



## **Issue Brief: Racial Disparities in School Discipline**

In the wake of tragic mass violence in public schools arises a segment of reactionaries who seek to make schools safer by arming school personnel with more intense practices for exclusionary discipline. Legislators and school administrators propose and implement ideas such as zero-tolerance policies, placement of police or more resource officers inside schools, and even calling in the National Guard to patrol and protect schools.<sup>1</sup> But how will increasing the intensity of policing in schools, coupled with exclusionary, zero-tolerance discipline policies impact the students who are already marginalized by exclusionary practices?

This issue brief will summarize the well-documented racial disparities that occur in school discipline. Additionally, this brief will illuminate the inequity in perpetuating these disparities, addressing the impact of exclusionary practices, such as suspension, expulsion, and arrest on educational attainment. Finally, this brief proposes evidence-based practices, restorative justice, and professional development in the areas of cultural and racial equality as alternatives to unequal and exclusionary discipline practices.

### **I. The School-to-Prison Pipeline**

From the outset, it is important to note that over the last two decades, there has been a decline in youth crime."<sup>2</sup> Of the crime that does exist, far from all those committing crimes are arrested. Of those arrested, most teenage delinquents do not become adult criminals.<sup>3</sup> In fact, research has clearly shown that, in general, schooling is the largest factor in reducing criminal activity.<sup>4</sup> However, schooling in the United States has become increasingly policed as districts gravitate toward standardization, zero tolerance, and exclusionary discipline policies. The public school system and the criminal justice system have merged, cultivating one of the most notorious civil rights issues of this generation: the school-to-prison pipeline.

A student can encounter a continuum of entry points that will propel him or her down the school-to-prison pipeline, including school-based suspensions, expulsions, or alternative education program placement, and including more serious legal infractions or probation violations, all of which can ultimately involve the juvenile justice system, criminal prosecution, and incarceration in the adult penal system.<sup>5</sup>

#### **A. Policing and School Arrests**

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Although overall crime has decreased in the past twenty years, nine percent of male youth aged 10 to 17 years are arrested annually.<sup>6</sup> One quarter of those arrests occur at school.<sup>7</sup> The high incidence of arrests at school is a new pattern. Children are much more likely today to be arrested at school than their parents were a generation ago.<sup>8</sup>

Part of the reason for the new trend comes from increased police presence in schools, which has significantly increased over the past decade. Outside of prison and jail inmates, public school students are perhaps the most policed group in the country right now.<sup>9</sup> School districts in some major cities have established their own police departments, which are larger than the entire police departments in some smaller cities. For example, New York City's school safety division is larger than the entire police force in Washington D.C., Detroit, or Boston.<sup>10</sup> Nationally, the use of surveillance cameras in schools has increased from 19 percent to 43 percent between 1999 and 2006.<sup>11</sup> In 2005, 68 percent of students reported the use of security guards or police officers present in their schools, up 14 percent from 1999.<sup>12</sup> To get into school every day, 93,000 students in New York City alone pass through metal detectors or subject to searches.<sup>13</sup>

Not surprisingly, the increased presence of law enforcement in schools contributes to more juvenile arrests made at schools for infractions that, a generation ago, would have been handled by teachers or administrators.<sup>14</sup> For example, in Clayton County, Georgia, when police officers were introduced into the schools, referrals directly from the schools to juvenile court increased 600 percent over a three-year period, but, during that same time period, there was no increase in the number of serious offenses or safety violations.<sup>15</sup> Similar spikes in criminalization of student behaviors upon introduction of police into the school system have been documented in Philadelphia, Pennsylvania, Denver, Colorado, Los Angeles, California, Baltimore, Maryland, and the state of Florida.<sup>16</sup> In Philadelphia, for instance, 4,361 students were taken from the classroom directly into police custody during the 2007-2008 school year.<sup>17</sup>

### **B. Exclusionary Discipline**

Although increased policing in schools contributes significantly to criminalization of minor students behaviors, exclusionary discipline practices play a somewhat more subtle role in constructing the school-to-prison pipeline. Exclusionary discipline practices include suspension from school, expulsion, or involuntary placement into a disciplinary alternative education program. Data regarding rates of suspension and expulsion is generally more transparent than data involving placement in alternative programs. This is because alternative education

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programs, for the most part lack definition and accountability. In other words, school districts are endowed with much discretion in creating and implementing their own alternative education programs, but little oversight exists to ensure that students who are placed in alternative education programs receive an adequate education.

As for suspension from school as an exclusionary discipline practice, from 1974 to 2000, the number of students suspended from school each year nearly doubled.<sup>18</sup> In 2006, one out of every fourteen students was suspended at least once during the academic year.<sup>19</sup> The increase in zero tolerance policies is partially to blame for taking disciplinary discretion out of the hands of school personnel and mandating suspension or expulsion for certain infractions. On the other hand, poor implementation of those policies in a school's code of conduct is also to blame for providing harsh consequences for vaguely-defined infractions. For instance, in Detroit public schools, students can be suspended for twenty days for insubordination, talking or making noises in class, or public displays of affection.<sup>20</sup> The same consequence is available for more serious infractions such as bringing drugs or weapons to school. About 90% of public schools have some sort of zero tolerance policy in place.<sup>21</sup> Forty-one states require their schools to report certain infractions to law enforcement.<sup>22</sup> Thus, as schools attempt to comply with mandates to make school "safer," they compose discipline codes that rely heavily on exclusionary discipline practices. The result is a code of conduct that provides too little discretion in administration of discipline, but too much discretion in defining the conduct to be disciplined.

### **II. Race and Discipline**

In 2000, black students represented 17 percent of all public school students, but they accounted for 34 percent of school suspensions.<sup>23</sup> Six years later, in 2006, black students again represented 17 percent of all public school students, but they accounted for 37.4 percent of all suspensions and 37.9 percent of all expulsions.<sup>24</sup> This pattern of racial disparity in administration of school discipline, especially exclusionary discipline practices, has been well-documented over the past 35 years.<sup>25</sup> The disproportionate impact of exclusionary discipline on minority students compared with their white counterparts is undisputed. For instance, in the 2006-2007 school year, no state suspended more white students than black students.<sup>26</sup> Black students are also twice as likely as white students to be educated in a more restrictive environment, such as an alternative education program.<sup>27</sup>

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Black students are not only referred for discipline more often than their white peers, but they are also subjected to harsher consequences for less serious behavior and for more subjective reasons than white students.<sup>28</sup> In other words, “minorities are more likely to be given extreme forms of punishment, despite not being involved in more serious acts.”<sup>29</sup> For example, one study found that white students were referred to the office more frequently for “offenses that appear more capable of objective documentation: *smoking, vandalism, leaving without permission, and obscene language*. ... In contrast, African American students were referred more often for *disrespect, excessive noise, threat, and loitering*, behaviors that would seem to require more subjective judgment.”<sup>30</sup> Overall, harsher sanctions for minor behaviors such as tardiness, absences, noncompliance, and disrespect have cultivated a systematic way to push students, particularly black students, out of school.<sup>31</sup>

These types of exclusionary disciplinary practices, which remove students from the school community and academic instruction, have been shown to contribute to delinquency, ultimately perpetuating the school-to-prison pipeline.<sup>32</sup> Meanwhile, exclusionary discipline practices have continuously been shown to neither deter nor correct problematic behaviors.<sup>33</sup> Instead, it has been well-documented that exclusionary discipline practices, suspensions, expulsions, and zero tolerance policies have significantly increased minority representation in the juvenile justice system.<sup>34</sup>

### **A. Causes of Racial Disparity in Discipline**

Much research has been conducted to attempt to isolate factors that may explain racial disparities in school discipline, and those studies have largely found that an institutional, systemic factor is to blame.<sup>35</sup> For instance, there is no evidence that racial disparities in school discipline can be explained through higher rates of disruption among black students.<sup>36</sup> Researchers have instead found that “even when we control for differences in behavior, student demeanor or personality (concentration, extroversion, closeness with teacher), grades, and other factors, African-American students are both more likely to be disciplined and have more disciplinary reports than other students.”<sup>37</sup> The “process of continued discrimination and disengagement may be seen as early as the elementary years and continues over time.”<sup>38</sup> Likewise, in examining factors leading to higher rates of dropout among black students, researchers have found little evidence that factors such as educational expectations, school

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attachment, or friend support play nearly as large a role as institutional responses and increasingly punitive zero tolerance educational climates in the “path to dropout.”<sup>39</sup>

Suggesting the darkest explanation for the clear discrepancies in school discipline for black and white students, many studies have tested the “underclass” hypothesis and found disparities in the dispersal of educational resources in response to perceived racial threat.<sup>40</sup> In other words, “[t]here is a pervasive perception that black males are ‘threatening’ and ‘deviant.’ These fears, whether conscious or subconscious, apparently contribute to group action.”<sup>41</sup> In the United States, we have an “underclass” which is disproportionately black and brown.<sup>42</sup> “[A]s the underclass grows, so does the use of prisons as a means to protect the dominant position of those at the top of the social hierarchy.”<sup>43</sup> Thus, the school-to-prison pipeline becomes justified by the need to protect the safety of students.<sup>44</sup> Under this theory, once a student is arrested, the school is validated in some pre-existing notion of the child’s deviant behavior.<sup>45</sup>

It is nearly impossible to show “absolute proof” of racial discrimination. However, based on the existing research, it is clear that “some form of systematic bias in the use of school suspension and expulsion.”<sup>46</sup> Thus, certain processes at the school level contribute to the school-to-prison pipeline,<sup>47</sup> and several theories account for why, in an outwardly “equal” system, clear biases exist when it comes to disciplining students of color. For example, “marginalizing students may be attractive where it (1) immediately relieves school administrator fatigue, (2) extends the zero tolerance and punitive approach that has plagued the criminal justice system and allows administrators and politicians to appear “tough,” (3) reduces students’ competition for resources, (4) rids school officials of the task of educating problem students, and (5) artificially boosts accountability testing scores.”<sup>48</sup> Additionally, it does not cost much to exclude a student from the educational setting; nor does it require individualized decision-making by an administrator when a child is simply referred to law enforcement.<sup>49</sup> Therefore, because these options require less expense of resources, they are attractive practices for administering discipline.

### **B. Negative Impacts: Perpetuating the Pipeline for Students of Color**

Results of a recent longitudinal study that controls for more personal characteristics leading to high school dropout, such as neighborhood, family, peer, and individual characteristics, show that arrest has a direct effect on high school dropout rate, especially among minority students.<sup>50</sup> These results imply that institutional responses to arrest, rather than social-psychological factors,

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are responsible for the negative impact arrest has on educational attainment.<sup>51</sup> “Indeed, by ruling out the importance of such person-level mechanisms, we can direct attention to the importance of institutional responses and the increasingly punitive ‘zero tolerance’ educational climate along the path to dropout.”<sup>52</sup>

A student’s relationship with school staff members and teachers strongly influences his or her academic engagement, academic achievement, discipline, and dropout potential.<sup>53</sup> Therefore, a discrimination against black students in the early stages of their school years, such as in elementary school, can have particularly devastating consequences for later in life.<sup>54</sup> When a student is arrested, teachers and administrators perceive that student’s behavior as intensely worse than “normal” delinquency, and they are more likely to adversely react to that student, triggering further alienation from school.<sup>55</sup> To the extent that school personnel or law enforcement in the school setting initiate the arrest, the alienation increases. Particularly as schools unequally apply exclusionary practices to minority students, those students become more alienated from school and also more likely to engage in the types of behaviors the exclusionary policies were intended to prevent.<sup>56</sup>

Arrest decreases the odds of high school graduation by over 70 percent.<sup>57</sup> Additionally, arrest during adolescence hinders the transition to adulthood in other ways.<sup>58</sup> Even if an arrested student is permitted to return to school, that student is already dangerously close to falling in to the school-to-prison pipeline, or at least to potential dropout. For instance, students who have been arrested may accrue unexcused absences that result in failing grades or being dropped from school because of excessive absences.<sup>59</sup> Students who have been arrested may voluntarily drop out because of alienation from school or because he or she recognizes the stigma of a criminal record.<sup>60</sup> Contact with the criminal justice system limits a student’s future employment opportunities.<sup>61</sup> School-based arrest can also result in devastating psychological effects, including public humiliation, diminished self-worth, distrust of law enforcement, distrust of the school personnel, and ultimate alienation from school.<sup>62</sup>

Consistent documentation has against found that rather than making schools safer places, exclusionary disciplinary policies further deprive students of educational opportunities.<sup>63</sup> In fact, in a 2010 report, The Advancement Project noted that punitive discipline policies have led to a tripling of the national prison population from 1987 to 2007.<sup>64</sup> Thus, “although zero tolerance has given some school and community stakeholders a sense of security by temporarily emptying

schools of students with ‘violent’ dispositions and putting them in prisons, these policies have done little to remove the despair, alienation, fear, and violence that pervade both U.S. schools and U.S. society.”<sup>65</sup>

### III. Recommendations

School districts have the responsibility of implementing effective strategies to combat racial disproportionality in discipline practices. “Even if discrepancies in discipline are not racially motivated, the overrepresentation of black students and those of lower socioeconomic status in school discipline contributes to racial stratification in school and society.”<sup>66</sup> This “stratification” in the past has brought about landmark lawsuits such as *Brown v. Board of Education* and, more recently, *Parents Involved in Community Schools v. Seattle School District No. 1*. However, there are numerous hurdles involved in taking legal action based on statistical disparities. Thus, we are left with extra-judicial, practical, evidence-based approaches for combating this major civil rights issue within our schools.<sup>67</sup>

Compiling some of the best practices and recommended approaches to ending racial disparities in exclusionary discipline, the Children’s Law Center recommends the following courses of action:

1. Schools and children’s advocates should work together to address the school-to-prison link in elementary and intermediate grades, promising a greater chance of dissolving the link for any given child.<sup>68</sup>
2. Legislators, educational policy-makers, and educational institutions must take a holistic approach to disincentivizing race disparities in disciplinary action, and should instead adopt incentives that allow each child a real chance.<sup>69</sup>
3. Educational institutions should recognize the impact of outside factors on student behavior that may also lead to discipline disparities, including:
  - Residential segregation and unequal housing which create isolated, poor schools;
  - Extreme punitive approaches to misconduct in the criminal justice system;
  - Existing incentives for school administrators to exclude students; and
  - Perceptions of poor and minority students that encourage marginalization.<sup>70</sup>
4. States should provide incentives to increase accountability in several areas, including:
  - Operation of alternative education programs
  - Increasing graduation rates, beginning with incentives in intermediate grades
  - Elimination of zero-tolerance policies
  - Adoption of restorative justice practices
  - Adoption of positive behavior support practices

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- Implementation of stringent due process procedures for school discipline matters
  - Quality cultural and diversity training for all school personnel who interact with students, including school resource officers
  - Promotion of respectful school climates<sup>71</sup>
5. Communities should seek to improve the quality of educational services for all children.<sup>72</sup>

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<sup>1</sup> See S.B. 3692, 112th Cong., 2d Sess. (2012).

<sup>2</sup> Thalia Gonzalez, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 J.L. & EDUC. 281, 287 (April 2012), citing Jeffrey A. Butts & Daniel P. Mears, *Trends in American Youth Crime*, JUV. JUST. & DELINQUENCY 23 (2011).

<sup>3</sup> David S. Kirk & Robert J. Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, 86 SOC. OF EDUC. 36, 38 (Jan. 2013).

<sup>4</sup> Michael Rocque & Raymond Paternoster, *Understanding the Antecedents of the “School-to-Jail” Link: The Relationship Between Race and School Discipline*, 101 J. CRIM. L. & CRIMINOLOGY 633, 634 (Spring 2011), citing Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*, 94 AM. ECON. REV. 155, 183 (2004).

<sup>5</sup> Gonzalez, *supra* note 2, at 292, citing ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 18 (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf).

<sup>6</sup> Kirk & Sampson, *supra* note 3, citing Office of Juvenile Justice and Delinquency Prevention 2009.

<sup>7</sup> Kirk & Sampson, *supra* note 3, at 37.

<sup>8</sup> Gonzalez, *supra* note 2, at 283, citing ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 18 (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> Gonzalez, *supra* note 2, at 288.

<sup>11</sup> Zachary W. Best, Note, *Derailing the Schoolhouse-to-Jailhouse Track: Title VI and a New Approach to Disparate Impact Analysis in Public Education*, 99 GEO. L.J. 1671, 1677 (Aug. 2011), citing ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 18 (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf).

<sup>12</sup> *Id.*



<sup>13</sup> *Id.*

<sup>14</sup> Gonzalez, *supra* note 2, at 288 (“The collaboration between schools and law enforcement has increased the number of youth referred to juvenile court for minor misbehaviors that in the past would have likely been handled by school administrators”), citing Aaron Kupchik, HOMEROOM SECURITY: SCHOOL DISCIPLINE IN AN AGE OF FEAR, 85 (2010) (“[S]chool resource officers often look for ways to redefine misbehavior as criminal, even when the label doesn’t apply”); see also Best, *supra* note 11, at 1680 (“[I]ncreased involvement of security guards and police officers in schools has made student encounters with law enforcement more likely, including fines and arrests for events traditionally handled by teachers and administrators”).

<sup>15</sup> Gonzalez, *supra* note 2, at 288, citing M. Lynn Sherrod, Bryan Huff & Steven Teske, *Childish Behavior; Criminal Behavior*, Huntsville Times, June 1, 2008, A23.

<sup>16</sup> See Gonzalez, *supra* note 2, at 288.

<sup>17</sup> Best, *supra* note 11, at 1673, citing ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 18 (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf).

<sup>18</sup> Gonzalez, *supra* note 2, at 283, citing Johanna Wald & Daniel Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 99 NEW DIRECTIONS FOR YOUTH DEV. 9, 10 (2003); see also Best, *supra* note 11, at 1676, citing DANIEL J. LOSEN & RUSSELL J. SKIBA, SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS 2 (2010), available at [http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/suspended-education-urban-middle-schools-in-crisis/Suspended-Education\\_FINAL-2.pdf](http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/suspended-education-urban-middle-schools-in-crisis/Suspended-Education_FINAL-2.pdf).

<sup>19</sup> Gonzalez, *supra* note 2, at 283, citing ADVANCEMENT PROJECT, *Education on Lockdown: The Schoolhouse to Jailhouse Track* (2005), available at <http://www.advancementproject.org/sites/default/files/publications/FINALOLrep.pdf>.

<sup>20</sup> Best, *supra* note 11, at 1677, citing ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 18 (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf).

<sup>21</sup> Best, *supra* note 11, at 1677, citing Ivan Eugene Watts & Nirmala Erevelles, *These Deadly Times: Reconceptualizing School Violence by Using Critical Race Theory and Disability Studies*, 41 AM. EDUC. RES. J. 271, 281 (2004).

<sup>22</sup> Gonzalez, *supra* note 2, at 288, citing Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis* 11 (2010), available at [http://www.splcenter.org/sites/default/files/downloads/publications/Suspended\\_Education.pdf](http://www.splcenter.org/sites/default/files/downloads/publications/Suspended_Education.pdf).

<sup>23</sup> Best, *supra* note 11, citing NAACP LEGAL DEF. & EDUC. FUND, INC., *Dismantling the School-to-Prison Pipeline* 7 (2005), available at [http://naacpldf.org/files/publications/Dismantling\\_the\\_School\\_to\\_Prison\\_Pipeline.pdf](http://naacpldf.org/files/publications/Dismantling_the_School_to_Prison_Pipeline.pdf).

<sup>24</sup> Gonzalez, *supra* note 2, at 283, citing NAACP LEGAL DEF. & EDUC. FUND, INC., Annual Report 43 (2009), available at [http://naacpldf.org/files/publications/NAACPLDF\\_2007-2009\\_Annual\\_Report.pdf](http://naacpldf.org/files/publications/NAACPLDF_2007-2009_Annual_Report.pdf).

<sup>25</sup> Best, *supra* note 11, at 1673, citing Russell J. Skiba et al., THE COLOR OF DISCIPLINE: SOURCES OF RACIAL AND GENDER DISPROPORTIONALITY IN SCHOOL PUNISHMENT 1, IND. EDUC. POL’Y CENTER, Policy Research Report #SRS1 (2000), available at [www.indiana.edu/safeschl/cod.pdf](http://www.indiana.edu/safeschl/cod.pdf).

<sup>26</sup> Gonzalez, *supra* note 2, at 292, citing ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 18 (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf).

<sup>27</sup> Torin D. Togut, Symposium, *Keeping the Needs of Students with Disabilities on the Agenda: Current Issues in Special Education Advocacy: The Gestalt of the School-to-Prison Pipeline: The Duality of Overrepresentation of Minorities in Special Education and Racial Disparity in School Discipline on Minorities*, 20 AM. U. J. GENDER SOC. POL’Y & L. 163 (2011), citing Overidentification Issues Within the Individuals with Disabilities Education Act and the Need for Reform: Hearing Before the H. Comm. on Educ. and the Workforce, 107th Cong. 26-42 (2001) (testimony of Rep. Chaka Fattah).

<sup>28</sup> *Id.* at 177, citing Russell J. Skiba, et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 16 (2000).

<sup>29</sup> Rocque & Paternoster, *supra* note 4, at 634, citing Russell J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Discipline*, 34 URB. REV. 317, 331-332 (2002).

<sup>30</sup> Russell J. Skiba, Suzanne E. Eckes & Kevin Brown, *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y.L. SCH. L. REV. 1071, 1089 (2009/2010).

<sup>31</sup> Gonzalez, *supra* note 2, at 287.

<sup>32</sup> *Id.* at 287-288, citing Eugene Maugin & Rolf Loeber, *Academic Performance and Delinquency*, 20 CRIM. & JUST. 145-264 (1996).

<sup>33</sup> See Gonzalez, *supra* note 2, at 288, 297 (“Many schools have manifested punitive crime control measures by relying on surveillance technologies and full-time law enforcement officers (citations omitted) despite the fact that there is little to no evidence that these measures or zero tolerance policies served as an effective deterrent”) (“As the 2006 American Psychological Association ten-year evidentiary review of zero tolerance policies concluded, the presence and use of exclusionary zero tolerance policies did not improve school safety”), citing American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, 63 AM. PSYCH. 852, 853-854 (2008).

<sup>34</sup> Gonzalez, *supra* note 2, at 292, citing ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 18 (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf)).

<sup>35</sup> See, e.g. Kirk & Sampson, *supra* note 3, (finding that “institutional responses and disruptions in students’ educational trajectories, rather than social-psychological factors, are responsible for the arrest-education link”).

<sup>36</sup> Skiba, Eckes & Brown, *supra* note 30, at 1089; see also Rocque & Paternoster, *supra* note 4, at 662 (“[D]isproportionality in discipline is not explained by differential behavior and is thus unjustified”).

<sup>37</sup> Rocque & Paternoster, *supra* note 4, at 663.

<sup>38</sup> *Id.* at 662.

<sup>39</sup> Kirk & Sampson, *supra* note 3, at 55.

<sup>40</sup> India Geronimo, Symposium, *Systemic Failure: The School-to-Prison Pipeline and Discrimination Against Poor Minority Students*, 13 J.L. SOC'Y 281, 297-298 (Fall 2011), citing H. GEORGE FREDRICKSON, SOCIAL EQUITY AND PUBLIC ADMINISTRATION: ORIGINS, DEVELOPMENTS, AND APPLICATIONS 110 (M.E. Sharpe 2010).

<sup>41</sup> *Id.* at 297, citing Andrew Lucas Blaize Davies & Alisa Pollitz Worden, *State Politics and the Right to Counsel: A Comparative Analysis*, 43 LAW & SOC'Y REV. 187, 195 (2009) (noting that "racial threat [hypothesis]" posits that "up to a majoritarian tipping point, there is a positive correlation between proportions of racial minorities and repressive policies").

<sup>42</sup> *Id.* at 296.

<sup>43</sup> *Id.*, citing Kevin B. Smith, *The Politics of Punishment: Evaluating Political Explanations of Incarceration Rates*, 66 J. POL. 925, 927 (2004).

<sup>44</sup> Best, *supra* note 11, at 1677.

<sup>45</sup> Kirk & Sampson, *supra* note 3.

<sup>46</sup> Togut, *supra* note 27, at 179, citing Rebecca Gordon et al., *Facing the Consequences: An Examination of Racial Discrimination in U.S. Public Schools*, (Mar. 2000), available at <http://eric.ed.gov/PDFS/ED454323.pdf>.

<sup>47</sup> Geronimo, *supra* note 40, at 292.

<sup>48</sup> *Id.* at 282-283.

<sup>49</sup> *Id.* at 294.

<sup>50</sup> Kirk & Sampson, *supra* note 3.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 55, citing Kathleen Nolan, *Police in the Hallways: Discipline in an Urban High School*, University of Minnesota Press (2011).

<sup>53</sup> *Id.* at 39.

<sup>54</sup> Rocque & Paternoster, *supra* note 4, at 638.

<sup>55</sup> Kirk & Sampson, *supra* note 3, at 39.

<sup>56</sup> Best, *supra* note 11, at 1679.

<sup>57</sup> Kirk & Sampson, *supra* note 3, at 41, citing Jon Gunnar Bernberg & Marvin D. Krohn, *Labeling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood*, 41(4) CRIMINOLOGY 1287-1318 (2003).

<sup>58</sup> *Id.* at 54.

<sup>59</sup> *Id.* at 40.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Best, *supra* note 11, at 1680, citing THE PUB. POLICY RESEARCH INST., STUDY OF MINORITY OVERREPRESENTATION IN THE TEXAS JUVENILE JUSTICE SYSTEM FINAL REPORT (2005).

<sup>63</sup> Gonzalez, *supra* note 2, citing ADVANCEMENT PROJECT, *Education on Lockdown: The Schoolhouse to Jailhouse Track* (2005), available at

<http://www.advancementproject.org/sites/default/files/publications/FINALEOLrep.pdf>;

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[http://www.splcenter.org/sites/default/files/downloads/effective\\_discipline-MS.pdf](http://www.splcenter.org/sites/default/files/downloads/effective_discipline-MS.pdf); Heather Cobb, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile*

*Court*, 44 HARV. C.R.-C.L. L. REV. 581, 582-88 (2009); Deborah N. Archer, *Introduction: Challenging the School to Prison Pipeline*, 54 N.Y.L. SCH. L. REV. 867, 868-70 (2010); (other citations omitted).

<sup>64</sup> *Id.*, citing ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL TO PRISON PIPELINE (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf).

<sup>65</sup> Best, *supra* note 11, at 1679, citing Ivan Eugene Watts & Nirmala Erevelles, *These Deadly Times: Reconceptualizing School Violence by Using Critical Race Theory and Disability Studies*, 41 AM. EDUC. RES. J. 271, 282 (2004).

<sup>66</sup> Togut, *supra* note 27, at 178, citing Christine Bowditch, *Getting Rid of Troublemakers: High School Disciplinary Procedures and the Production of Dropouts*, 40(4) SOC. PROBLEMS 493, 506 (Nov. 1993).

<sup>67</sup> Skiba, Eckes & Brown, *supra* note 30, at 1112.

<sup>68</sup> See Rocque & Paternoster, *supra* note 4.

<sup>69</sup> Geronimo, *supra* note 40, at 284.

<sup>70</sup> *Id.* at 298.

<sup>71</sup> *Id.* at 299.

<sup>72</sup> Togut, *supra* note 27, at 179.