RESTORATIVE PRACTICES: RIGHTING THE WRONGS OF EXCLUSIONARY SCHOOL DISCIPLINE

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INTRODUCTION

Schools are beset with complex challenges in their efforts to educate students. The tough policies created to ensure safe learning environments appear to be increasingly ineffective, generating racial disproportionality in discipline, academic failure, high dropout rates, and a clear school-to-prison pipeline. The drive to meet the standards on state or national tests have generated pressure-cooker classrooms with little time for students who need more attention or for addressing students' emotional or social needs. A growing number of sources suggest that some of these conditions are exacerbated by a lack of teacher preparation in student management,[1] lack of training in culturally competent practices,[2] and gaps in familiarity between students and teachers that reinforce okay-racial stereotypes.[3] Much of this fallout predictably and disproportionately affects economically disadvantaged African American and Hispanic students.

Usually, public policies with legal consequences are the first remedies generated to correct disparities because of the commonly held prospect that the law guarantees greater equity. Such top down and legally mandated measures, however, commonly fall

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    1.   Frances Vavrus & KimMarie Cole, "*I Didn't Do Nothin'": The Discursive Construction of School Suspension*, 34 URB. REV. 87, 108–09 (2002).
    2.   *See* ANN ARNETT FERGUSON, BAD BOYS: PUBLIC SCHOOLS IN THE MAKING OF BLACK MASCULINITY 50 (2000); *see also* Brenda L. Townsend, *The Disproportionate Discipline of African American Learners: Reducing School Suspensions and Expulsions,* 66 EXCEPTIONAL CHILD 381, 381, 383–84 (2000).
    3.   *See* John A. Bargh & Tanya L. Chartrand, *The Unbearable Automaticity of Being*, 54 AM. PSYCHOLOGIST 462, 465 (1999); *see also* Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 LAW & HUM. BEHAV. 483, 502 (2004).

short because they do not target the root cause. More often, they produce short-sighted and reactionary results because they fail to provide the kind of transformation necessary to shift the current paradigm, which today privileges punitive and exclusionary responses to student behavior as a way to maintain order and keep up with externally decreed instructional schedules. In contrast, there is increasing evidence that when applied to education, restorative justice holds the potential for making a nationwide massive shift to a whole school climate change, which embodies a relational ecology aimed at nurturing the motivational bonds of belonging.[4] Restorative justice, which has been swiftly introduced to school districts as a solution, offers an inclusive community building approach to the classroom and a set of practices that appear to have a significant impact on redirecting the school-to-prison pipeline. However, the clamor for change threatens to upend the processes necessary for successful and sustainable implementation of restorative justice in schools. The rule of law has a unique role to play in ensuring that the roll out of a restorative justice approach proceeds slowly, thoughtfully, and scientifically throughout this country.

The past thirty years have seen a paradigm shift in school disciplinary practices and an unparalleled upsurge in the criminalization of youth behaviors. Whereas student misconduct was traditionally viewed as normative, within the bounds of healthy development, and manageable via traditional school-based interventions, current punitive and exclusionary practices are predicated on the belief that school-based misbehavior is evidence of a dangerous and growing trend in out-of-control youth. This movement is best exemplified by events such as the Columbine High School shootings in 1999 that ushered in an era of zero-tolerance school policies in an effort to ensure greater school safety.[5] Indeed, by 1997, 79% of the nation's schools had adopted zero-tolerance policies toward alcohol, drugs, and violence.[6] These poli-

    4. Brenda E. Morrison & Dorothy Vaandering, *Restorative Justice: Pedagogy, Praxis, and Discipline*, 11 J. SCH. VIOLENCE 138, 139 (2012).

    5. Allison R. Brown, *Reconsidering School Safety Policies After Sandy Hook Shooting*, WASH. POST (Jan. 10, 2013), http://www.washingtonpost.com/blogs/therootdc/post/reconsidering-school-safety-policies-after-sandy-hook-shooting/2013/01/10/36b14fa4-5b30-11e2-beee-6e38f5215402_blog.html; *see* DEBORAH FOWLER ET AL., TEX. APPLESEED, TEXAS' SCHOOL-TO-PRISON PIPELINE: TICKETING, ARREST & USE OF FORCE IN SCHOOLS 2 (2010) [hereinafter FOWLER ET AL., TEXAS' SCHOOL-TO-PRISON PIPELINE].

    6. TONY FABELO ET AL., JUSTICE CTR., COUNCIL OF STATE GOV'TS JUSTICE CTR., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO

cies continue to hold sway but are taking different directions. For example, the more recent Sandy Hook Elementary School massacre has resulted in the drafting of bills in several states to arm teachers in the classroom with guns for greater protection.[7]

Unfortunately, zero-tolerance policies, which are meant to increase school safety, instead jeopardize the futures of thousands of students because the policies criminalize youthful actions and create a system of exclusion through punishment that literally pushes students out the door with the message that they are not wanted here. In hindsight, it appears that much of the purging of troublesome students has been spurred by the No Child Left Behind Act ("NCLB"), which in 2002 ushered in high stakes testing—transforming schools into production factories.[8] Students who acted up are removed so that teachers can focus on the remaining students,[9] thereby separating out those who will succeed from those who will fail. The U.S. Department of Education projects that 250,000 more students received out-of-school suspension in 2006–07 than received it four years earlier.[10] In Texas alone, out-of-school suspensions increased 43% during that time.[11]

The purpose of this article is to explain the pressing need for school-based restorative justice as a philosophy and mechanism to alter increasingly negative school climates, redress educators' retributive orientation to student behavior, and redirect the school-to-prison pipeline. Part I discusses the manifestations of the current crisis in education. Although zero tolerance was intended to increase school safety, recent studies attest to the severe iatrogenic consequences including high rates of in-school and out-of-school suspensions, ever-increasing racial disparities in the use of punishment, the misuse of harsh disciplinary procedures with traumatized youth, and growing evidence of educator drop out that parallels the failure of students to complete school. Part II provides background on school-based restorative justice. Besides defining the concept of restorative justice, this part focuses

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STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 3 (2011).

7. *See* John Eligon, *A State Backs Guns in Class for Teachers*, N.Y. TIMES (Mar. 8, 2013), http://www.nytimes.com/2013/03/09/us/south-dakota-gun-law-classrooms.html.

8. *See* ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW "ZERO TOLERANCE" AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 4 (2010), https://b.3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf.

9. FABELO ET AL., *supra* note 6, at 60.

10. ADVANCEMENT PROJECT, *supra* note 8, at 5.

11. *Id.*

on its application to education, the constituents of a whole school approach, and the rapid growth that is occurring throughout the United States. Part III examines the evidence for this approach. Although the use of school-based restorative justice is still in its infancy, numerous studies attest to dramatic reductions in suspensions, increased school attendance, improved academic achievement, lower student drop out rates, financial savings, and decreases in racial disproportionality. Part IV explores the rapid and emerging legislative and institutional response to school-based restorative justice that threatens to upend a process that requires time and precision in implementing a complex, contextualized, and nuanced shift in how educators approach student behavior. In response, efforts to take school-based restorative practices to scale in Texas are described followed by a list of Thirteen Best Practices that provide a values-based guide to whole school implementation. Part V is a call to action that positions social-based restorative justice as an antidote to the fallout from exclusionary punitive practices and a mechanism to enhance those school controlled factors that influence school climate. This part also highlights the likelihood of backlash if implementation of the restorative approach is too rapid or applied without careful consideration to the change process. It concludes with recommendations for how the legal profession can support the successful adoption of school-based restorative justice.

I. IMPACTS OF HISTORICAL PRACTICES

A. *Misguided Strategies for School Safety*

Zero-tolerance policies have birthed still more tough-minded approaches, which collectively contribute to repressive environments, seemingly in the name of safety. Some state legislative bodies, for example, passed laws criminalizing student behaviors such as truancy. Indeed, until 2015, Texas prosecuted children for truancy at double the rate of all other forty-nine states combined.[12] Moreover, the presence of law enforcement, commonly referred to as "school resource officers," on school campuses became normative as police officers today routinely monitor pubic school

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12.   DEBORAH FOWLER ET AL., TEX. APPLESEED, CLASS, NOT COURT: RECONSIDERING TEXAS' CRIMINALIZATION OF TRUANCY 1 (2015), http://static.texastribune.org/media/documents/Truancy-Appleseed.pdf.

hallways, lunchrooms, school grounds, and after-school events. Media accounts have described occasions where pepper spray, Tasers, and trained canines have been used to break up fights and restore order if youth are seen as misbehaving on school property or at school functions.[13] Many school districts have hired their own police commissions using sizable portions of their budgets for security—amounts that eclipse those spent on social work services, curriculum development, or food services.[14] Indeed, it is not surprising that campus policing has become "the largest and fastest growing area of law enforcement in Texas, according to its own professional association."[15]

Accompanying the increase in law enforcement and public safety-centered policy is the response of police to school-related behaviors including "disruption of class, disorderly conduct, disruption of transportation, truancy, and simple assaults related to student fights."[16] The available data does not support the assumed rise in school violence that justifies a strong police presence and stiff disciplinary practices. Violent criminal behavior is quite low. Non-violent property crimes account for most juvenile criminal behavior, with assaults representing approximately 5% of all reported offenses.[17] Indeed "[p]olls of teachers show very little difference between the rate of assaults on teachers in 1956 and in 2003–04 . . . ."[18] This is not to decry the country's increased awareness of bullying, the advent of cyber bullying, and escalating adolescent suicides, some of which occur in response to bullying, but criminal arrests show low rates of exceedingly egregious offenses. Moreover, contrary to popular opinion, there is not a direct relationship between bullying and youth suicide, which has steadily declined over the last two decades and is generally associated with the presence of seven risk factors, all of which must operate at the same time to move a youth to attempt suicide.[19] The risk factors include "history of substance abuse, conduct dis

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13.   FOWLER ET AL., TEXAS' SCHOOL-TO-PRISON PIPLELINE, *supra* note 5, at 2.

14.   *Id*. at 49.

15.   *Id*. at 2.

16.   *Id*. at 1.

17.   *Id*. at 25.

18.   *Id*. at 28.

19.   Richard Lieberman & Katherine C. Cowan, *Bullying and Youth Suicide: Breaking the Connection*, PRINCIPAL LEADERSHIP, Oct. 2011, at 12–13, 15.

order or depression, access to such items as firearms or ropes, internal and external protective factors and vulnerabilities, hopelessness, and impulsiveness . . . ."[20]

B. *Fallout from Punitive Strategies*

Unfortunately, these realities have been hidden until recent research and publicity exposed the consequences from the out-of-control system of suspensions and expulsions for low-level disciplinary infractions. A statewide study of Texas students followed nearly one million seventh graders for six years.[21] Researchers found that "[a]bout 54 percent of students experienced in-school suspension, [and] . . . [t]hirty-one percent of students experienced out-of-school suspension, which averaged two days per incident."[22] Moreover, only 3% of the disciplinary actions were for behaviors that called for mandatory suspensions and expulsions, meaning 97% were based on the discretion of school officials.[23] Special education students were particularly vulnerable. Approximately three-quarters of students with special emotional and physical needs were suspended or expelled at least once.[24] Importantly, these suspensions and expulsions at the 3900 public middle and high schools in Texas did not show a correlation with student risk factors such as economic disadvantage.[25] Indeed, "[t]he proportion of campuses within a single [school] district with higher-than-expected disciplinary rates ranged from 7.7 percent to 46.7 percent . . . . Similarly, the proportion of campuses within a district with lower-than-expected disciplinary rates was as low as 20 percent and as high as 76.9 percent."[26] This suggests that how student behavior was addressed depended on the officials in a particular school.

Although the Texas "study found that African-American students were no more likely than students of other races [and eth-

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20. *Id*. at 15.

21. FABELO ET AL., *supra* note 6, at 6; *see also id*. at ix (asserting that, because Texas has the second largest school system in the country and two-thirds of the student population are non-white, the demographics that inform this research have particular relevance for other states as well).

22. *Id.* at ix.

23. *Id.* at x.

24. *Id*. at xi.

25. *Id*. at 83.

26. *Id*. at 82.

nicities] to commit serious offenses that mandate that a student be removed from the campus,"[27] "African-American students had a 31 percent higher likelihood of a school discretionary action [than did] otherwise identical white and Hispanic students."[28] Indeed, "[a] much larger percentage of African-American (26.2%) and Hispanic (18%) students were placed in out-of-school suspensions for their first violation than were whites (9.9%)."[29]

The use and reuse of increasingly punitive avenues had other serious repercussions. Research findings showed that 31% of "students with one or more suspensions or expulsions repeated their grade level at least once."[30] Worse yet, 15% of students with eleven or more suspensions or expulsions dropped out of school compared to a 2% dropout rate for students with no disciplinary actions.[31] There was also evidence of a negative relationship between suspensions and expulsions and involvement in the juvenile justice system. Specifically, "juvenile probation youth with one school disciplinary referral were 10 percent more likely to become chronic offenders than juveniles with no school disciplinary referrals."[32] Indeed, "[e]ach additional referral increased a youth's risk of re-offense by an added 10 percent."[33] In contrast, "[o]f those students who had no involvement in the school disciplinary system, just 2 percent had contact with the juvenile justice system."[34]

C. *Disproportionate Use of Discipline*

Another outcome of the punitively based system is that African American students shouldered and continue to carry much of the disciplinary burden. The differential of five-and-a-half percentage points between elementary school age African American and white students for out-of-school suspension, for example, grows to seventeen percentage points at the secondary level.[35] Acceleration

27. *Id.* at 46.
28. *Id.* at x.
29. *Id.* at 42.
30. *Id.* at 56.
31. *Id.*
32. *Id.* at 65.
33. *Id.*
34. *Id.* at 66.
35. DANIEL LOSEN ET AL., ELIMINATING EXCESSIVE AND UNFAIR EXCLUSIONARY DISCIPLINE IN SCHOOLS: POLICY RECOMMENDATIONS FOR REDUCING DISPARITIES 4 (2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Disparity_Policy_Full_031214.pdf.

in the discipline gap is also evident for office referrals. African American students are twice as likely to be referred to the office at the elementary school level and up to four times more likely at the middle school level.[36]

Besides the disparity in frequency, the severity of punishment also illustrates the lack of equity. A study in Florida found that in addition to suspending 39% of African American students—compared to 22% of white students and 26% of Hispanics/Latino students—schools also suspended African American students for longer periods of time than other students, even after controlling for poverty.[37] Ironically, "[s]urvey data from 8th and 10th grade Black, White, and Hispanic/Latino students indicate that Black males reported similar or lower uses of drugs, alcohol, and weapons at school compared to other students . . . ."[38] The importance of this glaring racial disparity is reflected in the simple fact that attending a school with more black students, regardless of the school's demographics, increases one's risk of out-of-school-suspension more than engaging in a fight or battery.[39]

Moreover, there is alarming evidence that the racial trend in disproportionate use of punishment starts early. The Civil Rights Data Collection ("CRDC") amassed data on preschool suspensions and expulsions for the first time in 2011–12. Based on over one million students from 99% of schools offering preschool, researchers found that black children represent 18% of preschool enrollment, but 48% of the preschool children who received more than one out-of-school suspension.[40] In comparison, white students represent 43% of preschool enrollment, but made up just 26% of the

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36. Russell J. Skiba et al., *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCHOL. REV. 85, 101 (2011).

37. RUSSELL J. SKIBA ET AL., NEW AND DEVELOPING RESEARCH ON DISPARITIES IN DISCIPLINE 2 (2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_NewResearch_010915.pdf.

38. *Id.*

39. *See* Russell J. Skiba et al., *Parsing Disciplinary Disproportionality: Contributions of Behavior, Student, and School Characteristics to Suspension and Expulsion* 19 (Annual Meeting of the Am. Educ. Research Ass'n, Paper, 2012), http://www.indiana.edu/~equity/docs/SkibaAERAParsingDisciplinaryDisproportionality.pdf [hereinafter Skiba et al., *Contributions of Behavior*].

40. U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS., CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE 7 (2014), http://blogs.edweek.org/edweek/rulesforen gagement/CRDC%20School%20Discipline%20Snapshot.pdf.

preschool children who received more than one out-of-school suspension.[41]

Although African American students are far more likely to be targets of harsh discipline, several other student populations also experience more than their share of suspensions and expulsions. Male students[42] and LGBT students[43] are disciplined at higher rates, as well as students with disabilities who tend to be suspended at over twice the rate of their non-disabled peers.[44] Of all students, however, those who belong to two or more disadvantaged groups show the highest risk of suspension.[45]

D. *Trauma and Punitive Practices*

Behind these punitive practices lies glaring histories of trauma, much of it chronic. A study of over 9000 youths found that almost 80% of youths involved in the juvenile justice system had been exposed to traumatic events associated with physical abuse, sexual assault, domestic violence, and community/school violence.[46] Many youth are themselves victims of this violence. Their exposure is associated with increased risk for delinquent behavior/arrest, learning disorders, academic difficulties, substance use, PTSD, and other mental health problems.[47] These rates are highest among the same groups that are disproportionately affected by zero-tolerance policies, namely racial/ethnic minorities, LGBT youth, children in foster care, and those who are economically disadvantaged.[48]

Although students may behave in ways that provoke suspension or even arrest, zero-tolerance policies and harsh disciplinary procedures have deleterious effects on these youths as well as on

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41.   *Id.*

42.   *See* PRUDENCE CARTER ET AL., DISCIPLINE DISPARITIES SERIES: OVERVIEW 2 (2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_Overview_010 915.pdf; LOSEN ET AL., *supra* note 35, at 4.

43.   *See* CARTER ET AL., *supra* note 42, at 2; LOSEN ET AL., *supra* note 35, at 4.

44.   LOSEN ET AL., *supra* note 35, at 4.

45.   *Id.*

46.   *See* Gail A. Wasserman & Larkin S. McReynolds, *Contributors to Traumatic Exposure and Posttraumatic Stress Disorder in Juvenile Justice Youths*, 24 J. TRAUMATIC STRESS 422, 424 (2011).

47.   *See* ROBERT L. LISTENBEE, JR. ET AL., REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 3–6 (2012), http://www.jus tice.gov/defendingchildhood/cev-rpt-full.pdf.

48.   CARTER ET AL., *supra* note 42, at 1–4.

the safety and learning environment for their peers. Indeed, much of the behavior that has been deemed criminal is increasingly found to be related to brain development and trauma-infused environments—areas that require interventions aimed at increasing self-regulation as well as relational and social skills. Many of these youth who have been victimized by those who are supposed to protect them are suspicious and hostile toward efforts to control their behavior.[49] After growing up in households marked by anger and hostility, they can be easily triggered to re-experience the sense of danger and dread and respond aggressively to protect themselves.[50] Unfortunately, the placement of law enforcement to promote safety has resulted in more youth being detained for non-criminal behaviors such as emotional outbursts.[51] The presence of zero-tolerance policies and related practices likely has created a climate over many years that itself is iatrogenic or resulting from the treatment, i.e., zero-tolerance policies, itself. Consequently, positive interventions are needed not only to address school-related misconduct, but also to change the mindset of the system itself, which is criminally oriented.

E. *The Impact on Teachers*

The negative school climate generated by punitive practices and unequal treatment has also impacted teachers and administrators. The National Commission on Teaching and America's Future reports that 16.8% of teachers turn over annually.[52] In urban schools the rate has risen to 20%.[53] In some urban areas the rate is even higher. In New York City middle schools, 66% of teachers

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49.   Christopher Branson, *Closing the School to Prison Pipeline Through Disciplinary Policies Grounded In Principles of Adolescent Development and Trauma-Informed Care*, 9 (Race, Law, and Justice: Strategies for Closing the School-to-Prison Pipeline, Conference Paper, 2013), https://www.researchgate.net/publication/282870184_Closing_the_School_to_Prison_Pipeline_Through_Disciplinary_Policies_Grounded_in_Principles_of_Adolescent_Development_and_Trauma-Informed_Care.

50.   *Id*. at 10.

51.   *Id*. at 11.

52.   NAT'L COMM'N ON TEACHING AND AMERICA'S FUTURE, THE HIGH COST OF TEACHER TURNOVER 1 (2012), http://nctaf.org/wp-content/uploads/2012/01/NCTAF-Cost-of-Teacher-Turnover-2007-policy-brief.pdf.

53.   Richard M. Ingersoll, *Why Do High-Poverty Schools Have Difficulty Staffing Their Classrooms with Qualified Teachers?*, CTR. FOR AM. PROGRESS (Nov. 19, 2004), https://www.americanprogress.org/issues/education/news/2004/11/19/1205/why-do-high-poverty-schools-have-difficulty-staffing-their-classrooms-with-qualified-teachers/; *see also* U.S. DEP'T OF EDUC., TEACHER ATTRITION AND MOBILITY: RESULTS FROM THE 2004-05 TEACHER FOLLOW-UP SURVEY 7–9 (2007), http://nces.ed.gov/pubs2007/2007307.pdf.

leave within five years.[54] A national survey of teachers leaving the profession found that 44% of teachers left, in part, because of student behavior.[55] Less recognized is the fact that this trend is also manifest in principal turnover. Among school leadership professionals, 50% of new principals quit during their third year in the role and less than 30% stay beyond their fifth year.[56]

Compared with white teachers, though, African American and Hispanic teachers are more likely to stay and particularly so at schools where the student body has similar racial and socioeconomic backgrounds.[57] This pattern, however, is undoubtedly influenced by the fact that of 6 million teachers, 84% of teachers are white and 84% are female[58] while students of color comprise over 50% of students as of 2014.[59] This demographic chasm likely fuels assumptions and stereotypes about racial and ethnic differences because of the lack of familiarity between minority students and predominantly white female teachers.[60] Indeed, teachers have been taught erroneously that personal philosophy or instructional virtuosity should suffice for managing the classroom, leaving

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54. WILLIAM H. MARINELL & VANESSA M. COCA, THE RES. ALL. FOR N.Y.C. SCHS., WHO STAYS AND WHO LEAVES? FINDINGS FROM A THREE-PART STUDY OF TEACHER TURNOVER IN NYC MIDDLE SCHOOLS 7–8 (2013), https://steinhardt.nyu.edu/scmsAdmin/media/users/sg158/PDFs/ttp_synthesis/TTPSynthesis_Report_March2013.pdf.

55. MISS. YOUTH JUSTICE PROJECT, S. POVERTY LAW CTR., EFFECTIVE DISCIPLINE FOR STUDENT SUCCESS: REDUCING STUDENT AND TEACHER DROPOUT RATES IN MISSISSIPPI 2 (2008), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/effective_discipline_MS.pdf.

56. ED FULLER & MICHELLE D. YOUNG, TEX. HIGH SCH. PROJECT: LEADERSHIP INITIATIVE ISSUE BRIEF 1, TENURE AND RETENTION OF NEWLY HIRED PRINCIPALS IN TEXAS 3 (2009), http://www.casciac.org/pdfs/ucea_tenure_and_retention_report_10_8_09.pdf.

57. Betty Achinstein et al., *Retaining Teachers of Color: A Pressing Problem and a Potential Strategy for "Hard-to-Staff" Schools*, 80 REV. EDUC. RES. 71, 85 (2010); *see* Eric A. Hanushek et al., *Why Public Schools Lose Teachers*, 39 J. HUM. RESOURCES 326, 347 (2004); *see also* RICHARD INGERSOLL & HENRY MAY, CONSORTIUM FOR POLICY RESEARCH IN EDUC., RECRUITMENT, RETENTION AND THE MINORITY TEACHER SHORTAGE 27 (2011), http://repository.upenn.edu/cgi/viewcontent.cgi?article=1232&context=gse_pubs.

58. C. EMILY FEISTRITZER, NAT'L CTR. FOR EDUC. INFO., PROFILE OF TEACHERS IN THE U.S. 2011, at 11 (2011), http://www.edweek.org/media/pot2011final-blog.pdf.

59. *See* NAT'L CTR. FOR EDUC. STATISTICS, *Racial/Ethnic Enrollment in Public Schools* (2015), http://nces.ed.gov/programs/coe/indicator_cge.asp.

60. *See* FEISTRITZER, *supra* note 58, at 11. Many of these teachers enter classrooms with little or no knowledge about the backgrounds of their students or how to manage student behavior other than to send disruptive students away. *See* Townsend, *supra* note 2, at 381, 383, 387–88; *see also* Pamela Hudson Baker, *Managing Student Behavior: How Ready Are Teachers to Meet the Challenge?*, AM. SECONDARY EDUC., Summer 2015, at 51, 56; Cathy J. Siebert, *Promoting Preservice Teachers' Success in Classroom Management by Leveraging a Local Union's Resources: A Professional Development School Initiative*, 125 EDUC. 385, 385, 389 (2005).

them ignorant and ill-equipped to respond effectively to students.[61]

F. *Importance of School Controlled Factors*

Recent studies on racial disparities in discipline indicate that school-controlled factors are the strongest predictors of both frequency and disproportionate use of suspensions.[62] These factors include teachers' attitudes and tolerance levels,[63] their classroom management skills,[64] principal attitudes toward discipline,[65] and positive or negative school climate.[66] The significance of school-level characteristics override student demographics and behaviors,[67] suggesting that subtle forms of bias can impact educators' perception of problematic conduct, their subjective responses, and the decisions they make about consequences.

Because the tone for the culture of the school is set by the administration, the principal's attitude toward discipline warrants close scrutiny. Studies have found that students are less likely to receive out-of-school suspensions or expulsions in schools where principals are more oriented toward preventative alternatives.[68] Moreover, the racial temperature decidedly influences school climate, as does academic pressure, student support, and the conveying of warmth between members of the school community.[69] Indeed, so-called "indifferent" schools that score the lowest on measures of warmth/support and academic expectations show the

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61. *See* JULIE GREENBERG ET AL., TRAINING OUR FUTURE TEACHERS: CLASSROOM MANAGEMENT ii–iii (2014). This reality feeds teachers' disillusionment and likely contributes to their premature decisions to leave the field of education. Ominously, enrollment in California teaching education programs declined by 53% over the past five years. *See* Eric Westervelt, *Where Have All The Teachers Gone?*, NPR (Mar. 4, 2015, 8:29 PM), http://www.npr.org/sections/ed/2015/03/03/389282733/where-have-all-the-teachers-gone.

62. *See* Russel J. Skiba et al., *Parsing Disciplinary Disproportionality: Contributions of Infraction, Student, and School Characteristics to Out-of-School Suspension and Expulsion*, 51 AM. EDUC. RES. J. 640, 658 (2014) [hereinafter Skiba et al., *Contributions of Infraction*].

63. *Id.* at 646–47.

64. *Id.*

65*. Id.* at 647.

66. *Id.* at 641.

67. *See* FABELO ET AL., *supra* note 6, at 82–83.

68. Skiba et al., *Contributions of Infraction*, *supra* note 62, at 659–60.

69. *See* Erica Mattison & Mark S. Aber, *Closing the Achievement Gap: The Association of Racial Climate with Achievement and Behavioral Outcomes*, 40 AM. J. COMMUNITY PSYCHOL. 1, 10 (2007).

highest rates of suspension and the largest black-white suspension gaps.[70]

These subtle indices of bias are not necessarily undone by school-wide interventions that are considered effective in improving school discipline or school climate. For example, a nationally representative study of schools who had implemented School Wide Positive Behavioral Support programs found when disaggregating the results that "African American and Latino students were up to five times more likely than white students to receive suspension and expulsion for minor infractions."[71] Reductions in suspensions and expulsions, therefore, do not necessarily indicate that changes have been made in racial disparities and the disproportionate use of punishment.[72]

Research consistently shows that educators who establish supportive relationships with students are not only aware of the events affecting them at school, but are also able to read and understand their responses to these events. This puts the students' behavior in context (e.g., his father is in Afghanistan and he is frightened) and avoids rigid and global judgments.[73]

For many educators, knowing the back story about students' lives reduces the gap or lack of familiarity between teacher and student. Maybe high emotional intensity when speaking or use of large physical gestures are norms for self-expression. When such behavior is misjudged as an expression of defiance, it distances educators and alienates students.[74] In contrast, authentic efforts to understand nuance and meaning frequently draw students

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70. *See* Anne Gregory et al., *The Relationship of School Structure and Support to Suspension Rates for Black and White High School Students*, 48 AM. EDUC. RES. J. 904, 924 (2011).

71. *See* RUSSELL J. SKIBA ET AL., WHAT DO WE KNOW ABOUT RACIAL AND ETHNIC DISPROPORTIONALITY IN SCHOOL SUSPENSION AND EXPULSION? BRIEFING PAPER DEVELOPED FOR THE ATLANTIC PHILANTHROPIES' RACE AND GENDER RESEARCH-TO-PRACTICE COLLABORATIVE 18 (2015), http://www.indiana.edu/~atlantic/wp-content/uploads/2011/12/CollaborativeBriefingPaper.pdf.

72. *See* Skiba et al., *Race Is Not Neutral*, *supra* note 36, at 102; *see also* ANNE GREGORY ET AL., HOW EDUCATORS CAN ERADICATE DISPARITIES IN SCHOOL DISCIPLINE: A BRIEFING PAPER ON SCHOOL-BASED INTERVENTIONS 3 (2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Disparity_Interventions_Full_031214.pdf [hereinafter GREGORY ET AL., EDUCATORS CAN ERADICATE DISPARITIES].

73. *See* GREGORY ET AL., EDUCATORS CAN ERADICATE DISPARITIES, *supra* note 72, at 3.

74. MARILYN ARMOUR, ED WHITE MIDDLE SCHOOL RESTORATIVE DISCIPLINE EVALUATION: IMPLEMENTATION AND IMPACT, 2013/2014, SIXTH & SEVENTH GRADE 17–18 (2014), http://www.utexas.edu/research/cswr/rji/pdf/Year2-Final-EW-Report.pdf. [hereinafter ARMOUR, ED WHITE MIDDLE 2013/2014].

closer furthering their connectedness, sense of being wanted, belonging and engagement in the learning process.[75] This deepening of understanding increases educators' relational skills, including their confidence and having a place in their students' worlds but also encourages problem solving approaches for conflict and discipline rather than fixed rules.[76] This logic is supported by the results from a recent district-wide study of Chicago schools that found that the quality of teacher-student and teacher-parent relationships was the strongest predictor of a strong sense of safety in the school building.[77] Moreover, after accounting for the demographic differences in the neighborhoods served, the study showed that low suspension rates correlated with higher safety rates.[78]

G. *The Crisis and the Opportunity*

The advent of zero-tolerance policies and high stakes testing created a culture that, in the name of safety and academic productivity, allowed the use of punitive and exclusionary practices to manage student behavior. These measures target African American students, among others, who, over time, fall further behind in their classes due to being suspended, are retained at their grade level, and eventually drop out.[79] This reality has led to allegations of implicit bias and inconsistency in the application of suspension and expulsion that deprives students of the opportunity to learn, thereby establishing the basis for civil rights based litigation.[80] The negative school climate that accompanies initiatives such as metal detectors, armed police, the public humiliation of being "kicked out," and high stakes testing affects teachers, many of whom lack cultural familiarity with the students they teach[81] and are unprepared to manage unruly class-

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75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *See* GREGORY ET AL., EDUCATORS CAN ERADICATE DISPARITIES, *supra* note 72, at 3.
80. *See* Russell J. 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, 1067–68 (Carolyn M. Evertson & Carol S. Weinstein eds., 2006); *see also* U.S. DEP'T OF JUSTICE & U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER: NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE (2014).
81. NAT'L ECON. & SOC. RIGHTS INITIATIVE, TEACHERS TALK: SCHOOL CULTURE,

rooms.[82] They too feel disillusioned and failed. They may seek relief by changing schools but eventually and increasingly drop out too.[83] Though foreboding, this crisis has produced an unusual opportunity to impact a major social institution in our society, our schools, and hopefully turn around this dire situation.

State legislatures regulate public education including aspects of student discipline. To date, the most obvious and seemingly far reaching remedy to the crisis is to propose new laws to replace or modify zero-tolerance policies. Indeed, some states recently passed such legislation. California, for example, passed AB 420 that bans the use of "willful defiance" policies, which accounts for 43% of student suspensions.[84] The law reserves the use of suspensions for serious violations while requiring schools to use alternative measures for nonviolent transgressions.[85] Similarly, Connecticut passed a bill prohibiting the suspension of young children.[86] Colorado passed an amendment to the School Finance Act eliminating mandatory expulsions for drugs, weapons, assault, and robbery, and changed the grounds for suspensions and expulsions from "shall" to "may" be grounded.[87] Texas, in an effort to dismantle the school-to-prison pipeline and keep students in school, decriminalized truancy in 2015.[88]

These efforts at reforming state policy and law are strong indicators that the public is moving away from the harsh discipline

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SAFETY AND HUMAN RIGHTS 24–25 (2008), http://www.nesri.org/sites/default/files/Teachers _Talk.pdf; Carla R. Monroe, *African American Boys and the Discipline Gap: Balancing Educators' Uneven Hand*, 84 EDUC. HORIZONS 102, 105 (2006).

82.   GREENBERG ET AL., *supra* note 61, at 11–25.

83.   Aly Seidel, *The Teacher Dropout Crisis*, NPR (July 18, 2014, 5:03 PM), http:// www.npr.org/sections/ed/2014/07/18/332343240/the-teacher-dropout-crisis.

84.   AB 420, 2014 Cal. State Assemb., Reg. Sess. (2014); *California Enacts First-in-the-Nation Law to Eliminate Student Suspensions for Minor Misbehavior: AB 420 Signing Caps Landmark Year for School Discipline Reform in the State*, ACLU (Sept. 27, 2014) https://www.aclunc.org/news/california-enacts-first-nation-law-eliminate-student-suspensi ons-minor-misbehavior.

85.   *California Enacts First-in-the Nation Law*, *supra* note 84.

86.   Public Act 15-96, 2015 Gen. Assemb., Reg. Sess. (Conn. 2015); Joseph de Avila, *Connecticut Rethinks School Suspensions*, WALL ST. J., (Mar. 26, 2015, 9:10 PM), http:// www.wsj.com/articles/conn-rethinks-school-suspensions-1427418614.

87.   H.B. 12-1345, 68th Gen. Assemb., Reg. Sess. (Colo. 2012); *Expelled and At-Risk Student Services (EARSS) Policies: 2012 School Discipline Bill*, COLO. DEP'T EDUC., https: //www.cde.state.co.us/dropoutprevention/earss_policiesandstatestatutes (last visited Feb. 19, 2016).

88.   H.B. 2398, 84th Leg., Reg. Sess. (Tex. 2015); Patrick Svitek, *Abbott Signs Bill Decriminalizing Truancy*, TEX. TRIBUNE (June 19, 2015), http://www.texastribune.org/2015 /06/19/texas-decriminalize-truancy-after-abbott-signs-bil/.

associated with zero tolerance. Although well intentioned, many of these legally based directives aimed at curbing punitive and exclusionary practices and keeping students in school are, unfortunately, now producing chaos.[89] In part, this is because teachers and administrators have few, if any, tools to use instead.[90]

II. RESTORATIVE PRACTICES AND CHANGING SCHOOL CLIMATE

A groundbreaking report was released in 2014 by the Council of State Governments Justice Center that pulled together consensus-based and field-driven recommendations from over 100 advisors and 600 contributors aimed at "reducing the millions of youth suspended, expelled, and arrested each year while creating safe and supportive schools for all educators and students."[91] Central in the recommendations is the critical role of positive school climate and the use of restorative justice in education as the underpinning for productive learning environments.[92]

A. *Defining Restorative Justice in Schools*

Restorative justice is a philosophy and set of principles and practices that bring together stakeholders voluntarily in the aftermath of crime or wrongdoing to directly address harm, make amends, and restore, to the extent possible, the normative trust that was broken.[93] Derived from indigenous cultures and spiritual traditions, restorative justice is embedded in the principles of respect, dignity, and the inherent worth and well-being of all peo-

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89. Steve Gunn, *Teachers Complain, Chaos Reigns as St. Paul Schools Spend Millions on 'White Privilege' Training*, EAG NEWS.ORG (June 2, 2015), http://eagnews.org/teachers-complain-chaos-reigns-as-st-paul-schools-spend-millions-on-white-privilege-training/; *see* Paul Sperry, *How Liberal Discipline Policies Are Making Schools Less Safe*, N.Y. POST (Mar. 14, 2015, 8:25 PM), http://nypost.com/2015/03/14/politicians-are-making-schools-less-safe-and-ruining-education-for-every one/.

90. *See* Susan Frey, *New Law Limits Student Discipline Measure*, EDSOURCE (Sept. 28, 2014), http://edsource.org/2014/new-law-limits-student-discipline-measure/67836.

91. *School Discipline Consensus Report*, JUST. CTR. COUNCIL ST. GOV'TS, https://csg justicecenter.org/youth/school-discipline-consensus-report/.

92. EMILY MORGAN ET AL., THE SCHOOL DISCIPLINE CONSENSUS REPORT: STRATEGIES FROM THE FIELD TO KEEP STUDENTS ENGAGED IN SCHOOL AND OUT OF THE JUVENILE JUSTICE SYSTEM 4 (2014), https://csgjusticecenter.org/wp-content/uploads/2014/06/The_Sc hool_Discipline_Consensus_Report.pdf.

93. MARK UMBREIT & MARILYN PETERSON ARMOUR, RESTORATIVE JUSTICE DIALOGUE: AN ESSENTIAL GUIDE FOR RESEARCH AND PRACTICE 6–7 (2010); *see* Nils Christie, *Words On Words*, 1 RESTORATIVE JUST. 15 (2013).

ple.[94] Its practices are predicated on the belief that when a violation occurs, it breaks human connections, throwing the entire community into disharmony.[95] Although restorative justice has been used primarily in response to criminal behavior, it is gathering significant momentum in education because of its ability to build safe communities for engaged learning, meet student needs, increase cross-cultural connections, and generate collaborative and inclusive solutions that foster healing and restoration.

As a school-based initiative, it serves as an alternative to retributive zero-tolerance policies. It "views violence, community decline, and fear-based responses as indicators of broken relationships."[96] Its practices are grounded in the values of showing respect, taking responsibility, and strengthening relationships.[97] These qualities conform to the mandate from the Denver Public Schools that there must be a shift in school values such that developing relationships and connectedness take precedence over exclusion and separation from the school community.[98]

The use of restorative justice for school-related discipline goes by a variety of names including Circles, Restorative Practices, Restorative Processes, Restorative Measures, Restorative Approaches, and Restorative Discipline (hereafter referred to as restorative practices). Its parallel emergence throughout the world makes it difficult to accurately trace its historic development. Indeed, even in the United States, it materialized in the late 1990s in Bethlehem, Pennsylvania, Minneapolis and St. Paul, Minnesota, and six school districts in Wisconsin at roughly the same time.[99] More important, however, has been its steady expansion as concerns about the sanctioning process and its bias against lower socioeconomic status students and minorities have grown coupled with concerns over highly punitive school cultures.

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94. UMBREIT & ARMOUR, *supra* note 93, at 48.

95. *Id.* at 5.

96. *Id.* at 2.

97. MICHAEL D. SUMNER ET AL., SCHOOL-BASED RESTORATIVE JUSTICE AS AN ALTERNATIVE TO ZERO-TOLERANCE POLICIES: LESSONS FROM WEST OAKLAND 6 (2010).

98. *See* Thalia N.C. González & Benjamin 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 241, 241–43 (Nancy E. Dowd ed., 2011); Peta Blood & Margaret Thorsborne, *Overcoming Resistance to Whole-School Uptake of Restorative Practices* 3 (Int. Institute of Restorative Practices "The Next Step: Developing Restorative Communities, Part 2" Conference Paper, 2006).

99. *See* Carol Chmelynski, *Restorative Justice for Discipline with Respect,* 71 EDUC. DIGEST 17, 17–19 (2005).

B. *Growth and Scope of Restorative Practices*

Currently, restorative practices are emerging throughout the country but are notably recognized in California, Colorado, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, Texas, Connecticut, and Pennsylvania.[100] However, implementation is spotty. For example, The International Institute for Restorative Practices, a private restorative justice center, has implemented restorative practices in major urban districts such as New York, Detroit, Philadelphia, Baltimore, and San Francisco.[101] The Oakland Unified School District has implemented Circles in over twenty schools.[102] The Denver Public Schools have restorative justice coordinators in five middle schools and two high schools.[103] As this young movement grows, it is amassing convincing evidence that supports its philosophy and practices as well as understanding and knowledge about what makes for a successful and sustainable implementation.

Part of that knowledge includes a strong warning or caveat about how restorative practices must be introduced into schools and the propensity for it to be used as a quick fix. Specifically, schools must not reduce restorative practices to a program of behavior intervention[104] that is narrow, reactive, and focused on the "bad" students. Effective implementation requires developing a new currency to motivate change that rests on the power of relational influence.[105] Specifically, restorative practices replace fear, uncertainty, and punishment as motivators with belonging, con-

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100.   MARA SCHIFF, DIGNITY, DISPARITY AND DESISTANCE: EFFECTIVE RESTORATIVE JUSTICE STRATEGIES TO PLUG THE "SCHOOL-TO-PRISON PIPELINE" 9 (2013), http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline/schiff-dignity-disparity-ccrr-conf-2013.pdf.

101.   *See* Joshua Wachtel, *Restorative Practices Can Help Close School-to-Prison Pipeline*, RESTORATIVE WORKS LEARNING NETWORK (Sept. 17, 2013), http://restorativeworks.net/2013/09/restorative-practices-school-prison-pipeline/.

102.   SONIA JAIN ET AL., RESTORATIVE JUSTICE IN OAKLAND SCHOOLS IMPLEMENTATION AND IMPACTS: AN EFFECTIVE STRATEGY TO REDUCE RACIALLY DISPROPORTIONATE DISCIPLINE, SUSPENSIONS AND IMPROVE ACADEMIC OUTCOMES, at iv (2014), http://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/134/OUSD-RJ%20Report%20revised%20Final.pdf.

103.   MYRIAM L. BAKER, DPS RESTORATIVE JUSTICE PROJECT: YEAR THREE 3–4 (2009), www.rjcolorado.org/_literature_55812/Denver_Public_Schools_Restorative_Justice_Program_Final_Report_2008-2009.

104.   *See* Dorothy Vaandering, *Implementing Restorative Justice Practice in Schools: What Pedagogy Reveals*, 11 J. PEACE EDUC. 64, 65, 78 (2014).

105.   *See* Morrison & Vaandering, *supra* note 4, at 139–40.

nectedness, and the willingness to change because people matter to each other. However, unless this relational approach is threaded as an ethos throughout the school's culture and endorsed by the entire school community, behavior change will be limited and restorative practices will have "little impact on the school as a whole, including the reduction of future crises."[106] A whole school relational approach, therefore, refers not just to serious instances of harm and aggression but also to relationships in the classroom and between school educators, administrator's leadership style, policy decisions, broad community engagement, and a long-term commitment to change. Indeed, school-based restorative justice prioritizes building the capacity for school community and positive climate over punitive responses to behaviors in order to embed true safety in schools.[107]

Besides defining the philosophical underpinnings for a whole school approach, there is wide-spread agreement that implementation must draw on the public health prevention framework of a three-tiered triangle that places harm-specific incidents requiring repair at the top, problem solving incidents requiring maintenance in the middle, and community building needed for prevention at the bottom.[108] Operationally, the specific practices associated with intensive, targeted, and universal tiers establish a non-authoritarian culture of high expectations with high levels of support that emphasizes doing things "with" someone as opposed to doing things "to" or "for" someone.[109]

In the classroom, Tier 1 restorative circles are used to build community, problem solve, facilitate student and teacher connectivity, and to provide a respectful space for establishing the values for the class based on human dignity and democratic principles.[110] Outside the classroom, Tier 2 and Tier 3 practices such as circles, restorative conferencing, or peer juries are used for more

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106.   Gillian McCluskey et al., *'Teachers Are Afraid We Are Stealing Their Strength': A Risk Society and Restorative Approaches in School*, 59 BRIT. J. EDUC. STUD. 105, 109 (2011).

107.   Thalia González, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 J.L. & EDUC. 281, 297–98 (2012).

108.   BRENDA MORRISON, RESTORING SAFE SCHOOL COMMUNITIES: A WHOLE SCHOOL RESPONSE TO BULLYING, VIOLENCE AND ALIENATION 106–11 (2007).

109.   BOB COSTELLO ET AL., THE RESTORATIVE PRACTICES HANDBOOK FOR TEACHERS, DISCIPLINARIANS AND ADMINISTRATORS 50 (2009).

110.   JON KIDDE & RITA ALFRED, ALAMEDA CTY. SCH. HEALTH SERVS. COAL., RESTORATIVE JUSTICE: A WORKING GUIDE FOR OUR SCHOOLS 9, 11 (2011), http://www.skidmore.edu/campusrj/documents/Kidde-and-Alfred-2011.pdf.

intensive interventions that include repairing damage, reintegrating back into the school after a student absence, and resolving differences.[111]

Because the focus is on inclusion and community-based problem solving, restorative justice in schools not only addresses harm but also uses processes that concurrently create a climate that promotes healthy relationships, develops social-emotional understanding and skills, increases social and human capital, and enhances teaching and learning. At the same time that it serves as an intervention, it also becomes preventative because schools are better equipped to resolve issues early on and outside the framework of a reactionary crisis. Indeed, the methods used ensure sustainability in that students are "much more likely to take responsibility for harm done if they have a voice in repairing the harm," if the community has to provide the necessary support for its youth, and if positive outcomes result from holding themselves and others accountable.[112]

Although restorative practices are philosophically geared towards a whole school model, the rapid growth and adoption of restorative practices reflect the goodness-of-fit between schools and restorative justice philosophy and programs when applied specifically to wrongdoing. In this regard, restorative practices build on its base using a relational rather than separatist model that brings people together to collectively identify the impact from wrongdoing and to determine steps to make things right. Instead of a punitive model that asks (1) what rules or laws were broken, (2) who broke them, and (3) how should they be punished, restorative practices asks (1) what is the harm caused and to whom, (2) what are the needs and obligations that have arisen, and (3) who has the obligation to address the needs, to repair the harm, and to restore relationships.[113] From a restorative perspective, these questions "cannot be adequately answered without the involvement of those who have been most affected."[114] As a realignment of justice processes, restorative practices provide a mechanism that builds true and meaningful accountability, fosters resilience in youth and their capability to handle their problems, and stimulates reconnections and reempowerment of individuals by holding

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111.   *Id.* at 12–13.
112.   SUMNER ET AL., *supra* note 97, at 6.
113.   HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 21 (2002).
114.   KIDDE & ALFRED, *supra* note 110, at 8.

them responsible. When both the preventative and interventive aspects are brought together, restorative practices can be defined as follows: "a relational approach to building school climate and addressing student behavior that fosters belonging over exclusion, social engagement over control, and meaningful accountability over punishment."[115]

III. OUTCOMES OF RESTORATIVE PRACTICES

Evidence of the impact of restorative practices on behavioral outcomes, such as suspensions and absenteeism, is growing. Indeed, randomized control trials are being conducted by the Rand Corporation in Pittsburgh, Pennsylvania, on twenty-three public schools,[116] and in Maine on fourteen schools.[117] These randomized trials build on the wealth of data that indicates large drops in suspensions after restorative practices have been introduced. West Philadelphia High School, for example, was on the state's "Persistently Dangerous Schools" list for six years running. The school reduced the frequency of "[v]iolent acts and serious incidents" by 52% in 2007–08 and an additional 40% in 2008–09.[118] Suspensions declined 84% and expulsions declined to zero at Cole Middle School in Oakland, California, over a two-year period during the implementation of restorative justice.[119] In a sample of students (n=331) drawn from a three-year project in five Denver public middle schools and two high schools, 30% of schools reduced their average number of out-of-school suspensions received, and there was a 90% reduction in office referrals and out-of-school suspensions.[120] District-level impact has been noted in cumulative reductions in out-of-school suspensions of over 40%

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115. ARMOUR, ED WHITE MIDDLE 2013/2014, *supra* note 74, at 7.

116. *District Announces Plans to Advance Restorative Practices in Pittsburgh Public Schools,* PITTSBURGH PUB. SCHS. (Apr. 22, 2015), http://www.pps.k12.pa.us/site/default.as px?PageType=3&DomainID=4&ModuleInstanceID=153&ViewID=047E6BE3-6D87-4130-8 424-D8E4E9ED6C2A&RenderLoc=0&FlexDataID=9725&PageID=1.

117. Joshua Wachtel, *NIH to Fund First Randomized Controlled Trials for Restorative Practices in 14 Maine Schools,* RESTORATIVE WORKS LEARNING NETWORK (Sept. 19, 2013), http://restorativeworks.net/2013/09/nih-fund-first-randomized-control-trials-restorative-practices-16-maine-schools/.

118. SHARON LEWIS, INT'L INST. FOR RESTORATIVE PRACTICES, IMPROVING SCHOOL CLIMATE: FINDINGS FROM SCHOOLS IMPLEMENTING RESTORATIVE PRACTICES 6–7 (2009), http://www.varj.asn.au/Resources/Documents/IIRP-Improving-School-Climate.pdf.

119. SUMNER ET AL., *supra* note 97, at 31.

120. BAKER, *supra* note 103, at 10.

compared with baseline rates.[121] Ed White Middle School in San Antonio, Texas, reduced out-of-school suspensions by 87% and in-school suspensions by 29% in the first year of implementation.[122] In-school suspensions fell another 52% for the pilot group in the second year.[123]

Besides these large drops in disciplinary actions, schools reported decreases in related behaviors. In a study of Minnesota schools, referrals for violent behaviors at Lincoln Center Elementary School decreased by more than half.[124] Additionally, behavior referrals for physical aggression at the same elementary school decreased from 773 to 153 incidents.[125] Research on Chicago Public Schools showed a 63% decrease in misconduct reports and an 83% decrease in arrests for a high school in just one year.[126] Another school had a 59% drop in cases of misconduct and a 69% decline in arrests.[127] In a comparative study of twenty-four middle schools in Oakland, California, absenteeism dropped by 24% for the restorative justice schools but rose 62% for the non-restorative justice schools.[128] Students sampled in Denver Public Schools Restorative Justice Project showed a 30% improvement in school attendance and timeliness.[129] Tardies fell 39% at an economically disadvantaged middle school in San Antonio, Texas.[130]

Although not causal, the data suggests that as suspensions fall, physical altercations reduce, and as students show greater engagment in school, evidenced by drops in absenteeism and tardies, there is also growth in educational achievement. In a comparative study of Oakland schools, reading levels "in grade 9 doubled in [restorative justice] high schools from an average of 14% to 33%, an increase of 128%, compared to 11% in [non-

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121.   *Id.* at 15.

122.   ARMOUR, ED WHITE MIDDLE 2013/2014, *supra* note 74, at 13.

123.   *Id.* at 8.

124.   David R. Karp & Beau Breslin, *Restorative Justice in School Communities,* 33 YOUTH & SOC'Y 249, 257 (2001).

125.   *See* Jeanne B. Stinchcomb et al., *Beyond Zero Tolerance: Restoring Justice in Secondary Schools*, 4 YOUTH VIOLENCE & JUV. JUST. 123, 136 (2006).

126.   HIGH HOPES CAMPAIGN, FROM POLICY TO STANDARD PRACTICE: RESTORATIVE JUSTICE IN CHICAGO PUBLIC SCHOOLS 7 (2012), http://www.dignityinschools.org/sites/de fault/files/FromPolicyToStandardPractice.pdf.

127.   *Id.*

128.   JAIN ET AL., *supra* note 102, at vi, 12, 57.

129.   BAKER, *supra* note 103, at 9.

130.   ARMOUR, ED WHITE MIDDLE 2013/2014, *supra* note 74, at 76.

restorative justice] high schools."[131] Moreover, "[f]rom 2010–2013, [restorative justice] high schools experienced a 56% decline in high school dropout rates in comparison to 17% for [non-restorative justice] high schools."[132] Graduation rates increased 60% over three years compared to 7% for non-restorative justice high schools.[133] In a separate study, standardized test scores at Cole Middle School rose seventy-four points after two years of implementing restorative practices.[134] A study of Baltimore County School District charter schools found that students functioning at grade level tripled, based on the Maryland State Assessment.[135] After being designated as a school with "[i]mprovement [r]equired" by the Texas Education Agency, Ed White Middle School achieved stars of distinction for student performance in English, math, and social studies.[136] It also received a star of distinction and ranked second in the state for improved student progress compared to other middle schools with similar demographics after two years of implementing restorative practices.[137]

Equally important to the hard evidence supporting restorative practices are outcomes specific to students' social functioning and life skills, as well as cost savings. In the Denver Public Schools Restorative Justice Project, nearly half the students showed improvement on their emotional quotient scores and over 50% improved their stress management, suggesting that students perceived improvement in their management of interpersonal conflict.[138] Students in restorative justice circles in Oakland reported enhanced ability to understand peers, manage emotions, demonstrate greater empathy, resolve conflicts with parents, improve their home environments, and maintain positive relationships with peers.[139] Though limited, some data exists supporting the impact of restorative practices on teachers. Specifically, Cole Middle School retained all of its teachers in spite of his-

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131. JAIN ET AL., *supra* note 102, at vi.
132. *Id.* at vi, 52, 57.
133. *Id.* at vi, 51, 57.
134. KIDDE & ALFRED, *supra* note 110, at 17.
135. González, *supra* note 107, at 312.
136. ARMOUR, ED WHITE MIDDLE 2013/2014, *supra* note 74, at 8, 12, 39.
137. *Id.* at 8, 39, 77.
138. BAKER, *supra* note 103, at 12–13.
139. JAIN ET AL., *supra* note 102, at 44.

torically high turnover.[140] In terms of cost savings, reductions in suspensions and expulsions in the Santa Rosa School District saved more than $550,000 in average daily attendance money.[141]

Most important is the emerging evidence that restorative practices may impact racial disproportionality in discipline. A three-year study of restorative practices in a K–8 urban school found that out-of-school suspensions fell from 51% to 14% for African American students, 34% to 6% for Hispanic students, 39% to 6% for multiracial students, and 51% to 9% for white students.[142] Although this study did not measure the relationship between restorative practices and drops in suspensions, the average discipline gap between students of different races and ethnicities decreased from 10% in 2011 to 0% in 2013.[143] In a study of schools across two states, David Simson found a smaller black-white gap in suspension rates in restorative justice schools compared with a matched set of non-restorative justice schools.[144] In Denver, after six years of using restorative practices, district-wide disparities in discipline among black, white, and Latino students narrowed.[145] Suspension rates for African American students dropped the most from 17.6% to 10.4%.[146] The gap between black and white students narrowed from 11.7% to 8.1%.[147] A correlational study analyzed student surveys from high school classrooms at two urban high schools with a total enrollment of approximately 4500 students.[148] Results showed that classrooms

140. Cassidy Friedman, *Restorative Justice Takes on West Oakland Schools*, NEW AM. MEDIA (Mar. 24, 2011), http://newamericamedia.org/2011/03/restorative-justice-takes-on-west-oakland-schools.php.

141. Susan Kinder, *Close to Home: Success of Restorative Program Shows in Numbers*, PRESS DEMOCRAT (June 6, 2014), http://www.pressdemocrat.com/csp/mediapool/sites/PressDemocrat/News/story.csp?cid=2371142&sid=555&fid=181.

142. Polly K. Long, Diminishing the Discipline Gap: Restorative Justice as a Promising Alternative in One Urban School 32 (Aug. 2015) (unpublished M.S.E./Ed.S. thesis, University of Dayton), https://etd.ohiolink.edu/!etd.send_file?accession=dayton1436815423&disposition=inline.

143. *Id.* at 36.

144. David Simson, *Restorative Justice and its Effects on (Racially Disparate) Punitive Discipline* 33 (7th Annual Conference on Empirical Legal Studies Paper, 2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id =2107240.

145. Claudia Rowe, *In School Discipline, Intervention May Work Better Than Punishment*, SEATTLE TIMES (Jan. 25, 2015, 8:15 PM), http://old.seattletimes.com/html/education/2025538481_edlabrestorativejusticexml.html.

146. *Id.*

147. *See id.*

148. Anne Gregory et al., *The Promise of Restorative Practices to Transform Teacher-Student Relationships and Achieve Equity in School Discipline*, 25 J. EDUC. & PSYCHOL.

where teachers implemented more restorative practices tended to have narrow discipline gaps—that is Latino and African American versus Asian and white students—compared to teachers who implemented less restorative practices.[149] A study of school-based restorative justice in Oakland School District found a 40% decrease in the number of suspensions for African American students.[150] Moreover, the discipline gap between black and white students had closed from 12.6% to 9.2% in the restorative justice schools compared to an increase in the control schools.[151] Finally this study found a significant difference in effects of restorative practices on African American students compared to white students in schools where restorative justice had been more fully developed.[152] This outcome suggests that the African American students may benefit more from being in restorative justice schools than white students.[153]

IV. THE TRAJECTORY FOR IMPLEMENTATION IN THE UNITED STATES

Restorative practices are on a fast track to becoming the favored discipline philosophy in schools throughout the country accompanied by a range of multi-tiered practices. As an antidote to punitive and exclusionary school discipline, it has been highly recommended in the extensive School Discipline Consensus Report.[154] National leaders also support its adoption. In a recent letter, former Secretary of the U.S. Department of Education Arne Duncan wrote, "States are revising discipline laws to enhance local discretion, curtail zero-tolerance requirements, and encourage the development of alternative disciplinary approaches such as *restorative justice*."[155] President Obama and Hillary

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CONSULTATION 1, 8 (2014).

149. *Id.* at 18.

150. JAIN ET AL., *supra* note 102, at vi.

151. *Id.*

152. *Id.* at 55.

153. *Id.*

154. *See* MORGAN ET AL., *supra* note 92, at 31, 82.

155. Arne Duncan, Foreword, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, U.S. DEP'T EDUC. (Jan. 8, 2014), http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf (emphasis added).

Clinton have also endorsed the use of restorative justice in schools.[156]

Research on whole school restorative practices approach is in its nascent stages. However, concerns over the unprecedented use of suspensions and expulsions coupled with the dramatic drops in punitive sanctions when restorative practices are used create a tempting offer to schools desperate for solutions. Indeed, restorative practices portend an encompassing preventative and interventive model that builds community for both students and teachers, improves the quality of the teacher and student relationships, and encompasses fair process, participatory decision making, and student voice. It also treats the harm generated by zero-tolerance policies by reducing suspensions and expulsions, rehumanizing schools, and potentially reducing the enduring racial discipline gap.

A. *Expansion Through Requiring Restorative Practices*

School districts and campuses are implementing restorative practices with lightning speed. The downward cascade in numbers of suspensions have influenced school boards and other policy and rulemaking entities to pass resolutions supporting, even requiring schools to implement restorative practices. In 2012, for example, the Massachusetts legislature passed Chapter 222, a school discipline reform law requiring districts to revise their Codes of Conduct by July 2014 to issue suspensions and expulsions only as a last resort.[157] Tom Mela, Senior Project Director with Massachusetts Advocates for Children and member of the Chapter 222 Coalition said, "the law requires alternatives to exclusion, such as restorative justice practices, and it requires services for any students excluded from school."[158] In 2013, the Board of Education for the Los Angeles Unified School District adopted the Board Resolution-2013 School Discipline Policy and School

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156. Thomas B. Edsall, Opinion, *How Much Do Black Lives Matter to the Presidential Campaign*, N.Y. TIMES (Nov. 11, 2015), http://www.nytimes.com/2015/11/11/opinion/campaign-stops/how-much-do-black-lives-matter-to-the-presidential-campaign.html?_r=2.

157. Act Relative to Student to Educational Services and Exclusion from School, ch. 222, 2012 Mass. Acts 222 (codified at MASS. GEN. LAWS ch. 71, §§ 37H (effective July 1, 2014); *see also Boston Takes the Lead in MA Discipline Reform,* SCHOTT FOUND. FOR PUB. EDUC. REFORM BLOG, http://schottfoundation.org/blog/2013/09/13/boston-takes-lead-ma-discipline-reform (last visited Feb. 19, 2016).

158. *Boston Takes the Lead*, *supra* note 157.

Climate Bill of Rights.[159] This resolution mandates schools to develop and implement restorative justice practices by 2020 as an alternative to traditional school discipline.[160] Additionally, in 2010, the Board of Education of the Oakland Unified School District passed Resolution No. 0910-0120, launching "a District-wide three-year Restorative Justice Initiative to include professional development of administrators and school site staff, redesign of District discipline structures and practices, and promote alternatives to suspension at every school . . . ."[161]

California has been particularly noteworthy in passing similar resolutions in other parts of the state. Besides activity by Fresno Unified School District, San Francisco Unified School District, and Berkeley Unified School District, the California Democratic Party adopted Resolution 14-07.06 in support of the implementation of restorative justice policies for all California school districts.[162] Although restorative practices are not specifically mentioned in the legislation, California led the nation in passing Assembly Bill 420, which limits the use of "willful defiance" as a reason to expel students.[163] In the 2012–13 school year, "willful defiance" was responsible for over half of the suspensions in the state and has been used disproportionately throughout the country to discipline African Americans and, in some districts, Latino students.[164] The passage of this significant legislation is the direct result of positive outcomes from California school districts that have reduced or eliminated expulsions and suspensions while concomitantly implementing restorative practices.

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    159.   Michelle King & Earl R. Perkins, *Discipline Foundation Policy: School-Wide Positive Behavior Intervention and Support*, L.A. UNIFIED SCH. DISTRICT (Feb. 14, 2014), http://fixschooldiscipline.org/wp-content/uploads/2014/10/LAUSD-Discipline-Foundation-Policy-Feb.2014.pdf.

    160. *Id.*

    161. Bd. of Educ. of the Oakland Unified Sch. Dist., *Resolution No. 0910-0120*, http://www.fixschooldiscipline.org/wp-content/uploads/2013/01/17.Oakland-USD-Board-Resolution.pdf (enacted Jan. 27, 2010).

    162.   Cal. Democratic Party, *Resolution 14-07.06*, www.cadem.org/our-california/resolutions/2014/support-for-the-implementation-of-restorative-justice-policies-for-all-california-school-districts (adopted July 13, 2014).

    163.   AB 420, 2014 Cal. State Assemb., Reg. Sess. (Cal. 2014); CAL. STATE BAR ASS'N, FACT SHEET: RECENT LEGISLATION ON DISCIPLINE: AB 420, at 1 (Mar. 2015), https://www.csba.org/GovernanceAndPolicyResources/~/media/CSBA/Files/GovernanceResources/GovernanceBriefs/201503_AB420DisciplineFactSheet.ashx.

    164.   CAL. STATE BAR ASS'N, FACT SHEET, *supra* note 163, at 1.

B. *Expansion Through Codes of Conduct*

Besides resolutions, districts across the country have made numerous revisions to their codes of conduct to include restorative practices. Dayton, Ohio, for example, introduced restorative justice to a number of schools in 2012.[165] It expanded to eight schools for the 2014–15 year and plans for it to be adopted district-wide by 2017, pending funding.[166] Dayton Public Schools also added restorative practices in 2014 to its Student Code of Conduct.[167] After Massachusetts passed its school discipline reform law, Boston took the lead to become, ahead of schedule, the first district in the state to align its Code of Conduct with the new legislation.[168] Other districts have followed, including Fall River, Massachusetts, which based its code on the one adopted by the Boston Public School District.[169]

Schools in Syracuse, New York, have moved to restorative discipline with their new Code of Conduct with assistance from Engaging Schools, a non-profit that assists educators in middle and high schools.[170] Larry Dieringer, executive director of Engaging Schools, says "[t]he Syracuse Code of Conduct, Character and Support goes far beyond establishing a set of policies, procedures, rules, and consequences. It lays the foundation for establishing a restorative and supportive culture in Syracuse."[171] This movement likely was propelled, in part, because the district was under investigation by the New York State Attorney General's Office for inequitable disciplinary practices.[172]

Chicago Public Schools have been using restorative practices for many years. However, in 2015, the district changed its Code of Conduct. As part of its statement of purpose, the code states, "Chicago Public Schools is committed to an instructive, corrective,

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165. *Student Code of Conduct*, DAYTON PUB. SCHS., http://www.dps.k12.oh.us/students-parents/student-information/student-code-of-conduct/ (last visited Feb. 19, 2016).

166. *Id.*

167. *Id.*

168. *See Boston Takes the Lead*, *supra* note 157.

169. Michael Gagne*, District Changing Code of Conduct, Taking 'Restorative Justice' Approach to Correction*, HERALD NEWS (Apr. 27, 2014, 12:30 AM), http://www.heraldnews.com/article/20140427/NEWS/140427031.

170. *Syracuse City Schools Move to Restorative Discipline with New Code of Conduct*, ENGAGING SCHS. BLOG (Oct. 2, 2014), http://www.engagingschools.org/773/.

171. *Id.*

172. *Id.*

and restorative approach to behavior."[173] The Bridgeport, Connecticut, School District also changed its Code of Conduct in 2013–14 to include restorative practices.[174] Although not a part of changes in codes of conduct, in 2014, the National Education Agency partnered with the Advancement Project, the Opportunity to Learn Campaign, and the American Federation of Teachers to release a restorative practices toolkit as part of encouraging schools to adopt restorative measures.[175]

Some states and districts have received large grants or allocated significant funds to implement these changes. Besides the grant given to Pittsburgh Public Schools and the state of Maine, New York appropriated $2.4 million of the 2016 City Budget for implementation of restorative justice practices in schools as part of the New York City Council's commitment to progressive school discipline reform.[176]

C. *Problems with Rapid Expansion*

Restorative practices provide educators, students, and parents with a forward-looking, whole school, positive climate and disciplinary system for school reform that infuses hope. As a social corrective, it treats rule-breaking as harm done to a relationship, humanizing key players and offering students a way back. Although the literature counsels that implementation is at least a three- to five-year process,[177] the swiftness with which restorative practices are being adopted is concerning and threatens to cause a predictable backlash. Indeed, articles have already appeared in the *New York Post*[178] and the *Los Angeles Times.*[179] The *New York*

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173. CHICAGO PUB. SCHS. POLICY MANUAL, STUDENT CODE OF CONDUCT FOR CHICAGO PUBLIC SCHOOLS 2 (effective Sept. 8, 2015), http://www.policy.cps.edu/download.aspx?ID=263.

174. BRIDGEPORT PUB. SCHS., STUDENT CODE OF CONDUCT 4 (2013), http://www.bridgeportedu.com/Board/Policies/2013-2014/CodeOfConduct_2013-2014AbRefManual.pdf.

175. Mary Ellen Flannery, *NEA and Partners Promote Restorative Justice in Schools*, NEATODAY (Mar. 24, 2014, 1:19 PM), http://neatoday.org/2014/03/24/nea-and-partners-promote-restorative-justice-in-schools/.

176. Press Release, Shoshi Doza of the Dignity in Sch. Campaign, Students, Parents, Teachers and Advocates Applaud $2.4M Speaker Initiative to Support Restorative Justice in New York City Schools (June 26, 2015), http://www.dignityinschools.org/press-release/students-parents-teachers-and-advocates-applaud-24m-speaker-initiative-support-restora.

177. JAIN et al., *supra* note 102, at 59.

178. *See, e.g.*, Sperry, *supra* note 89.

179. *See, e.g.*, Teresa Watanabe & Howard Blume, *Why Some LAUSD Teachers Are Balking at a New Approach to Discipline Problems*, L.A. TIMES (Nov. 7, 2015, 10:00 AM),

Post article claims that teachers are struggling with lawless classrooms, the lack of consequences for serious infractions, serious threats and physical attacks against teachers, the worsening of student behavior including student fights, roaming the halls and mouthing off to teachers, and an inordinate amount of time away from academic instruction.[180] Without consequences, the classrooms are controlled by bullies. The article warns that under such conditions students and teachers will transfer to safer private or charter schools.[181] *The Los Angeles Times* article reports similar problems but recognizes that these are likely the result of inadequate resources and training.[182] Indeed, Los Angeles has the second largest school district in the country.[183] The district tried to implement restorative practices in five years but had only given training to 307 of the district's 900 schools and had employed only five restorative justice counselors in its first year.[184] After recognizing its inadequate planning, the district increased the number of counselors to twenty-five amid community pressure and added twenty more counselors in its second year of implementation for a total added cost of $7.2 million.[185]

   Restorative practices are a young initiative. There is no agreement on a standard for implementation, on the training of teachers, the need for restorative coordinators or how to use them, or on the differences in implementation by grade level, e.g., elementary, middle, and high school. Many schools likely try to execute the approach by focusing on the more intensive or challenging students first without having fully prepared teachers or understood that the priority must be on changing the school culture through Tier 1 or community building practices. If school districts are directed to remove traditional disciplinary practices all at once and implement restorative practices broadly and without slow, careful, and strategic planning, it is predictable that the use of restorative practices will falter. Unfortunately, the blame will be placed on restorative practices rather than on inadequate implementation.

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http://www.latimes.com/local/education/la-me-school-discipline-20151108-story.html.
   180.   Sperry, *supra* note 89.
   181.   *Id.*
   182.   Watanabe & Blume, *supra* note 179.
   183.   *Id.*
   184.   *Id.*
   185.   *Id.*

D. *Expansion in Texas*

Unfortunately, most districts in the country are putting restorative practices into place in too many schools at once and too quickly. Although restorative practices are seemingly a good fit for today's schools, there is little to no recognition of the thorough and detailed planning that must accompany implementation and the need for ongoing adjustment based on the response of a school over time to new ideas and changing traditional mindsets. In contrast to the rest of the country, Texas, which houses almost 10% of the nation's students,[186] is introducing restorative practices to its 1266 school districts but is using a different structure to convey information. The state is divided into twenty regional education service centers that provide assistance to educators throughout the state, including curriculum support, technology hosting, and bringing districts together in accordance with the Texas Education Agency's ("TEA") focus on increasing student achievement.[187] TEA, in partnership with the Institute for Restorative Justice and Restorative Dialogue ("IRJRD") housed in the School of Social Work at the University of Texas at Austin, is using the twenty regional education service centers to provide two types of training throughout the state aimed at educating the critical constituencies for successfully implementing sustainable restorative practices in schools.[188]

A two-day Administrator Readiness Training is offered to administrative teams to equip them with a long-term overview of what is involved in executing a whole school approach so their planning is realistic, contextualized, and grounded in restorative principles. A five-day Restorative Coordinator Training is offered to persons who are or will be guiding their districts or schools in the process of whole school implementation over time. Besides the specific multi-tiered practices, participants are equipped to work with and strategically plan with administrative teams, train and

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186. CHEN-SU CHEN, NAT'L CTR. FOR EDUC. STATISTICS, PUBLIC ELEMENTARY AND SECONDARY SCHOOL STUDENT ENROLLMENT AND STAFF COUNTS FROM THE COMMON CORE OF DATA: SCHOOL YEAR 2009–10, at 1, 6-7 (2011), http://nces.ed.gov/pubs2011/2011347.pdf; DIV. OF ACCOUNTABILITY RESEARCH, TEX. EDUC. AGENCY, ENROLLMENT IN TEXAS PUBLIC SCHOOLS 2010–11, at 3 (2010), http://tea.texas.gov/acctres/Enroll_2010-11.pdf.

187. *Education Service Centers*, TEA, http://tea.texas.gov/About_TEA/Other_Services/Education_Service_Centers/Education_Service_Centers/ (last visited Feb. 19, 2016).

188. Michael Williams, *Texas Focusing on Restorative Discipline*, TEX. EDUC. AGENCY (June 12, 2015), http://tea.texas.gov/Home/Commissioner_Blog/Texas_Focusing_on_Restorative_Discipline/.

mentor teachers, involve the community, and activate student leadership. Both trainings emphasize a diffusion model of conveying information through networking and narratives that foster a positive contagion effect and gradual buy. This process mirrors the restorative justice principle of voluntariness, promotes self-agency and ownership, and diminishes reactivity and resistance. Both trainings underscore voluntariness of participation, changing attitudes about discipline, a whole school approach focused on managing complexity, slow implementation, careful planning tailored to the culture of each school, deep commitment from school administrators, and the presence of a restorative coordinator to help guide the school through the change process. IRJRD is conducting research on school and district implementation post the trainings.

E. *Best Practices*

IRJRD has developed a set of thirteen Best Practices in support of the Texas model of implementation hereafter referred to as Restorative Discipline.[189]

> 1. *Restorative Discipline is a philosophy and system-wide intervention that places relationships at the heart of the educational experience.*

Restorative Discipline utilizes a relational ecology that finds its strength through nurturing motivational bonds of belonging that support individual development and social responsibility. This paradigm gives the harm or conflict "back" to the parties most involved.

> 2. *The goal of Restorative Discipline is to change the school climate rather than merely respond to student behavior.*

While utilizing a multi-tiered model of influence and intervention, the energy of Restorative Discipline begins at Tier 1 with a focus on changing school climate. Restorative practices are utilized for community building, teaching course content, decision

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189. These Best Practices were created by the IRJRD and reflect both the standards shared by restorative practice practitioners working in schools throughout the United States, as well as knowledge from implementation of restorative practices in Texas. They are part of the handouts provided to educators in the IRJRD's Texas training program and undergird the model of implementation advanced by IRJRD. See IRJRD's website, http://www.utexas.edu/research/cswr/rji/rdinschools.html.

making, values clarification, problem-solving, and acknowledging new, returning, and departing members of the community, as well as resolving conflict. Restorative practices are utilized by all members of the school community: administrators, teachers, students, support staff, volunteers, parents, and community stakeholders.

3. *Restorative Discipline requires a top-down commitment from school board members and administrators.*

School board and administrator buy-in, as well as communication and modeling of that buy-in, prevent Restorative Discipline from becoming another initiative around which there's a flurry of excitement with no follow up, support, or accountability. A committed administrator who can "voice the vision" can instill in others the optimism, critical thinking, and strategic planning necessary for successful and fruitful implementation. An enthusiastic and knowledgeable administrator leads the way for teacher buy-in, demonstrates community building by applying Restorative Discipline practices in teacher and administrator interactions such as staff meetings, oversees the creation and use of the leadership response team, provides leadership in the midst of change and challenge, and promotes data collection and analysis to undergird restorative work. Finally, administrative support and commitment assures the necessary long-range planning and resources to support the expected three-to-five-year rollout.

4. *Restorative Discipline uses a whole school approach. All administrators, teachers, all staff, and students should be exposed to and/or trained in restorative processes with periodic boosters.*

Restorative Discipline is a restorative justice-based, whole school disciplinary response that focuses on changing school climate through the building of community at the classroom and campus levels. It is more than a tool or technique that gets applied to a specific incident, individual student, or exclusive classroom. Restorative Discipline's core concept—relational trust—is developed and practiced by all community members who must be trained initially and then supported through additional training, support activities, reinforcement, and period boosters.

    5. *Restorative Discipline engages parents/caregivers as integral members of restorative conferences and circles.*

Restorative Discipline practitioners are expected to become proficient in community engaged restorative circles and family-group conferencing, which typically include parents and caregivers as participants.

    6. *Restorative Discipline uses an internal leadership response team to spearhead the implementation and help support necessary dialogue.*

An active leadership response team serves as a planning and implementation body, facilitates circles involving more complicated or serious incidents or those in which family members and caregivers participate, and coordinates needed trainings and boosters. Team members are often school administrators, the onsite Restorative Discipline coordinator, counselors, family service coordinators, school resource officers, and committed teachers and parents.

    7. *Restorative Discipline calls for an outside restorative justice coordinator to serve onsite.*

Implementation fidelity requires a Restorative Discipline Coordinator who is "of the community" more than representative of campus employees and who may be employed at the District level or from an external agency. Whether full or part-time, the Restorative Discipline Coordinator's only role is to assist the campus and surrounding community in the Restorative Discipline application and implementation. The Coordinator must be able to move freely among administrators, teachers, students, staff, parents, and community members in order to model, assist, and as needed, challenge and critique.

    8. *Restorative Discipline has a data system to analyze trends and inform early interventions.*

A data collection system is necessary both to measure outcomes and to identify implementation gaps and challenges. This practice

mirrors the Positive Behavioral Intervention and Support expectation that teams "systematically collect, summarize, and analyze, data to drive the decision-making process and identify priorities."[190]

9. *Restorative Discipline focuses on the harms, needs, and causes of student behavior, not just the breaking of rules and dispensing of punishment.*

A fully restorative campus uses circles and other restorative interventions at Tier 2 and Tier 3 levels and applies Restorative Discipline principles in every conflict and issue of harm in order to give stakeholders a voice and to create a contextual response to the matter under consideration. To the degree possible within district guidelines, the parties involved determine the parameters and nature of how the wrongdoer will be held accountable and the form amends-making will take.[191] Circle facilitators are carefully selected and trained to be able to create "safe spaces" where the work of Restorative Discipline can take place.[192]

10. *Restorative Discipline places a fundamental attention on harm and the subsequent needs of the victim.*

Restorative Discipline reflects a problem-solving and relational approach that focuses on restoring, to the degree possible, the victim to wholeness and the person(s) responsible for the harm back to the community.[193] Repairing the harm both literally and relationally is central to responses to negative behavior.

11. *Restorative Discipline places an emphasis on meaningful accountability in matters involving harm and conflict.*

Responses to conflict and issues of harm focus energy on accountability plans that are meaningful, specifically in regards to

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190.   TEXAS POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORT (PBIS), SCHOOL-WIDE PROJECT, http://ndisd.org/UserFiles/Servers/Server_3041344/File/Migration/PBS_Project_ Description.pdf.

191.   *See generally* AMBRA GREEN ET AL., KEY ELEMENTS OF POLICIES TO ADDRESS DISCIPLINE DISPROPORTIONALITY: A GUIDE FOR DISTRICT AND SCHOOL TEAMS 2 (2015), http://www.pbis.org/school/equity-pbis (discussing the different levels of policy and procedure implementation from school boards to school administrators).

192.   *See* JEAN GREENWOOD, CTR. FOR RESTORATIVE JUSTICE & PEACEMAKING, THE CIRCLE PROCESS: A PATH FOR RESTORATIVE DIALOGUE (2005) (discussing the role of circle facilitators); *see also* Heather T. Jones, *Restorative Justice in School Communities: Successes, Obstacles, and Areas for Improvement*, *in* RESTORATIVE JUSTICE 4 (Marilyn Armour ed., 2013).

193.   *See* Jones, *supra* note 192, at 2.

the harm that occurred, the needs and concerns of the victim and the community, the development of empathy, and the needs and deficits of the person(s) responsible for the harm as evidenced by the nature of the conflict or issue of harm.[194] Furthermore, accountability plans are recorded and monitored for successful completion with a subsequent plan should the plan not be completed or in the event of further problems.[195]

> 12. *Restorative Discipline takes time. It is dialogue driven and rests on the steady establishing and deepening of relationships.*

Research and experience suggest that three to five years of intentional and concentrated work is needed to make a campus fully restorative.[196]

> 13. *Restorative Discipline calls for collaboration with community-based restorative justice programs, local businesses, and agencies that serve youth, including community and faith-based programs, law enforcement, and public health and mental health entities.*

Restorative Discipline maintains that schools belong to and are part of a wider community.[197] Partnering with local programs and agencies illustrates this principle, provides a way for the community to invest in the school and its students, and broadens the range of people who can be influential or serve as a positive influence on a student's life.

CONCLUSION

There is no question that policies and procedures meant to ensure safe learning environments have had severe unintended consequences that jeopardize the futures of children, create prison-like conditions in schools, profoundly discourage teachers from continuing in their chosen profession, and contribute decidedly to

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194. *See id.*

195. MARILYN ARMOUR, THE INST. FOR RESTORATIVE JUSTICE AND RESTORATIVE DIALOGUE, ED WHITE MIDDLE SCHOOL RESTORATIVE DISCIPLINE EVALUATION: IMPLEMENTATION AND IMPACT, 2012/2013 SIXTH GRADE 57 (2013) [hereinafter ARMOUR, ED WHITE MIDDLE 2012/2013].

196. U.S. DEP'T OF EDUC., OFFICE OF SPECIAL EDUCATION PROGRAMS, POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS IMPLEMENTATION BLUEPRINT: PART 1—FOUNDATIONS AND SUPPORTING INFORMATION 15 (2015).

197. *See* ARMOUR, ED WHITE MIDDLE 2012/2013, *supra* note 195, at 15.

lower student achievement. Research on this national crisis, ear-marked by gross racial disproportionality in discipline, suggests that school controlled factors override student characteristics and demographics as predictors of both frequency and disproportion-ate use of punishment. As noted earlier, school controlled factors include teachers' attitudes and tolerance levels, their skill in managing the classroom, principal attitudes toward discipline, and a positive or negative school climate.[198] These factors are the exact targets of a whole school restorative practices approach.[199]

Restorative justice calls on those responsible for the harm done to others to make amends and restore the normative trust that was broken by wrongdoing. Although this fundamental restora-tive principle usually applies to individual wrongdoers and dis-crete acts, it is also congruent with the harm done through socie-tally endorsed exclusionary practices to students, school personnel, and the learning environment over many years. That is, restorative practices not only provide schools with the oppor-tunity to embed a different paradigm for current issues, but also to make amends for the past by committing deeply and unfailing-ly to a relational healing philosophy that is inclusive in nature. Indeed, the current crisis opens the door to relationally oriented solutions that usually would be scoffed at as "soft." These solu-tions have been pushed to the forefront because arguably few other comprehensive options exist. Actually, the use of restorative justice in education is still young. There is little scientific knowledge about how to implement it well. As a society condi-tioned to efficiency, immediate gratification, and fast fixes, there is undue pressure on schools to implement an otherwise slow, thoughtful, and relationally oriented process too rapidly. These social norms could easily create a backlash such that a failed im-plementation would provide justification for returning to a modi-fied and disguised form of punitive practices.

The rule of law has a critical role to play in nurturing the solu-tion provided through restorative practices. In light of its poten-tial, through legislative action to mandate change, it must be careful not to feed the potential backlash. Specifically, the prohi-

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198. *See* Skiba et al.*, Contributions of Behavior*, *supra* note 39, at 7; *see also* text ac-companying notes 30–34 (discussing the impact of suspensions and expulsions on stu-dents' academic performance and juvenile justice system involvement).

199. MARGARET THORSBORNE & PETA BLOOD, IMPLEMENTING RESTORATIVE PRACTICE IN SCHOOLS: A PRACTICAL GUIDE TO TRANSFORMING SCHOOL COMMUNITIES 59–61 (2013).

bition on punitive practices exercised by some states is likely to exacerbate failure because other alternatives, such as restorative practices, are still in experimental stages, unknown or have limited capacity to help schools successfully put new practices into place because so few persons have been trained or have experience with restorative practices in schools. Likewise, legal mandates to implement restorative practices may overwhelm systems ill prepared for what is required for sustainable implementation. Moreover, legal mandates undo the voluntariness that philosophically accompanies restorative practices and insert instead unrealistic time lines coupled with inadequate resources for implementation.

Law, therefore, must be innovative in constructing avenues to support restorative practices that truly assist districts and campuses in their adoption of profound reforms. It might be productive, for example, for legislatures to generate policy that "philosophically" supports restorative practices in schools, financially incentivizes schools to use restorative coordinators to guide the implementation over three to five years, or establishes review committees to approve thoughtful implementation plans based on best practices. Legislatures might also support "philosophically" the education and training of future teachers in Colleges of Education so they are better equipped to bring restorative practices into their classrooms. Likewise, school resource officers need training mandated by legislatures. Just as the government offers subsidies for alternative energy sources such as solar or wind energy or tax credits for hybrid cars using electrical power, school districts could be similarly incentivized, through relieving some of their tax burden, to pilot diverse options including restorative practices.

The concept of restorative practices does not come prepackaged. Rather it requires thinking outside the box to generate novel supports for far reaching sustainability and success. This historic period presents a golden opportunity to make right the wrongs of prior times and to generate a different base for the future. In the words of Savannah, a fifteen-year-old student, "[i]nstead of learning from our behavior, schools just force us out without real conversations and interventions. Suspensions don't

work, summonses don't work, arrests don't work. Keep us in the classroom, keep us accountable, and build relationships. That works."[200]

    200. ADVANCEMENT PROJECT, RESTORATIVE PRACTICES: FOSTERING HEALTHY RELATIONSHIPS & PROMOTING POSITIVE DISCIPLINE IN SCHOOLS: A GUIDE FOR EDUCATORS (2014), http://b.3cdn.net/advancement/5165058db7e15ced3a_6lm6y18hu.pdf.