then creates a case plan to address the risk factors and needs of the referred student, and to ensure his or her progress and

¹⁵⁴ *Id.*, at 2.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*, at 3.

¹⁵⁷ Telephone Interview with Berkowitz, *see* note 157.

¹⁵⁸ Telephone Interview with Dr. Sandra Pavelka, Dir., Inst. For Youth and Justice Studies, (June 27, 2011).

¹⁵⁹ *Id.*

¹⁶⁰ Sandra O'Brien, Dir., Inst. For Youth and Justice Studies, *Restoring Schools: A Case of School Accountability Boards*, Persistently Safe School 2005: THE NATIONAL CONFERENCE OF THE HAMILTON FISH INSTITUTE ON SCHOOL AND COMMUNITY VIOLENCE, 180 (2005).

¹⁶¹ *Id.*, at 179.

provide assistance when necessary. Of 50 cases referred in two Collier middle schools, 48 were successful, that is, the students completed and turned all assignments and did not reappear before Student Accountability Boards.¹⁶² Three additional schools districts, Sarasota County Schools, Marion County Public Schools, and Miami-Dade County Public Schools, will begin implementing restorative justice programs in the fall of 2011.¹⁶³

Illinois

The Peoria Public Schools, located in Peoria, Illinois, are implementing restorative justice to reduce racial and ethnic disparities in the juvenile justice system.¹⁶⁴ Specifically, a restorative approach to conflict is utilized in lieu of zero-tolerance policies and referrals to law enforcement. Schools in the district have begun community conferencing, called Community Peace Conferencing, with great success. At Children's Home Kiefer School, an alternative day school for children with severe emotional and behavior problems, the Children's Home Association of Illinois implemented Peacemaking Circles. Used in all classrooms, Peacemaking Circles help to set standards of classroom behavior and resolve classroom disputes.¹⁶⁵ As of 2008, there was a 35 percent drop in referrals to detention from the schools, and 43 percent drop in referrals of African American students.¹⁶⁶ Manual High School also uses peer juries, set up by Illinois Models for Change and the Children's Home Association of Illinois. Comprised of 12 student volunteers, the jury received two eight-hour days of training. Whereas police were frequently called to the school for minor infractions prior to the introduction of peer juries, calling the police is now a last resort. According to the Program Coordinator, Lori Brown, students referred to peer juries frequently become more active in the school community and do not commit the same offense a second time.¹⁶⁷

Iowa

Since implementation in 2006, restorative practices have become a fundamental component of the school culture at Walnut Creek Campus. This alternative school in West Des Moines, Iowa adheres by restorative practices, designating an entire section of the school's handbook to

¹⁶² *Id.*, at 180.

¹⁶³ Telephone Interview with Pavelka, *see* note 158.

¹⁶⁴ DMC/Juvenile Justice Action Network, *see* note 65.

¹⁶⁵ *Spring IBARJ Meeting in Peoria*, Illinois Balanced and Restorative Justice (2011), available at <http://ibarji.ning.com/events/spring-ibarj-meeting-in-peoria>; Pam Adams, *Norwegians Learn Discipline at Kiefer School*, Journal Star (Sept. 15, 2010), available at <http://www.pjstar.com/news/x860727377/Norwegians-learn-discipline-strategies-at-Kiefer-School>.

¹⁶⁶ *Spring IBARJ Meeting in Peoria*, *see* note 165.

¹⁶⁷ Kelly Mantick, *A Different Kind of Jury Duty*, CENTRAL ILLINOIS BUSINESS PUBLISHERS (July, 2011), available at <http://www.peoriomagazines.com/ibi/2011/jul/different-kind-jury-duty>.

restorative justice.¹⁶⁸ Walnut Creek utilizes conflict mediation, circles and restitution as alternatives to traditional disciplinary procedures.¹⁶⁹ According to Dr. Kim Davis, the school principal, “we started the process of using restorative practices and it has just strengthened and expanded over time.”¹⁷⁰

Oregon

In 2008 Resolutions Northwest, the Department of Community Justice, and the Parkrose School District developed a collaborative partnership to implement restorative discipline practices in the Parkrose School District.¹⁷¹ The goals of the restorative justice project were to reduce student referrals to juvenile justice and decrease in-school and out-of-school suspension and expulsions, in particular for minority students.¹⁷² The restorative justice project was funded by Department of Community Justice and the City of Portland and implemented as a three-year pilot.¹⁷³ Understanding that the impact of restorative justice implementation cannot simply be captured by quantitative data, the Parkrose restorative justice program collected data regarding the 162 facilitated cases reflecting the outcomes and student satisfaction. In 2008-2009 the Parkrose restorative justice program reported that 89% of cases resulting in agreements, 91% of cases closed with no further incidents 90 days after the agreement, 89% of students felt confident in their ability to complete their agreement, 85% of students felt satisfied with the restorative intervention process, 75% of students felt the harm had been repaired. In 2009-2010, 175 cases were referred to the restorative justice program. Such qualitative data is critical to understanding the processes of implementation.¹⁷⁴ Of the 175 cases, 86 restorative meetings were facilitated, 105 agreements were reached, 101 agreements were completed and 71 days of suspension were

¹⁶⁸ Walnut Creek Campus, *2011 Summer School Handbook*, available at <http://www.wdmc.org/wcc/documents/handbook11.pdf>

¹⁶⁹ *Id.*

¹⁷⁰ Email from Dr. Kim Davis, Principal, Walnut Creek Campus, (June 20, 2011) (on file with author).

¹⁷¹ Interview with Garcia, *see* note 64.

¹⁷² *Id.*

¹⁷³ Interview with Daniel Garcia Restorative Justice School Mediation Specialist, Parkrose Sch. District (May 11, 2010).

¹⁷⁴ Thelton E. Henderson Center for Social Justice, *see* note 15 at 16-21 (discussing student, teacher, and parent perceptions of the restorative justice program); Stichcomb, et al., *see* note 2 at 138-139 (discussing experiential accounts of teachers and students); Nancy Riestenberg, Minnesota Department of Education, presentation at the National conference of the Hamilton Fish Institute on School and Community Violence, *Restorative Measures in Schools: Alternatives to Suspensions In-School Behavior Intervention Grants* (2004); Morrison et al., *see* note 17 at 170-173; *IIRP 2009*, *see* note 128 (discussing perceptions of restorative justice program by schools administrator, community members, and teachers); Interview with Fuentes, *see* note 18; Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (Jun. 25, 2011).

avoided.¹⁷⁵ In the third year of the pilot, Resolutions Northwest reported that from September to February 132 students were referred to the restorative justice project, 98 cases were facilitated with 95% resulting in agreements, and 108 days of suspension avoided.¹⁷⁶ Based on the results of the pilot project, it will be expanded in 2010-2011, adding full-time restorative justice staff, beginning implementation in Portland Public Schools District, engaging in intensive community-based, and teacher trainings on restorative justice.¹⁷⁷

Maryland

Several organizations are promoting restorative justice in Baltimore, Maryland, the second most violent city in the country.¹⁷⁸ The Community Conferencing Center, a nonprofit community-based organization,¹⁷⁹ has worked in the Baltimore County School District since 1998 to provide alternatives to suspension and arrest.¹⁸⁰ Currently serving 50 to 60 schools in the District, the Community Conferencing Center trains teachers to lead informal classroom circles, called the Daily Rap, and organizes and facilitates Community Conferencing.¹⁸¹ Of 450 documented Community Conferences, 97% resulted in a written agreement, and there was a 95% rate of compliance with the agreements.¹⁸² The Daily Rap, in which 2,200 teachers have been trained,¹⁸³ has also been successful: 61 percent of teachers are better able to manage misbehavior, and 44 percent reported fewer office referrals.¹⁸⁴ The Conflict Resolution Center of Baltimore County also provides restorative solutions to the Baltimore City Public Schools. The Conflict Resolution Center has taken referrals from 32 elementary, middle and high schools, offering students both community conferencing and community mediation.¹⁸⁵ The Conflict Resolution Center is

¹⁷⁵ Interview with Daniel Garcia Restorative Justice School Mediation Specialist, Parkrose Sch. District (Jun. 16, 2011); Resolutions Northwest Report to Portland City Council, *Creating Community Safety by Keeping Kids in School RNW's School Restorative Justice Pilot Project*, Nov. 2010 (on file with author).

¹⁷⁶ *Id.*

¹⁷⁷ Interview with Garcia, *see* note 175; Interview with Daniel Garcia Restorative Justice School Mediation Specialist, Parkrose Sch. District (Jul. 28, 2011).

¹⁷⁸ Laura Mirsky, *The Community Conferencing Center: Restorative Practices in Baltimore, Maryland*, Restorative Practices e-Forum, (March 9, 2004), available at <http://www.iirp.org/pdf/cccbaltimore.pdf>, at 1.

¹⁷⁹ Telephone Interview with Laura Abramson, Exec. Dir., Cmty. Conflict Ctr., (June 15, 2011).

¹⁸⁰ *Id.* at 3.

¹⁸¹ Interview with Abramson, *see* note 179.

¹⁸² Email from Laura Abramson, Exec. Dir., Cmty. Conflict Ctr., (June 16, 2011) (on file with author).

¹⁸³ Interview with Abramson, *see* note 179.

¹⁸⁴ Community Conflict Center, *Summary of Daily Rap Impact*, available at http://media.communityconferencing.org/uploads/main/Daily_Rap_Teacher_Surveys.pdf, at 2.

¹⁸⁵ Telephone Interview with Misty Fae, Conflict Resolution Ctr., (July 7, 2011).

currently addressing a University of Maryland 2011 report, which examines the disproportionate minority contact with the Maryland juvenile justice system.¹⁸⁶ The report identifies school referrals to law enforcement as a primary point of contact with the juvenile justice system, and recommends community conferencing and the creation of restorative agreements as an effective alternative to police involvement in schools.¹⁸⁷ The Conflict Resolution Center, in collaboration with the Baltimore Police Department, the Juvenile Court, Baltimore County School District, and other community stakeholders, are preparing to implement a pilot program in two to four schools in order to decrease the disproportionate rate of minority youth in the juvenile justice system.¹⁸⁸

The Baltimore Curriculum Project, another nonprofit organization, has implemented restorative practices at three Baltimore County School District charter schools.¹⁸⁹ At City Springs School, where 99 percent of students are from families living below the poverty line, restorative practices were implemented in 2007, and have since been embraced school-wide.¹⁹⁰ In addition to hiring an on-site restorative practices facilitator, the entire school staff was trained, including cafeteria workers.¹⁹¹ From the 2008-09 to the 2009-10 academic year, the suspension rate decreased by 88 percent, the Maryland state assessment score increased, and the number of students functioning at grade level tripled.¹⁹² Restorative practices were so impactful that the school adopted a two-year “Whole-School Change Program” in the fall of 2010.¹⁹³

Michigan

In 2004, the Lansing School District began implementation of a restorative justice program as part of a larger United Way grant. The program was piloted in one elementary school and as of 2009 has expanded to include nineteen schools.¹⁹⁴ In 2005, the pilot school reported a 15%

¹⁸⁶ *Id.*

¹⁸⁷ University of Maryland, Institute for Governmental Service and Research, *Disproportionate Minority Contact in the Maryland Juvenile Justice System*, 54, 82 (2011).

¹⁸⁸ Telephone Interview with Fae, *see* note 185.

¹⁸⁹ Baltimore Curriculum Project, *Restorative Practices Builds Community at City Springs*, (forthcoming July 2011) (on file with author).

¹⁹⁰ Laura Mirsky, *Restorative Practices: Whole-School Change to Build Safer, Saner School Communities*, Restorative Practices e-Forum, (May 26, 2011), available at http://www.iirp.org/iirpWebsites/web/uploads/article_pdfs/93801_Whole-School-Change.pdf, at 1.

¹⁹¹ *Id.*

¹⁹² *Id.*, at 3.

¹⁹³ *Id.*, at 1; *See also*, International Institute for Restorative Practices, available at http://www.iirp.org/pdf/SSS_Implementation_Overview.pdf.

¹⁹⁴ Von der Embse et al., *see* note 3 at 18; Abbey J. Porter, *Restorative Practices in Schools: Research Reveals the Power of Restorative Approach, Part II*, Report prepared for International Institute of Restorative Practices, 1-2 (2007)(on file with author).

decrease in suspensions.¹⁹⁵ Since its implementation that Lansing School District reported that 1500 students have been involved with the program, with 507 of the 522 cases resolved, 11 cases were in lieu of expulsion, and more than 1600 days of student suspension were avoided.¹⁹⁶ Similar to the Parkrose restorative justice program, the Lansing School District has conducted long-term surveys with participants and report that 90% of participants learned new skills to solve or avoid conflicts after the restorative justice intervention.¹⁹⁷

Minnesota

In 1998, the Minnesota Legislature appropriated \$300,000 to the Department of Children, Families & Learning for the implementation and evaluation of alternative approaches to suspensions and expulsions.¹⁹⁸ Eighty-five districts applied for three-year funding and four districts were selected. Each of the four districts implemented a range of restorative practices and developed an evaluation plan aimed at measuring the impact in five areas: suspensions, expulsions, attendance, academics and school climate. Like many others throughout the country, Minnesota schools experienced high rates of suspensions, expulsions, dropping out, truancy, and behavioral infractions.¹⁹⁹ In the early 1990s, the Minnesota statewide expulsion rate increased from around 100 to more than 300 as an apparent result of the implementation of zero tolerance policies by school districts. These efforts appeared to signal a gradual shift in the school system's response to misconduct from punishment to problem solving.²⁰⁰ As Stinchcomb, et al., found the use of restorative justice practices at several case study schools impacted school safety, and presented positive indicators of decreased suspensions and expulsions, as well as acts of physical aggression.²⁰¹ For example, at Lincoln Center Elementary acts of physical aggression dropped from 733 in 1997-1998 to 153 in 2000-2001, the number of in-school suspension dropped from 126 in 1999-2000 to 42 in 2000-2001, out-of-school suspensions declined from 30 in 1998-1999 to 11 in 2000-2001, and the number of behavioral referrals decreased from 1,143 in 1998-1999 to 407 in 2000-2001.²⁰² Though less clearly linked to the use of restorative justice processes, administrators reported that average daily attendance improved from 85.0% in 1997-1998 to 95.5% in 2000-2001.²⁰³

¹⁹⁵ Porter, *see* note 194.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Nancy Riestenberg, Grant Manager, *In-School Behavior Intervention Grants Final Report 1999-2001*, 1 Minnesota Department of Children Families & Learning, (2001)(Minnesota State Legislature Grant, 1998 MN Statute 398, Article 2 Section 57: IN-SCHOOL BEHAVIOR INTERVENTION GRANTS: 1999-2001).

¹⁹⁹ Stinchcomb et al., *see* note 2 at 134.

²⁰⁰ Riestenberg, *see* note 198.

²⁰¹ Stinchcomb et al., *see* note 2 at 135-139.

²⁰² Stinchcomb et al., *see* note 2 at 136.

²⁰³ *Id.*

Missouri

Community Conflict Services of St. Louis utilizes restorative principles to repair harm and build understanding at Long Middle School, where 46 percent of students are non-native English speakers and 89 percent receive free/reduced lunches. The majority of Long students attend Roosevelt, the high school with the highest suspension rate in the entire city and a graduation rate of 46 percent.²⁰⁴ Since the fall of 2007, Community Conflict Services has taken a whole-school implementation approach at Long. The organization trains faculty in talking circles, and leads a six-week curriculum for students designed to build understanding about restorative principles and talking circles. In addition to biweekly talking circles led by teachers and staff, Community Conflict Services works with the administration to identify and assist teachers with high referral rates, offers special circles for students with repeated disciplinary problems, and facilitates re-entry circles for suspended students and their parents.²⁰⁵

After only two years of implementing restorative practices, Long Middle School saw a 27 percent decrease in severity of suspensions, and an 18 percent reduction in affinity group-based violence.²⁰⁶ In programs targeting specific students with discipline problems, teachers have seen increases in attendance, timeliness, and being accountable for behavior. The entire school community is embracing restorative justice: the compliance rate with restorative agreements over four years is averaged at 90.5 percent, and in surveys taken by parents, there was 98 percent satisfaction with re-entry circles. Restorative practices have been so effective at Long Middle School that Roosevelt High School is currently working with Community Conflict Services to revamp the high school discipline program, and will begin training high school student mentors in the fall of 2011 to facilitate at Long Middle School.²⁰⁷

New Mexico

After three years of growing support for restorative practices in select Santa Fe Public Schools, a restorative justice program was funded by an appropriation from New Mexico Legislature and incorporated into the Santa Fe Public School's Code of Conduct as an alternative to traditional discipline in the fall of 2007.²⁰⁸ The Restorative Justice Initiative, funded by a second appropriation from the Legislature and by a City Grant in the 2008-2009 academic year, employs

²⁰⁴ Telephone Interview with Carrie Nardie, Soc. Worker, Cmty. Conflict Services, (June 28, 2011).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Restorative Justice Initiative*, see note 15 at 8; See also, Santa Fe Public Schools, *Code of Conduct: A Comprehensive Plan for Safe Schools 2010-2011*, available at <http://www.sfps.info/DocumentView.aspx?DID=2251>.

various restorative practices, and is offered at all grade levels. Restorative Justice Circles are held in elementary and high schools, and Peer Panels, based mainly in middle and in some elementary schools, are facilitated by students who assign their peers restorative-based consequences. At the high school level, students are trained in Restorative Justice/Mediation elective classes and facilitate Restorative Circles with peers about issues such as fighting, classroom discipline and personal challenges.²⁰⁹ The Santa Fe Public Schools Restorative Justice Coordinator, Mary Beth Brady, supports training and provides technical assistance to middle and high schools, and co-facilitates circles with site staff at the elementary level.²¹⁰ During the 2010-2011 academic year, Brady and a hip hop artist from a local NGO co-facilitated the “School Success Class,” a program for 30 high-risk middle school students with a restorative justice and art focus. The program was highly successful: there was a 40 to 50 percent reduction in serious incidents and out-of-school suspensions.²¹¹

In the 2008-2009 school year, over 975 students from 13 schools participated in the Restorative Justice program.²¹² At Santa Fe High School, the Restorative Justice/Mediation class received 42 referrals, and provided advocacy to 78 students at Santa Fe High School and two middle schools.²¹³ In the 2007-2008 year, Santa Fe High School Restorative Justice students provided mentorship to 20 middle school participants in 10 meetings throughout the year, and led four-hour training sessions with 70 seventh graders who chose to lead Peer Panels.²¹⁴

Pennsylvania

Administrators at West Philadelphia High School learned about restorative practices in spring 2008 and began implementing the practices immediately. The school had its first formal restorative practices training in fall 2008.²¹⁵ From April to December 2008, suspensions decreased by half and recidivism plummeted.²¹⁶ The school’s administrators credit restorative practices for these improvements.²¹⁷ As a report by the International Institute for Restorative

²⁰⁹ *Restorative Justice Initiative*, see note 15 at 5, 8.

²¹⁰ Mary Beth Brady, Restorative Justice Coordinator, *SFPS Restorative Justice Initiative SY10-11 Mid-Year Report* (Feb., 2011).

²¹¹ Email from Mary Beth Brady, Restorative Justice Coordinator, Santa Fe Public School, (July 7, 2011) (on file with author).

²¹² *Restorative Justice Initiative*, see note 15 at 7.

²¹³ *Id.* at 13.

²¹⁴ *Id.* at 2.

²¹⁵ *IIRP 2009*, see note 128.

²¹⁶ *Id.*

²¹⁷ *Id.*

Practices found, subsequent to implementation of restorative justice practices, violent acts and serious incidents were down 52% in 2007–2008 compared to 2006–2007.²¹⁸ Moreover, violent acts and serious incidents were down an additional 40% for 2008–2009.²¹⁹

Before restorative practices were introduced at Pottstown High School in Pennsylvania, the school was on academic probation and in danger of being taken over by the state. When the manufacturing industry in Pottstown withered away and poverty settled in, the school not only experienced a decline in academic performance, but also confronted a school climate of disrespect, classroom disruptions, ditching, and fighting.²²⁰ The school principal, Stephan J. Rodriguez, began vigorously implementing restorative practices in the fall of 2006. Ten enthusiastic teachers attended a restorative conferencing training, and began facilitating conferences upon their return.²²¹ As of 2009, the entire school staff trained, including teachers, counselors and instructional aides, and every educator was required to incorporate restorative practices into their work in some fashion. Restorative practices have yielded very positive results at Pottstown High: the school was removed from academic probation, student test scores and behavior significantly improved, and staff reported feeling united and inspired in their work.²²² Disciplinary problems have also decreased: between the 2005-2006 and 2007-2008 academic years, incidents of fighting fell from 20 to 9, out-of-school suspensions reduced from 140 to 108, and incidents of misbehavior, timeout or detention decreased from 168 to 37.²²³

Newtown Middle School, a relatively affluent school in Pennsylvania, began implementing restorative practices in 2006.²²⁴ After learning about the SaferSanerSchools program, the then-assistant principal, Richard Hollahan, began introducing restorative practices and had his staff trained. Hollahan described the restorative model as a “financial boon,” and as having transformed the school culture to one of mutual support and community building.²²⁵ Discipline problems also drastically decreased: there were 30 suspensions during the 2007-2008 school year, and only five as of December, 2008. Moreover, between the 2003-2004 and 2005-2006 school years, incidents of physical altercations decreased from 41 to 9, and incidents of

²¹⁸ *Id.*, at 6-7.

²¹⁹ *Id.*, at 7-8.

²²⁰ *Id.*, at 9.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*, at 10.

²²⁴ *Id.*, at 11.

²²⁵ *Id.*

misbehavior fell from 147 to 69.²²⁶ In response to Newtown’s successful program, other schools in the Council Rock School District are also implementing restorative practices.²²⁷

Restorative justice reached the Palisades School District, in Kintnersville, Pennsylvania during the 1998-1999 school year, when Palisades High School became the first International Institute for Restorative Practices pilot school.²²⁸ That same year, Palisades High School launched a new program called the Academy, designed for students struggling with academics or behavior, and who felt disconnected from the school. Despite an unsuccessful beginning, the Academy was ultimately able thrive after it began employing a continuum of restorative practices. The Academy staff, trained by the International Institute for Restorative Practices, utilized affective statements and questions, circles, interventions, one-on-ones and groups meetings with students. Moreover, teachers incorporated “check-in” and “check-out” circles into their classroom routines to set goals and expectations among students.²²⁹ Restorative practices were so effective in the school’s most difficult setting that Palisades High School decided to incorporate restorative practices throughout the entire school over a three-year period.²³⁰ The program was successful in decreasing behavioral problems, increasing academics, and fostering a more positive relationship among students and staff.²³¹ Disciplinary referrals decreased from 1,752 in the 1998-1999 academic year to 815 in the 2002-2003 school year, incidents of disruptive behavior fell from 273 to 142, administrative detentions dropped from 716 to 282, and out-of-school suspensions reduced from 105 to 53.²³² The Safer Saner Schools program expanded to Palisades Middle School in 2000, when the principal was inspired by a Palisades High’s success. Prior to implementing restorative practices, Palisades Middle School struggled with a school climate of disrespect and fighting, and suspended about 200 students a year.²³³ All staff members were trained in restorative justice, and the school introduced the entire spectrum of practices, from affective statements and questions to formal restorative conferences. In addition to positive effects on academic performance, the number of disciplinary referrals dropped from 913 in 2000-2001 to 516 in 2001-2002, and incidents of fighting decreased from 27 to 16.²³⁴

²²⁶ *Id.*, at 12.

²²⁷ *Id.*, at 11.

²²⁸ Laura Mirsky, *SaferSanerSchools: Transforming School Culture with Restorative Practices*, Restorative Practices e-Forum, (March 20, 2003), available at http://www.iirp.org/iirpWebsites/web/uploads/article_pdfs/ssspilots.pdf, at 2.

²²⁹ *Id.*, at 3.

²³⁰ *Id.*

²³¹ *Id.*, at 2.

²³² Carol Chmelynski, *Restorative Justice for Discipline with Respect*, School Board News, available at www.eddigest.com, (Sept., 2005), at 20.

²³³ Maugin, *see* note 28, at 4.

²³⁴ *Id.*

After helping implement restorative practices at Palisades High School, Principal Joseph Roy introduced restorative practices to Springfield Township High School in Erdenheim, Pennsylvania in January of 2000.²³⁵ Initially small groups of teachers were trained, and by the fall of 2001 the entire faculty was introduced to restorative practices. Many teachers started incorporating circles into their classrooms, and the Assistant Principal began facilitating formal restorative conferences in the case of a serious issue.²³⁶ Despite the challenge of shifting the traditional school culture, the school climate soon became one of acceptance and support, and students and staff attribute this transformation to restorative justice.²³⁷ Statistical data also reflect the positive effects of restorative justice at Springfield: between the 2000-2001 and the 2001-2002 school years, incidents of inappropriate behavior dropped from 99 to 32, incidents of disrespect to teachers dropped from 71 to 21, and incidents of classroom disruption decreased from 90 to 26.²³⁸

Virginia

Although the Fairfax County Public Schools, located in Fairfax, Virginia, has been training staff in restorative justice for over 8 years, the Northern Virginia Mediation Service (NVMS) Restorative Justice Task Force first began collaborating with Fairfax County Public Schools on a school-based restorative justice program in 2008.²³⁹ The NVMS-FCPS Program serves elementary, middle, secondary, and high schools, as well as Alternative Learning Centers in the nation's 11th largest district, an ethnically diverse community comprised of nearly 200 schools.²⁴⁰ Consistent with FCPS' "Student Responsibilities and Rights," which encourages conflict resolution and peer mediation,²⁴¹ the NVMS-FCPS Program centers on providing alternative solutions to traditional disciplinary action. The Program includes two coordinators, who allocate referred cases and lead trainings for teachers and administrators several times a year, a six to seven person Leadership Team, and 20 trained facilitators, mostly certified and practicing mediators.²⁴² Facilitators are available seven days a week, though they visit onsite offices at the two largest schools served on a schedules basis.²⁴³ A continuum of restorative

²³⁵ *Id.*, at 5.

²³⁶ *Id.*, at 5.

²³⁷ *Id.*, at 6.

²³⁸ *Id.*

²³⁹ Email from Marjorie Bleiweis, Northern Va. Mediation Serv., (June 15, 2011) (on file with author).

²⁴⁰ David Deal, Northern Va. Mediation Serv., 3rd National Conference on Restorative Justice Panel on School-Based Restorative Justice, *School-Based Restorative Justice: Ten Lessons Learned*, (June 8-11, 2011), at 2, 7.

²⁴¹ Fairfax County Public Schools, *Student Responsibilities and Rights: Grades K-12*, at 17.

²⁴² Adler, *see* note 48, at 3.

²⁴³ *Id.*

practices is employed, including, but not limited to, circles and formal conferencing, and typically a two-facilitator approach is utilized.²⁴⁴ The NVMS-FCPS Program has grown rapidly, with seven cases in fiscal year 2009, 32 in 2010 and 80 in 2011.²⁴⁵ In light of the Program's success, the state's largest high school, Westfield, created a formal partnership with NVMS in 2010.²⁴⁶ Westfield High and other frequent users of the Program report a sharp drop in suspensions, and the same students are rarely seen, indicating a low recidivism rate.²⁴⁷

While it is important to remember that a long history of educational research suggests that achieving school transformation requires an extended period of time, the examples highlighted in Part II reflect the ability of local districts efforts to prioritize education over punishment. These are not isolated instances of districts moving away from traditional retributive discipline practices, but rather a global movement for restoring justice in public schools. By implementing school-based restorative justice programs across the country have begun the difficult task of reversing the negative impacts of punitive discipline policies. As multiple studies have shown school-based restorative justice²⁴⁸ can transform the educational experience of students from what is, one focused on exclusion and zero tolerance, to what it should be, one focused on academic achievement. Unfortunately, a significant obstacle faced by many school districts across the United States is a lack of funding. Despite quantitative and qualitative evidence of the positive impacts of school-based restorative justice programs, many districts are forced to discontinue restorative programs due to lack of funding. For example, the Memphis City Schools implemented an effective restorative justice program in 22 schools, with a trained behavioral specialist at each school, as well as a victim empathy-training program. The program ended in December 2010, after only seven months, when funding for the behavior specialists was cut.²⁴⁹ The successful NVMS-FCPS in program in Fairfax, Virginia has yet receive its funding for the 2011-2012 school year,²⁵⁰ and the future of the restorative justice program at Peoria's Manual High School is uncertain.²⁵¹ Similarly, the Santa Fe Public Schools' Restorative Justice Initiative will also likely discontinue in the upcoming school year without sufficient funding, despite significant support in the schools and in the community.²⁵² These districts are just several

²⁴⁴ *Id.*, at 4, 6-7.

²⁴⁵ Email from David Deal, Northern Va. Mediation Srv., (July 7, 2011) (on file with author).

²⁴⁶ David Deal, *Stretch Your Mediation Wings: School-Based Restorative Justice*, VIRGINIA ADR, 4 (2010).

²⁴⁷ Email from Deal, *see* note 245.

²⁴⁸ *See generally* note 15.

²⁴⁹ Telephone Interview with Jean Handley, CEO, Turning Point Partners, conducted by Alison Caditz, Research Assistant for Professor Thalia González (June 24, 2011).

²⁵⁰ Email from Deal, *see* note 245.

²⁵¹ *See* note 163.

²⁵² Telephone Interview with Mary Beth Brady, Restorative Justice Coordinator, Santa Fe Public Schools, (July 6, 2011).

examples of restorative justice programs, which transform school communities, but are cut short before the full impact of restorative practices can be realized. Indeed, as districts with long-standing programs exemplify, implementation of restorative justice is not a short-term concept, but considering the significant benefits of such programs, fiscal and social, individual and collective, it is clear such investment must be made to address the school-to-prison pipeline and ensure the success of our nation's youth.

THE NORTH HIGH SCHOOL RESTORATIVE JUSTICE PROGRAM

Background

The Restorative Justice Program at North High School represents one example of a sustained school-based restorative justice practice focused on the implementation of non-exclusionary discipline processes to build a safer school culture, reduce suspensions and referrals to law enforcement, and impact educational performance. Since 2003, Denver Public Schools has implemented restorative justice interventions into its discipline and behavior management processes.²⁵³ The implementation process in Denver Public Schools was characterized by both strategies at the district-level and individual school building level.²⁵⁴ Like many urban school districts across the United States, Denver Public Schools faced challenges of high rates of student dropout, suspensions, and expulsions with a disproportionate representation among minority students in each of these areas.²⁵⁵ For example, in the 2000-2001 to 2004-2005 school years, Denver Public Schools reported a dramatic increase in the number of in-school suspensions, from 1,864 to 4,859, and out-of-school suspensions, from 9,846 to 13,487.²⁵⁶ The 13,487 out-of-school suspensions in 2005 generally ranged from five to ten days, i.e., 67,435 to 134,870 days of education lost.²⁵⁷ During that time period, there was also a 71% increase in the total number of police-issued tickets and arrests within Denver Public Schools, although the student population only rose 2%.²⁵⁸ Of the police-issued tickets, 68% were for minor incidents that included the use of obscenities, disruptive appearance, and shoving matches.²⁵⁹ A

²⁵³ Interview with Timothy Turley, Program Manager, Denver Public Sch. Prevention and Intervention Services, in Denver, Colo. (June 14, 2011); Interview with Robert Anderson, Director, Denver Public Sch. Prevention and Intervention Services, in Denver, Colo. (June 15, 2011); Interview with Barbara Downing, Mental Health and Assessment Services, Prevention Services, Denver Public Sch., in Denver, Colo. (June 14, 2011); Interview Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (June 16, 2011).

²⁵⁴ *Id.*

²⁵⁵ Interview with Turley, *see* note 253; Interview with Anderson, *see* note 253; Interview with Downing, *see* note 253; Interview with Cairns, *see* note 253; Myriam L. Baker, *CDE Expelled and At-Risk Student Services Grant: First Year Report 2006-2007*, Denver Pub. Schs., Denver Public Schools Restorative Justice and Disciplinary Reform Project, 1 (2007); Mac Iver, *see* note 73.

²⁵⁶ Baker, *see* note 255.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

disproportionate number of the suspensions, expulsions, police-issued tickets, and arrests were among Latino and African American students. In the 2004-2005 school year, Latino students represented 70% of the tickets issued, though they represented only 58% of the overall student population.²⁶⁰ African American students represented 35% of all expulsions and 34% of all out-of-school suspensions, though they represented only 19% of the student population.²⁶¹ Based on this significant data, the Office of Prevention and Intervention Initiatives determined that it was imperative for the district to begin moving away from reliance on punitive discipline and zero tolerance policies.²⁶²

Denver Public Schools Implementation of Restorative Justice

The implementation of the restorative justice program in Denver Public Schools can be best understood in three phases: exploratory, grant-funded pilot phase, and district-wide adoption phase. The exploratory phase is characterized by a small pilot restorative justice project at Cole Middle School in the 2003-2004 academic year. Cole Middle School was selected because high-need, with some of the district's largest numbers of suspensions, tickets, and arrests.²⁶³ The model implemented at Cole Middle School included both victim-offender mediation and large group circles. While data about the restorative justice pilot at Cole Middle School was limited, the project presented such promising results that the Office of Prevention and Intervention Initiatives applied for a Colorado Department of Education Expelled and At-Risk Student Services (EARSS) grant.²⁶⁴

In 2006, the Office of Prevention and Intervention Initiatives received the EARSS grant from the Colorado Department of Education.²⁶⁵ Utilizing the EARSS grant, the Office of Prevention and Intervention Initiatives began whole school implementation of a restorative justice program at North High School and its three feeder middle schools Skinner Middle School, Horace Mann

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Interview with Turley, *see* note 253; Interview with Anderson, *see* note 253; Interview with Downing, *see* note 253.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ As discussed *infra* the proposal made to the Colorado Department of Education Prevention Initiatives Unit was based on alarming trends noted in prior years' discipline data for the district. In its proposal the district's stated goal was to implement the restorative justice district-wide, and use the restorative justice program as the first stage of a reformation of the Denver Public Schools discipline policy. The district's discipline policy in 2006 was vague and enforcement varied from school to school. Specifically, under the Denver Public Schools Student Discipline policy, school principals "may develop a remedial discipline plan that shall address the student's disruptive behavior. Individual schools can determine what disruptive behavior would lead to removal from class, suspension, and potentially expulsion." As a result, the risk of expulsion was dependent upon the individual schools' suspension and discipline policies. Thus, students could face a higher risk of expulsion in one school and not another. *See* Interview with Turley, note 253; Interview with Anderson, note 253; Baker, *see* note 255.

Middle School, Lake Middle School.²⁶⁶ All four schools were identified as high-need, with some of the district's largest numbers of suspensions, tickets, and arrests. In the 2004-2005 school year, there were 350 out-of-school suspensions, four expulsions, and 72 tickets and arrests at Skinner Middle School;²⁶⁷ 220 out-of-school suspensions, three expulsions, and 22 tickets and arrests at Horace Mann Middle School;²⁶⁸ and 288 out-of-school suspensions, five expulsions, and 58 tickets and arrests at Lake Middle School.²⁶⁹

At the end of the 2006-2007 school year 213 students were referred to the pilot Restorative Justice Program at the four schools.²⁷⁰ The reduction in out-of-school suspensions from the baseline school year, 2004-2005, was 29% (reflecting a decrease from 1,146 to 835).²⁷¹ Expulsions were reduced at Skinner Middle School by 100% and 43% at Horace Mann Middle School.²⁷² Cumulatively, there were 26% fewer students expelled across the four schools in the 2006-2007 school year.²⁷³ In the 2007-2008 school year, 812 students were referred to the Restorative Justice Program.²⁷⁴ In addition to the four pilot schools, the grant-funded phase of the Restorative Justice Program was expanded to include Abraham Lincoln High School, Rishel Middle School and Kunsmiller Middle School.²⁷⁵ District-wide outcomes of the Restorative Justice Program reflected positive progress in addressing the negative impacts of punitive discipline.²⁷⁶ For example, in all four of the original pilot schools there was a continued decrease in school expulsions, from 23 in 2005-2006 to 6 in 2007-2008.²⁷⁷ Suspensions were also reduced at all four schools. At Horace Mann Middle School, suspensions decreased from 218 (2005-2006 baseline year) to 77 (2007-2008),²⁷⁸ and at Skinner Middle School, suspensions

²⁶⁶ *Id.*; Interview Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (May 20, 2011).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ Baker, *see* note 255.

²⁷⁰ *Id.* at 8; Interview Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (Mar. 26, 2010). The only full-year program implemented was at North High School, the programs at Skinner Middle School, Horace Mann Middle School, and Lake Middle School were implemented mid-year,

²⁷¹ Myriam L. Baker, *DPS Restorative Justice Project Executive Summary*, DENVER PUB SCHS., 2007-2008, 13 (2008)

²⁷² Baker, *see* note 271 at 14.

²⁷³ *Id.*

²⁷⁴ *Id.*; Interview with Cairns, *see* note 18.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 1.

²⁷⁷ *Id.* at 6-7.

²⁷⁸ *Id.* at 6.

decreased from 249 (2005-2006 baseline year) to 154 (2007-2008).²⁷⁹

During the grant-funded phase, outcomes of the Restorative Justice Program reflect that 15% of referred students showed an 87% reduction in the number of office referrals during the second semester compared to the first semester and 13% had an average reduction of 92% in the number of out-of-school suspensions in the second semester.²⁸⁰ In each of the pilot schools, including North High School, referred students also showed an improvement in attendance and tardiness. Specifically, 13% of all students referred to the Restorative Justice Program improved their attendance and 18% improved their tardiness.²⁸¹ Additionally, 13% of all referred students reduced the average number of their out-of-school suspensions and 10% reduced office referrals they received.²⁸² Based on data collected in the 2007-2008 school year, students who showed improvements in these areas were also more likely to have participated in multiple restorative justice interventions.²⁸³ Across all of the grant-funded phase pilot schools in the 2008-2009 school year 1,235 students were referred to the Restorative Justice Program.²⁸⁴ Furthermore, in the 2008-2009 school year, 223 cases referred for restorative intervention were in lieu of out-of-school suspension.²⁸⁵ An additional eleven cases had reduced suspension due to participation in the Restorative Justice Program.²⁸⁶ When comparing the baseline school year of the grant-funded phase 2005-2006 to the 2008-2009 school year an overall reduction of over 5,400 suspensions in schools is revealed as a result of the Restorative Justice Program.²⁸⁷ Expulsions also exhibited a downward trend. Analysis of expulsions in the first two years of the grant-funded phase showed reductions ranging from 32% to 75%.²⁸⁸

In 2009-2010, a sample of 293 students that participated in at least three restorative interventions over the course of the school year was used to assess the impact of involvement in multiple instances of restorative interventions on such measures as school discipline, attendance,

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 5.

²⁸¹ *Id.* at 3.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ Myriam L. Baker, *DPS Restorative Justice Project: Year Three. Year End Report 2008-2009*, DENVER PUB. SCHS, 17 (2009).

²⁸⁵ *Id.* at 18.

²⁸⁶ *Id.* at 14.

²⁸⁷ *Id.* at 15.

²⁸⁸ *Id.* at 16.

and social skills.²⁸⁹ The numbers of failing grades for targeted students was compared between the first and second semesters. Failing grades decreased for 30% of the targeted students by 50%.²⁹⁰ School attendance was measured as an indicator of school engagement. Absences were compared from the first semester of the school year to the last second. Attendance improved for 31% of students receiving at least two RJ interventions by a 64% reduction in the number of period absences.²⁹¹ The average number was 72 per student in the first semester, and 44 in the second semester.²⁹² Timeliness was improved for 35% of targeted students, as evidenced by a 47% reduction in school tardies from the first semester average of nearly 19 per student to a second semester average of 10 per student.²⁹³ Office referrals logged and out-of-school suspensions were compared for the sample of students between the first and last semesters of the school year. Office referrals were reduced for 20% of targeted students by an 88%, from a first semester average of nearly two per student to a second semester average of about one office referral for every five students.²⁹⁴ Out of school suspensions were reduced for 13% of targeted students by 89%.²⁹⁵

During the grant-funded phase the restorative justice model was refined and the Office of Prevention and Intervention Initiatives developed short and long-term strategies for district-wide implementation. The model for implementation during the grant-funded phase was the placement of a full-time restorative justice coordinator in each of the pilot schools.²⁹⁶ The Office of Prevention and Intervention Initiatives also began working on revisions to the discipline policy to incorporate restorative formally into all discipline processes.²⁹⁷ The Office of Prevention and Intervention Initiatives recognized that without a formal district-wide shift from punitive and retributive practices, implementation of a sustained restorative justice program would be challenging. As has been well-documented and discussed *supra*, punitive practices are often so ingrained with school and district culture that whole school, or whole district, adoption of restorative justice does not occur.²⁹⁸ Consistent with best practices in sustained restorative

²⁸⁹ Myriam L. Baker, *DPS Restorative Justice Project: Year Four 2009-2010. Executive Summary*, DENVER PUB. SCHS, (2010).

²⁹⁰ *Id.* at 2.

²⁹¹ *Id.* at 2-3.

²⁹² *Id.*

²⁹³ *Id.* at 3.

²⁹⁴ *Id.* at 3.

²⁹⁵ *Id.* at 4.

²⁹⁶ Interview with Turley, *see* note 253; Interview with Anderson, *see* note 253; Interview with Cairns, *see* note 253.

²⁹⁷ Thalia González, *Restoring Justice: Community Organizing to Transform School Discipline Policies*, 15 UC DAVIS J. JUV. L. & POL'Y 1, 2-37 (2011); Interview with Turley, *see* note 253; Interview with Anderson, *see* note 253.

²⁹⁸ Interview with Turley, *see* note 253; Interview with Anderson, *see* note 253; Karp et al., *see* note 2; Stinchcomb et al., *see* note 2; Jennings et al., *see* note 15.

justice programs the 2008 revised discipline policy incorporated both traditional and restorative principles. The passage of the 2008 revised discipline code policy marked the beginning of the third phase of implementation in the district.

North High School Implementation of Restorative Justice

The development and implementation of the North High School Restorative Justice Program represented the beginning of the grant-funded phase discussed *supra*. The specific goal of the North High School Restorative Justice Program was to establish an institutional alternative to the exclusive use of punitive discipline.²⁹⁹ North High School was identified as high-need, with some of the district's largest numbers of suspensions, tickets, and arrests. For example, in the 2004-2005 school year, there were 288 out-of-school suspensions, five expulsions, and 68 tickets and arrests at North High School.³⁰⁰ In addition to being identified as high-need by the Office of Prevention and Intervention Initiatives based on the significant numbers of suspensions, tickets, and arrests, North High School was also chosen as a pilot for a restorative justice program as a result of community organizing efforts by Padres y Jóvenes Unidos.³⁰¹

Since the implementation of the North High School Restorative Justice Program there have been two full-time restorative justice coordinators. Unlike other programs discussed *supra* the restorative justice practice at North High School was developed and implemented by Denver Public School employees.³⁰² Such implementation is consistent with a whole school approach³⁰³, which focuses on creating a continuum of complex restorative practices based on sustained relationships between all members of the school community. As interviews with students, teachers, and administrators at North High School have all reflected the placement a full-time restorative justice coordinator within the school community, in contrast to a consultant or contract employee from an outside organization, facilitated the building of trust and involvement of the school leadership.³⁰⁴ Based on the number of cases referred to the Restorative Justice

²⁹⁹ Consistent with whole-school adoption discussed by Thorsborne and others, it was determined that the North High School Restorative Justice Program would become integrated into an broad range of educational services provided by the school focused on inclusion in the school community and academic success. *See* Interview with Turley, note 253; Interview with Anderson, note 253.

³⁰⁰ Baker, *see* note 255.

³⁰¹ González, *see* note 297 at 23-26.

³⁰² Interview with Turley, *see* note 253; Interview with Anderson, *see* note 253.

³⁰³ Hopkins, *see* note 22; Morrison et al., *see* note 17 at 106-109.

³⁰⁴ Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (Nov. 11, 2009); Interview with Robin Graham, Student Advisor, Smedley Elementary Sch., in Denver, Colo. (May 27, 2010); Interview with North High School students, in Denver, Colo. (May 20-21, 2009); Interview with North High School students, in Denver, Colo. (Nov. 12-13, 2009); Interview with North High School students, in Denver, Colo. (Apr. 19, 2010); Interview with North High School students, in Denver, Colo. (April 21, 2010); Interview with Kenna Moreland, Teacher, North High School, in Denver, Colo. (May 26, 2010); Interview with Beth Pino, Teacher, North High School, in Denver Colo. (May 26, 2010); Interview with Tamara Sealy, Teacher, North High School, in Denver, Colo. (May 27, 2010); Interview with Kari Searles, Teacher, North High School, in Denver, Colo. (May 27,

Program, in its second year a paraprofessional was added to increase targeted restorative interventions.³⁰⁵ Throughout the grant-funded phase of the North High School Restorative Justice Program the restorative justice team conducted trainings for student advisors, disciplinarians, and teachers integrate the restorative justice program into the school culture and meet the goals of the EARSS grant to transition away from reliance on punitive discipline.³⁰⁶

Understanding that school culture change does not happen in one year, the North High School Restorative Justice Program established short, medium, and long-term implementation goals. The initial goal, consistent with the EARSS grant was to reduce suspensions, expulsions and referrals to law enforcement by 20% per year during the first three years by adopting restorative justice practices in lieu of referrals to these traditional punishments.³⁰⁷ Moving beyond the initial goal, the North High School restorative justice and discipline team began focusing on reducing fights, improving school safety, and lowering discipline referrals.³⁰⁸ The North High School restorative justice and discipline team also committed to sustained impacts on school safety through the development of relationships based on mutual respect and meaningful accountability to support a culture of high academic achievement.³⁰⁹

North High School Restorative Justice Program Practices

Consistent with findings by Karp and Breslin³¹⁰ that school based restorative justice program implementation requires adaptation to specific school culture, the North High School Restorative Justice Program utilizes diverse restorative methods. Since its implementation, the goal of the

2010); Interview with Patricia Lopez, North High School, Counselor, in Denver, Colo. (May 27, 2010); Interview with Ryan McKillop, Teacher, North High Sch., in Denver, Colo. (May 27, 2010); Interview with Fuentes, *see* note 18; Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (May 27, 2010); Interview Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (June 28, 2011); Interview with Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (June 15, 2011).

³⁰⁵ Interview with Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (June 16, 2011).

³⁰⁶ Interview with Cairns, *see* note 305. Based on interviews conducted from 2008-2011, it is clear there has been a school wide shift in the culture and acceptance of restorative justice practices. For example, restorative justice questions are now used within classrooms to handle emerging disruptions, students formal and informal lead restorative justice interventions, and all administrators and disciplinarians utilize restorative justice practices when addressing behavioral issues. Interview with Cairns, *see* note 304; Interview with Graham, *see* note 304; Interview with Moreland, *see* note 304; Interview with Pino, *see* note 304; Interview with Sealy, *see* note 304; Interview with Searles, *see* note 304; Interview with Lopez, *see* note 304; Interview with McKillop, *see* note 304; Interview with Fuentes, *see* note 18; Interview with Chavez, *see* note 93.

³⁰⁷ Interview with Cairns, *see* note 305; Interview with Turley, *see* note 253; Interview with Anderson, *see* note 253.

³⁰⁸ Interview with Fuentes, *see* note 18; Interview with Chavez, *see* note 93; Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (Nov. 13, 2009); Interview Cairns, *see* note 305.

³⁰⁹ *Id.*

³¹⁰ Karp et al., *see* note 2.

Restorative Justice Program has been to provide a multi-level alternative to punitive discipline policies and practices in order to promote a healthy school community, impact school safety, and improve academic success. The North High School Restorative Justice Program is based on close and interconnected relationships between the restorative justice coordinator, school resource officer, teachers, and school administrators.³¹¹ While initial research of the restorative justice program at North High School outlined a one-dimensional model for the program, the current Restorative Justice Program utilizes a continuum model, which includes formal and informal restorative practices.³¹² These practices include mediations, conferences, and circles.³¹³ Each of these practices emphasizes key restorative principles of identifying harm, establishing responsibility, and developing a remedy.³¹⁴ The aim of the North High School restorative justice practice is to develop relationships between affected parties, including students, parents, teachers, administrators, and the community. This goal is consistent with a balanced restorative justice model, which encourages integration of victims, offenders, and the school community.

The restorative justice coordinator utilizes specific questions to establish a framework for each of the restorative practices used. These questions are:

1. What happened?
2. What are the effects?
3. Who is responsible? What part of this problem are you responsible for?
4. How will the situation be repaired?

Currently, the North High School Restorative Justice Program utilizes restorative dialogues, preventative classroom circles, mediations, conferences, group conferences, and student-led circles.³¹⁵ Each of these practices specifically link to the Denver Public Schools discipline code policy and discipline matrix. For example, restorative dialogues are one-on-one conversations between a teacher and a student using the restorative justice questions.³¹⁶ Such interventions are used when the issue or behavior correlates with the first step of the discipline ladder. Restorative practices are also connected to the type of issue, nature of responsibility, and impact of the issue.³¹⁷ For example, restorative mediations are used when both parties bear equal responsibility for an incident, for example when a fight occurs. The restorative mediation is

³¹¹ Interview with Graham, *see* note 304; Interview with Moreland, *see* note 304; Interview with Pino, *see* note 304; Interview with Sealy, *see* note 304; Interview with Searles, *see* note 304; Interview with Lopez, *see* note 304; Interview with McKillop, *see* note 304; Interview with Fuentes, *see* note 18; Interview with Chavez, *see* note 93.

³¹² Jennings et al., *see* note 15.

³¹³ *See generally* notes 111-126.

³¹⁴ *See generally* notes 102 & 103.

³¹⁵ Interview with Cairns, *see* note 304.

³¹⁶ *Id.*

³¹⁷ *Id.*

structured in a manner that allows facilitated dialogue, where each party takes turns answering basic restorative questions until an agreement is reached.

Consistent with underlying assumptions of restorative practice, the role of the restorative justice coordinator is to remain neutral. Restorative conferences are similar to mediations, but occur when there is not an equally shared responsibility between parties, for example, when bullying occurs. During a restorative conference, the restorative justice coordinator focuses on correcting an imbalance of power between parties and creating a structure to protect the victim.³¹⁸ Additionally, the restorative justice coordinator is responsible for balancing the needs of the victim and the offender.³¹⁹ Restorative circles, characterized as group conferences in other research, are used for incidents between multiple parties. At North High School a restorative circle is similar to a restorative mediation, in that each party takes turns answering basic restorative questions.³²⁰ In contrast to a two-party restorative mediation, the participants are arranged in non-adversarial positions, and each answers the questions in the order they are sitting.³²¹ Restorative circles at North High School are also structured to include members of the school community who are indirectly impacted by an incident or behavior. Restorative circles are most commonly used in classrooms to support learning outcomes, set boundaries and develop positive relationships.³²² The restorative circles are linked to curriculum, pedagogy, and behavior management.³²³

Typical outcomes of the Restorative Justice Program include personal apologies, public apologies, agreements to be polite, reestablished friendships, agreements to show mutual respect, agreements to address conflicts in private, and community service. After each restorative mediation, conference, or circle, the restorative justice coordinator follows up with all parties to ensure the restorative agreement or outcome is being met. As programmatic evaluations have indicated, restorative justice program participants exhibit an 80% satisfaction rate.³²⁴ Additionally, results have shown that over 75% of participants feel that the agreements are followed completely.³²⁵ Eighty-five percent of all participants felt satisfied with the outcome of the process.³²⁶ In 2009, a student and faculty focus group conducted at North High School found

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ Baker, *see* note 255 at 5.

³²⁵ *Id.*

³²⁶ *Id.*

strong support for the Restorative Justice Program and emphasized it's positive impact on school culture.³²⁷

North High School Restorative Justice Program Impact

During its first two years, the Restorative Justice Program at North High School conducted an estimated 120 formal restorative mediations, conferences, and circles per academic year.³²⁸ In the 2007-2008 school year, the Restorative Justice Program at North High School served 170 students based on 254 infractions.³²⁹ Twenty-eight of the cases referred were known to be in lieu of out-of-school suspension, and an additional 26 cases had reduced length of suspension due to participation in the restorative justice program.³³⁰ Twenty percent of the students in the program reduced their average number of out of school suspensions by 81% in the second semester and 17% of students showed an 80% reduction in the number of office referrals.³³¹ During the 2008-2009 school year the program conducted 199 formal cases. Fifty-seven of these cases were in lieu of suspension.³³²

In the 2009-2010 school year the program conducted 190 formal cases involving 241 students involving 184 infractions.³³³ Seventy-four of the cases were referred in lieu of, or as a condition of reduced out-of-school suspensions.³³⁴ Twenty-six of the cases were referred as a condition of no ticket written by the school resource officer.³³⁵ When considering the program outcomes the positive impact for students at North High school is clear. Forty-one percent of students who participated in the restorative justice program showed improvement in attendance demonstrated by a 44% reduction in school absences from the first semester to the second, or from an average of over 122 period absences per student in the first semester to 68 in the second.³³⁶ Forty-nine percent improved timely school arrival by a 50% reduction in school tardiness in the second semester compared to the first.³³⁷ Thirty-seven percent improved behavior at school as evidenced by a 94% reduction in the number of office referrals made in the second semester compared with

³²⁷ Baker, *see* note 289 at 16.

³²⁸ *Id.* at 6.

³²⁹ Baker, *see* note 271.

³³⁰ *Id.* at 1.

³³¹ *Id.* at 5.

³³² Baker, *see* note 289 at 16.

³³³ Baker, *see* note 289.

³³⁴ *Id.* at 2.

³³⁵ *Id.*

³³⁶ *Id.* at 5.

³³⁷ *Id.*

the first, or from an average of nearly two per student in the first semester to less than one for every nine student in the second.³³⁸ Thirty percent further improved behavior by an 88% reduction in out-of-school suspension in the second semester compared with the first, or from an average of over two incidents per student to less than one for every nine students.³³⁹

Positive outcomes were also clearly demonstrated with respect to school discipline. Seventy-four of the cases were referred in lieu of or as a condition of reduced out-of-school suspensions and 26 as a condition for no ticket written by the school resource officer.³⁴⁰ Out-of-school suspensions were reduced by 13% from the 2008-2009 school year, and by 34% since the program began four years ago.³⁴¹ Expulsions from school were reduced by 85% from the 2008-2009 school year, and by 82% since the project began.³⁴² Referrals to law enforcement were down by 70% compared with last year and 72% since the program began.³⁴³ Since its development and implementation over 830 formal restorative interventions have been conducted at North High School.³⁴⁴ This data does not account for all of the informal restorative processes that have emerged within the North High School community.³⁴⁵ For example, one North High School security guard estimated that he and the Dean conducted 100 informal conferences in the fall of 2009.³⁴⁶

To a large degree, the impact of the North High School Restorative Justice Program cannot be captured by quantitative data alone.³⁴⁷ As discussed in Part II school-based restorative justice implementation and development requires an institutional and individual shift from retributive and exclusionary practice to restorative and inclusionary practice. While quantitative data can exhibit downward trends in suspension and expulsions, as a result of restorative practice, there is not a quantitative measure for the development of positive relationships between students, teachers, and administrators. Moreover as school-based restorative justice programs grow school

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.* at 6.

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ Baker, *see* note 255; Baker, *see* note 271; Baker, *see* note 284; Baker, *see* note 289.

³⁴⁵ Interview with North High School students, *see generally* note 304. Given that these restorative interventions occur prior to an incident becoming a formal discipline matter and are preventative in nature it is difficult to quantitatively identify their impact.

³⁴⁶ Interview with C. Adams, Student Advisor, North High School, in Denver, Colo. (Jan. 8, 2009).

³⁴⁷ This is consistent with the findings of researchers who have studied long-term school-based restorative justice programs. *See* Stinchcomb, et al., note 2 at 132; Morrison et al., note 17 at 351-352, 336; Morrison et al., note 17 at 85, 149, 170-176.

communities become increasingly self-reflective and engaged.³⁴⁸ In terms of school-wide disciplinary outcomes, findings from the North High School Restorative Justice Program are valuable in confirming that when schools adopt alternative processes to address discipline they can build a safer school culture, reduce entry into the school-to-prison pipeline, and positively impact educational performance.

CONCLUSION

Although schools are not responsible for the host of social ills and factors that threaten youth within society, these institutions can exacerbate or ameliorate the vulnerability of youth to negative future outcomes. Schools that create positive communities for youth, by moving away from punitive and zero tolerance discipline policies, will counteract the risks for delinquency associated with academic failure, suspension, expulsion, and dropout. The practice of restorative justice empowers individuals and communities through building healthy relationships. In the context of schools, these practices seek to empower students, parents, teachers, administrators, and community members. Unlike punitive models for regulating schools, restorative justice practice provides school communities with the flexibility to address, confront, and resolve conflicts. In particular, restorative justice practice offers students the chance to voice their opinions and accept responsibility for their actions, while simultaneously allowing administrators to retain the necessary authority to maintain safe schools. As the case studies discussed in this article reveal, the development of sustained school-based restorative justice programs can be an important educational policy solution aimed at eliminating the school-to-prison pipeline. While there is no single answer to school discipline, studies of school based restorative justice programs unequivocally demonstrate the positive impacts of restorative justice within school communities.

³⁴⁸ Interview with Cairns, *see* note 304; Interview with Martin, *see* note 103; Interview with Hartman, *see* note 103; Interview with Lynch, *see* note 103.