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

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# Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline

Thalia González\*

## I. INTRODUCTION

Although the use of restorative justice in schools is hardly new globally, the emergence of school-based restorative justice in the United States as an educational practice to address the far-reaching negative impacts of punitive discipline policies is a more recent phenomenon. School-based restorative justice programs in the United States have grown exponentially in the last five years. Within the school context, restorative justice is broadly defined as an approach to discipline that engages all parties in a balanced practice that brings together all people impacted by an issue or behavior.<sup>1</sup> It allows students, teachers, families, schools, and communities to resolve conflict, promote academic achievement, and address school safety. Restorative justice practice in schools is often seen as building on existing relationships and complementary with other non-discipline practices, such as peer mediation or youth courts.

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1. Gilleen McCluskey et al., *Can Restorative Practices in Schools Make a Difference?*, 60 *EDUC. REV.* 405, 407-08 (2008); Peta Blood & Margaret Thorsborne, *The Challenges of Culture Change: Embedding Restorative Practice in Schools*, paper presented at the Sixth International Conference on Conferencing, Circles and other Restorative Practices: Building a Global Alliance for Restorative Practices and Family Empowerment (Mar. 3-5, 2005); Jeanne B. Stinchcomb, Gordon Bazemore & Nancy Riestenberg, *Beyond Zero Tolerance: Restoring Justice in Secondary Schools*, 4 *YOUTH VIOLENCE & JUV. JUST.* 123, 124 (2006); Lyn Harrison, *From Authoritarian to Restorative Schools*, *RECLAIMING YOUTH AND CHILDREN*, 17-18 (2007); David R. Karp & Beau Breslin, *Restorative Justice in School Communities*, 33 *YOUTH & SOC'Y* 249, 251-66 (2001); Sally Varnham, *Seeing Things Differently: Restorative Justice and School Discipline*, 17 *EDUC. AND THE LAW* 87, 88 (2005); Lorraine Stutzman Amstutz & Judy Mullet, *The Little Book of Restorative Discipline for Schools: Teaching Responsibility; Creating Caring Climates* (2005); Brenda E. Morrison, *Regulating Safe School Communities: Being Responsive and Restorative*, 41(6) *J. OF EDUC. ADMIN.* 689, 690-694, 701-702 (2003).

To understand the powerful impact of school-based restorative justice practice, one must consider the far-reaching negative impacts of zero tolerance and other punitive discipline measures.<sup>2</sup> It has been consistently documented that punitive school discipline policies not only deprive students of educational opportunities, but fail to make schools safer places.<sup>3</sup> The presence of zero tolerance and punitive discipline policies within schools also have negative effects on the offending student, by increasing the likelihood of future disciplinary problems, and ultimately

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2. Aaron Kupchik, *Homeroom Security: School Discipline in an Age of Fear*, New York Univ. Press 8 (2010); Daniel J. Losen & Russell J. Skiba, *Suspended Education: Urban Middle Schools in Crisis* 11 (2010), S. Poverty Law Ctr., available at [http://www.splcenter.org/sites/default/files/downloads/publication/Suspended\\_Education.pdf](http://www.splcenter.org/sites/default/files/downloads/publication/Suspended_Education.pdf); Michael P. Krczmien et al., *Juvenile Court Referrals and the Public Schools: Nature and Extent of the Practice in Five States*, 26 J. CONTEMP. CRIM. JUST. 273, 274 (2010); Nkechi Taifa & Catherine Beane, *Integrative Solutions to Interrelated Issues: A Multidisciplinary Look Behind the Cycle of Incarceration*, 3 HARV. L. & POL'Y REV. 283, 289-90 (2009) ("There is considerable evidence that educational failure is a significant risk factor for delinquent or criminal behavior. Deficiencies in educational systems, destructive school discipline policies, truancy, and the seeming inability of schools to identify and service disadvantaged youth who are in need of special educational services are directly related to the cycle of incarceration."); Jessica Feirrrman, Marsha Levick & Ami Mody, *The School-to-Prison Pipeline . . . and Back: Obstacles and Remedies for the Re-enrollment of Adjudicated Youth*, 54 N.Y.L. SCH. L. REV. 1115, 1123 (2009-2010); Nathan von der Embse et al., *Applying Social Justice Principles Through School-Based Restorative Justice*, *Communique* 1 (2009).

3. Advancement Project, *Education on Lockdown: The Schoolhouse to Jailhouse Track*, Advancement Project (2005), available at <http://www.advancementproject.org/sites/default/files/publications/FINALEOLrep.pdf> [hereinafter Advancement Project, *Education*]; Augustina Reyes, *The Criminalization of Student Discipline Programs and Adolescent Behavior*, 21 ST. JOHN'S J. LEGAL COMMENT 73, 77-78 (2006); Mississippi Youth Justice Project, Southern Poverty Law Center, *Effective Discipline for Student Success: Reducing Student and Teacher Dropout Rates in Mississippi*, Southern Poverty Law Center (2008), available at [http://www.splcenter.org/sites/default/files/downloads/effective\\_discipline\\_MS.pdf](http://www.splcenter.org/sites/default/files/downloads/effective_discipline_MS.pdf); Heather Cobb, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*, 44 HARV. C.R.-C.L. L. REV. 581, 582-88 (2009); Deborah N. Archer, *Introduction: Challenging the School-to-Prison Pipeline*, 54 N.Y.L. SCH. L. REV. 867, 868-70 (2010); Louisiana School-to-Prison Reform Coalition, *Effective Discipline for Student Success: Reducing Student and Teacher Dropout Rates in Louisiana*, Southern Poverty Law Center (2009), available at [http://www.splcenter.org/sites/default/files/downloads/LA\\_Reducing\\_Student\\_Dropout.pdf](http://www.splcenter.org/sites/default/files/downloads/LA_Reducing_Student_Dropout.pdf); Advancement Project, *Test, Punish, and Push Out: How "Zero Tolerance" and High-Stakes Testing Funnel Youth into the School to Prison Pipeline*, Advancement Project (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf) [hereinafter Advancement Project, *Test*]; Russell J. Skiba, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*, Indiana Education Policy Center (2000); Stinchcomb et al., *supra* note 1; American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*, 63 THE AM. PSYCHOLOGIST 852, 852-62 (2008); Heather A. Cole & Julian Vasquez Heilig, *Developing a School-Based Youth Court: A Potential Alternative to the School to Prison Pipeline*, 40 J.L. & EDUC. 305 (2011).

increasing contact with the juvenile justice system.<sup>4</sup> For example, in its 2010 report, *Test, Punish & Push Out: How “Zero Tolerance” and High Stakes Testing Funnel Youth Into the School-Prison-Pipeline*, The Advancement Project documented that punitive discipline policies have led to a tripling of the national prison population from 1987 to 2007.<sup>5</sup> Additionally, in many school districts across the United States, children are more likely to be arrested at school than they were a generation ago,<sup>6</sup> and the number of students suspended from school each year has nearly doubled from 1.7 million in 1974 to 3.1 million in 2000.<sup>7</sup> In 2006, one in every fourteen students was suspended at least once during the academic year.<sup>8</sup> In the same year, according to the Legal Defense Fund, African-American students representing only 17.1 percent of public school students “accounted for 37.4 percent of total suspensions and 37.9 percent of total expulsions nationwide.”<sup>9</sup> Between the 2002-2003 and 2007-2008 school years, the number of suspensions in New York City schools more than doubled, rising from 31,880 to 72,518, respectively.<sup>10</sup> More than one in five (22%) of the students suspended during the 2007-2008 school year in New York City had a superintendent’s suspension.<sup>11</sup>

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4. Advancement Project, *Education*, *supra* note 3; Advancement Project, *Test*, *supra* note 3; American Psychological Association Zero Tolerance Task Force, *supra* note 3; Cobb, *supra* note 3; Reyes, *supra* note 3; Children’s Defense Fund, *America’s Cradle to Prison Pipeline*, Children’s Defense Fund (2007), available at <http://www.childrensdefense.org/child-research-data-publications/data/cradle-prison-pipeline-report-2007-full-lowres.pdf>; Joseph B. Tulman & Douglas M. Weck, *Shutting Off the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, 54 N.Y.L. SCH. L. REV. 875, 877 (2010); Ronald C. Lewis, *A Multi-System Approach to Dismantling the “Cradle to Prison” Pipelines*, The Houston Lawyer 1, 1-4 (2009); Christine A. Christle, Kristine Jolivet & C. Michael Nelson, *Breaking the School to Prison Pipeline: Identifying School Risk and Protective Factors for Youth Delinquency*, 13 Exceptionality 69-88 (2005).

5. Advancement Project, *Test*, *supra* note 3, at 9.

6. Archer, *supra* note 3, at 868.

7. Johanna Wald & Daniel Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 99 New Directions for Youth Dev. 9, 10 (2003).

8. Advancement Project, *Education*, *supra* note 3.

9. NAACP Legal Def. & Educ. Fund, Inc., Annual Report of the NAACP Legal Defense and Educational Fund, Inc. (2007-2009) 43 (2009) [hereinafter *Legal Defense Fund*], available at [http://naacpldf.org/files/publications/NAACPLDF\\_2007-2009\\_Annual\\_Report.pdf](http://naacpldf.org/files/publications/NAACPLDF_2007-2009_Annual_Report.pdf).

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

11. *Id.* Superintendent suspensions can last up to one year. Principal’s suspensions can last from one to five days. The FOIL request also found that Suspensions disproportionately affect African American students. For example, during the 2006 -2007school year in New York City,

The first documented use of restorative justice in schools began in the early 1990s with initiatives in Australia.<sup>12</sup> Since this time, school based restorative justice programs have been studied most extensively internationally,<sup>13</sup> but more scholars have begun preliminary analysis of United States based programs.<sup>14</sup> School-based restorative justice practice is a

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Black students accounted for 53% of the suspensions, but made up only 32% of the student population. Suspensions disproportionately affect students receiving special education services. During the 2006-2007 school year in New York City, students receiving special education services accounted for 28% of the suspensions, but only made up 9% of the student population.

12. Lisa Cameron & Margaret Thorsborne, *Restorative Justice and School Discipline: Mutually Exclusive?*, Presented to the Reshaping Australian Institutions Conference "Restorative Justice and Civil Society", Australian National University, Canberra, February, 1999; Avery Calhoun & Gail Daniels, *Accountability in School Responses to Harmful Incidents*, JOURNAL OF SCHOOL VIOLENCE 21-47 (2008).

13. Cameron & Thorsborne, *supra* note 12; Eliza Ahmed & Valerie Braithwaite, *Forgiveness, Reconciliation, and Shame: Three Key Variables in Reducing School Bullying*, 62 JOURNAL OF SOCIAL ISSUES 363-366 (2006); Avery Calhoun, *Calgary Community Conferencing School Component 1999-2000: A Year in Review available at <http://www.calgarycommunityconferencing.com>*; Stinchcomb et al., *supra* note 1; National Evaluation of the Restorative Justice in Schools Programme, Youth Justice Board for England and Wales (2004), *available at <http://www.youth-justice-board.gov.uk>*; Blood & Thorsborne, *supra* note 1; John Boulton & Laura Mirsky, *Restorative Practices as a Tool for Organizational Change: The Bessels Leigh School*, 15 *Reclaiming Children and Youth*, HEALTH MODULE 89 (2006); Calhoun & Daniels, *supra* note 12; Avery Calhoun & William Pelech, *Responding to Young People Responsible for Harm: A Comparative Study of Restorative and Conventional Approaches*, Contemporary Justice Review 287 (2010); Tom Cavanagh, *Creating Schools of Peace and Nonviolence in a Time of War and Violence*, JOURNAL OF SCHOOL VIOLENCE 64 (2009); Wendy Drewery, *Conferencing in Schools: Punishment, Restorative Justice, and the Productive Importance of the Process of Conversation*, J. COMMUNITY APPL. SOC. PSYCHOL. 332 (2004); Wendy Drewery & John Winslade, *Developing Restorative Practices in Schools: Flavour of the Month or Saviour of the System?*, Paper Presented to the AARE/ NZARE Conference (Dec. 2003); Janice Wearmoth, Rawiri McKinney, & Ted Glynn, *Restorative Justice: Two Examples from New Zealand Schools*, BRITISH JOURNAL OF SPECIAL EDUCATION 196 (2007); Mark S. Umbreit, *Restorative Justice: An Empirically Grounded Movement Facing Many Opportunities and Pitfalls*, CARDOZO J. CONFLICT RESOL. 1 (2007); Kristin Reimer, *An Exploration of the Implementation of Restorative Justice in an Ontario Public School*, Canadian Journal of Educational Administration and Policy 1-42 (2011); McCluskey et al., *supra* note 1; Harrison, *supra* note 1.

14. Julie Ashworth et al., *Reclaiming Children and Youth*; 17 HEALTH MODULE 22-26 (2008); Monique Bourgeois, *A Secondary School Cooperative: Recovery at Solace Academy, Chaska, Minnesota*, 2 *Journal of Groups in Addiction and Recovery* 180, 180-197 (2007); Wesley G. Jennings, Angela R. Gover & Diane M. Hitchcock, *Localizing Restorative Justice: An In-Depth Look at a Denver Public School Program*, 11 *SOCIOLOGY OF CRIME, LAW AND DEVIANCE* 167, 173 (2008); Carol Chmelynski, *Restorative Justice for Discipline with Respect*, School Board News 17-20 (2005); Thalia González, *Restoring Justice: Community Organizing to Transform School Discipline Policies*, 15 *U.C. DAVIS J. JUV. L. & POL'Y* 1 (2011); David T. Deal, *Stretch Your Meditation Wings: School-Based Restorative Justice*, Virginia Adr 4-5 (2010); David T. Deal, *School-Based Restorative Justice: Ten Lessons Learned*, Third National Conference on Restorative Justice 1-9 (2011); Donald DeVore & Kevin Gentilcore, *Balanced and Restorative Justice and Educational Programming for Youth At-Risk*, 73 *THE CLEARING HOUSE* 96-100 (1999); Drewery & Winslade, *supra* note 13; Barry A. Fields, *Restitution and Restorative Justice*, 22 *Youth*

whole-school approach focused on inclusion in the school community, rather than exclusion, to address issues of student discipline,<sup>15</sup> student performance,<sup>16</sup> school safety,<sup>17</sup> student dropout,<sup>18</sup> and the school to prison pipeline<sup>19</sup> without a disproportionate reliance on suspensions and expulsions. As restorative justice models have evolved within schools, it is clear they contribute to the aims of education by emphasizing accountability, restitution, and restoration of a community. Similar to restorative justice programs in general,<sup>20</sup> school-based restorative justice practices

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Studies Australia 44-51(2003); Leah M. Christensen, *Sticks, Stones, and Schoolyard Bullies: Restorative Justice, Mediation and a New Approach to Conflict Resolution in our Schools*, 9 NEV. L.J. 545, 579 (2008); William Haft, *More Than Zero, The Cost of Zero Tolerance and the Case for Restorative Justice in Schools*, 77 DENV. U. L. REV. 795 (2000); Von der Embse et al., *supra* note 2; Michael D. Sumner, Carol J. Silverman & Mary Louise Frampton, *School-Based Restorative Justice as an Alternative to Zero-Tolerance Policies: Lessons from West Oakland*, Thelton B. Henderson Center for Social Justice, U.C. BERKELEY L. REV. 1-36 (2010); *Restorative Justice Initiative: End of Year Report 2008-2009*, Santa Fe Public Schools, available at [www.sfps.info](http://www.sfps.info) [hereinafter *Restorative Justice Initiative*]; Thalia 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 (New York University Press).

15. Fields, *supra* note 14; Sam Halstead, *Educational Discipline Using the Principles of Restorative Justice*, 50 JCE 42-47 (1999); Harrison, *supra* note 1; Belinda Hopkins, *Restorative Justice in Schools*, 17 Support for Learning 144-49 (2002); Boulton & Mirsky, *supra* note 13.

16. Brenda E. Morrison, Peta Blood & Margaret Thorsborne, *Practicing Restorative Justice in School Communities: The Challenge of Culture Change*, 5 PUB. ORG. REV. 335, 337-38 (2005); Morrison, *supra* note 1; Jennings et al., *supra* note 14; Boulton & Mirsky, *supra* note 13.

17. Tom Cavanagh, *Creating Schools of Peace and Nonviolence in a Time of War and Violence*, 8 JOURNAL OF SCHOOL VIOLENCE 64-80 (2009); American Psychological Association Zero Tolerance Task Force, *supra* note 3, at 853-54; Allison Ann Payne, Denise C. Gottfredson & Gary D. Gottfredson, *Schools as Communities: The Relationships Among Communal School Organization, Student Bonding, and School Disorder*, 41 Criminology 749, 751-53 (2003); Roger D. Goddard, *Relational Networks, Social Trust, and Norms: A Social Capital Perspective on Students' Chances of Academic Success*, 25 EDUC. EVALUATION AND POL'Y ANALYSIS 59, 59-62 (2003); Mark T. Greenberg et al., *Enhancing School-Based Prevention and Youth Development Through Coordinated Social, Emotional, and Academic Learning*, 58 The Am. Psychologist 466, 468-69 (2003); Stinchcomb et al., *supra* note 1, at 132-42; Interview with Daniel Fuentes, Student Advisor, North High School, in Denver, Colo. (May 26, 2010); Interview with Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (June 12, 2011); Morrison, *supra* note 1; Morrison et al., *supra* note 16; Michael Wenzel et al., *Retributive and Restorative Justice*, 32 LAW & HUM. BEHAV. 375, 376-78 (2008); Maria M. Tioftii & David P. Farrington, *Bullying: Short-Term and Long-Term Effects, and the Importance of Defiance Theory in Explanation and Prevention*, 3 Victims and Offenders 289-312 (2008).

18. Morrison et al., *supra* note 16; Von der Embse et al., *supra* note 2.

19. Haft, *supra* note 14; Stinchcomb et al., *supra* note 1; Varnham, *supra* note 1; Cole & Heilig, *supra* note 3; Greg Volz, *An Idea Whose Time Has Come?*, 33 APR Pa. Law 16 (2011); Katayoon Majd, *Students of Mass Incarceration Nation*, 54 HOW L.J. 343, 343, 362, 366, 391-92 (2011); Kathleen DeCataldo & Toni Lang, *Keeping Kids in School and Out of Court*, NYSTBJ 26, 29 (2011).

20. Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2003); Ted Watchel, *Restorative Justice in Everyday Life: Life Beyond the Formal Ritual*, 12 Reclaiming Children and Youth 83-87 (2003).

use varying models of conferences, mediations, and circles to repair the relationships between students, teachers, administrators, and the school community.<sup>21</sup> Thus, the primary function of restorative practice is to reintegrate the student into the school community, rather than removing the student and increasing the potential for separation, resentment, and recidivism.<sup>22</sup> Schools, in contrast to the legal system, provide a unique context in which the injury to the community is clearly defined and restitution can be formulated. For example, in schools, it is easier to identify members of the community who can play a positive role in the restorative justice process. Moreover, schools, unlike the legal system, have the capacity and knowledge to implement strategies that are long-term and sustainable.

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

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21. Morrison et al., *supra* note 16; Belinda Hopkins, *Just Schools: A Whole School Approach to Restorative Justice*, (Jessica Kingsley 2004); Morrison, *supra* note 1; Peta Blood & Margaret Thorsborne, *Overcoming Resistance to Whole-School Uptake of Restorative Practices*. Paper presented at the International Institute of Restorative Practices "The Next Step: Developing Restorative Communities, Part 2" Conference (2006); Payne et al., *supra* note 17; Varnham, *supra* note 1; Umbreit, *supra* note 13; Frida Rundell, *Re-Story-ing Our Restorative Practices*, 16 *Reclaiming Children and Youth* 52-59 (2007); Declan Roche, *Dimensions of Restorative Justice*, 62 *JOURNAL OF SOCIAL ISSUES* 217-238 (2006).

22. Karp & Breslin, *supra* note 1, at 250; Morrison, *supra* note 16, at 335. *See generally* JOHN BRAITHWAITE, *RESTORATIVE JUSTICE AND RESPONSIVE REGULATION* (2002).

## II. PUNITIVE DISCIPLINE AND THE SCHOOL TO PRISON PIPELINE

Over the last two decades, youth crime has steadily declined.<sup>23</sup> However, public school districts have approached discipline through increasingly punitive policies. Schools have imposed harsher sanctions on students for minor disruptive behavior, such as tardiness, absences, noncompliance, and disrespect, resulting in a systematic and pervasive pushing out of students from schools and into the school-to-prison pipeline.<sup>24</sup> Even though schools remain among the safest places for youth,<sup>25</sup> they have embraced many of the punitive policies of the criminal and juvenile justice systems incorporating them into their responses to student discipline.<sup>26</sup> In their meta-analysis of studies involving juvenile delinquency, Martin and Loeber found that use of frequent discipli-

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23. Jeffrey A. Butts & Daniel P. Mears, *Trends in American Youth Crime*, in *JUVENILE JUSTICE AND DELINQUENCY* 23, 23 (David W. Springer & Albert R. Roberts eds., 2011); see Majd, *supra* note 19, at 352-53.

24. See *supra* notes 3, 4, & 19.

25. Advancement Project, *Education*, *supra* note 3, at 11; Kupchik *supra* note 2, at 15. For example, between 1992 and 2005, the Bureau of Justice Statistics found that annual rates of serious violent crimes were lower at school than away from school. See Rachel Dinkes, Thomas D. Snyder, Emily Forrest Cataldi & Wendy Lin-Kelly, *Indicators of School Crime and Safety*, U.S. DEP'T OF EDUC. & U.S. DEP'T OF JUSTICE 6 (2007).

26. See *supra* notes 2-11; Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed Democracy and Created a Culture of Fear* 220 (Oxford Univ. Press 2007); ACLU of N. Cal., *Balancing the Scales of Justice: An Exploration into How Lack of Education, Employment, and Housing Opportunities Contribute to Disparities in the Criminal Justice System* (2010) [hereinafter *Balancing the Scales of Justice*], available at [http://www.aclunc.org/docs/racial\\_justice/balancing\\_the\\_scales\\_of\\_justice.pdf](http://www.aclunc.org/docs/racial_justice/balancing_the_scales_of_justice.pdf) (explaining that students who have law enforcement presence on campus are more likely to be arrested, arrested at a young age, expelled, and suspended); Clayton Cnty. Pub. Sch., *Blue Ribbon Commission on School Discipline: Executive Report* 47 (2007), available at <http://www.clayton.k12.ga.us/departments/student-services/handbooks/BlueRibbonExecutiveReport.pdf> (attributing a jump in school-referred delinquency cases in Clayton County, Georgia, from ninety in 1996 to twelve hundred in 2004 to the presence SROs at schools); Elora Mukherjee, *Criminalizing the Classroom: The Over-Policing of New York City Schools*, N.Y. Civ. Lib. Union 17-18 (2007), available at [http://www.nyclu.org/pdfs/criminalizing\\_the\\_classroom\\_report.pdf](http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf). A recent longitudinal study of SROs revealed that between 1995 and 2004, in four of five states studied, the proportion of juvenile court referrals from schools increased. See Krezmien et al., *supra* note 2, at 286. The researchers found "a strong possibility that schools are using the juvenile courts to handle school misbehavior without consideration of the negative and deleterious effects on children or the juvenile delinquency system." *Id.* at 290 (noting that such practice "unduly burdens the police, the juvenile courts, and the juvenile corrections systems"). In New York City, on any given day, over ninety-three thousand children—predominantly students of color—have to pass through security stations with metal detectors, bag-searches, and pat-downs administered by police personnel before getting to class. See Advancement Project, *Test*, *supra* note 3, at 4, 16; Hirschfield, *infra* note 60, at 3 (noting that between 1999 and 2006, the percentage of schools nationwide using one or more video surveillance cameras increased from 19% to 43%).



nary actions that remove students from the school community and academic instruction contributed to delinquency.<sup>27</sup> Further, they determined that exclusionary practices, such as suspension, interfered with educational progress and perpetuated a cycle of failure. In fact, this research on suspensions indicated that despite frequent use, such exclusionary discipline practices are not effective in reducing problematic behaviors.<sup>28</sup>

In addition, many schools have manifested punitive crime control measures by relying on surveillance technologies and full-time law enforcement officers<sup>29</sup> despite the fact that there is little to no evidence that these measures or zero tolerance policies served as an effective deterrent. For example, Schreck, Miller, and Leone's study found that these approaches are ineffective in increasing school safety.<sup>30</sup> Similarly, Mayer and Leone found that school "security measures" are actually associated with an increase in school disorder.<sup>31</sup> In fact, it is reported that public school students are "outside of prison and jail inmates, perhaps the most policed group in the country right now."<sup>32</sup> Currently, forty-one states require schools to report students to law enforcement for various misbehaviors on campus.<sup>33</sup> Over the last decade, the number of law enforcement officers stationed permanently on campuses has significantly increased.<sup>34</sup> For example, the New York Police Department's School Safety Division is larger than the entire police forces of the District of Columbia, Detroit, Boston, and Las Vegas.<sup>35</sup> School

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

28. Christle et al., *supra* note 4, at 70.

29. Majd, *supra* note 19, at 361; Kupchik, *supra* note 2, at 85 ("The surveillance over students by the police is far greater than they face outside school."); Krezmien et al., *supra* note 2; Advancement Project, *Test, supra* note 3, at 10; Losen & Skiba, *supra* note 2.

30. Christopher J. Schreck, J. Mitchell Miller & Chris L. Gibson, *Trouble in the Schoolyard: A Study of the Risk Factors of Victimization at School*, 71/03 CRIME & DELINQ. 460 (2003).

31. Matthew J. Mayer & Peter E. Leone, *School Violence and Disruption Revisited: Establishing Equity and Safety in the School House*, FOCUS ON EXCEPTIONAL CHILD., Sept. 2007, at 1, 12.

32. Advancement Project, *Test, supra* note 3.

33. Losen & Skiba, *supra* note 2.

34. Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 978 (2009-2010); Nicole L. Bracy, *Circumventing the Law: Students' Rights in Schools with Police*, 26 J. CONTEMP. CRIM. JUST. 294, 295-96 (2010); Dinkes, Snyder, Cataldi & Lin-Kelly, *supra* note 25.

35. Advancement Project, *Test, supra* note 3. While police presence has slowly become accepted on South Los Angeles school campuses, it has actually become commonplace to include policing authorities among school faculty. For example, students involved in the juvenile justice system often report to probation officers stationed at their respective high schools and middle schools. There are a few benefits to having probation officers; however the issues posed can have a serious affect on their cases. See Interview with Ariel Wander, Attorney Children's Rights Project, Public Counsel in L.A., Cal. (July 26, 2011) (discussing similarities in client experiences regarding policing in South Los Angeles schools).

districts, such as Los Angeles Unified School District, have established their own police departments.<sup>36</sup> This collaboration between schools and law enforcement coupled with the presence of surveillance equipment has increased the number of youth referred to juvenile courts for minor misbehaviors that in the past would have likely been handled by school administrators.<sup>37</sup> While data on arrests of students at school are not regularly reported, the available data suggests that surveillance at school is associated with more student arrests and that large numbers of youth are being referred for minor, not serious, offenses.<sup>38</sup> As a recent study of school resource officers revealed, between 1995 and 2004 in four of five states studied, the proportion of juvenile court referrals from schools increased.<sup>39</sup> The researchers found “a strong possibility that schools are using the juvenile courts to handle school misbehavior without consideration of the negative and deleterious effects on children or the juvenile delinquency system.”<sup>40</sup> In Clayton, Georgia, when police officers were introduced into the schools, school-based referrals to juvenile court in the county increased 600% over a three-year period.<sup>41</sup> During that same time period there was no increase in the number of serious offenses or safety violations.<sup>42</sup> Such an increase is not unique. Similarly, in Pennsylvania, the number of school-based arrests

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36. *Id.*

37. Thureau & Wald, *supra* note 34, at 978; see also Advancement Project, *Opportunities Suspended: The Devastating Consequences of Zero-Tolerance and School Discipline* 1, 13-15 (July 15, 2002), available at <http://www.advancementproject.org/sites/default/files/publications/opsusp.pdf>; Kupchik, *supra* note 2, at 85, (“[S]chool resource officers often look for ways to redefine misbehavior as criminal, even when the label doesn’t apply.”); Marsha L. Levick & Robert G. Schwartz, *Changing the Narrative: Convincing Courts to Distinguish Between Misbehavior and Criminal Conduct in School Referral Cases*, 9 U.D.C. L. REV. 53 (2007).

38. Johanna Wald & Lisa Thureau, *First, Do No Harm: How Educators and Police Can Work Together More Effectively to Preserve School Safety and Protect Vulnerable Students*, Charles Hamilton Houston Inst. For Race & Justice (2010), available at <http://www.charleshamiltonhouston.org/assets/documents/news/FINAL%20Do%20No%20Harm.pdf>; *Balancing the Scales of Justice*, *supra* note 26 (explaining that students who have law enforcement presence on campus are more likely to be arrested, arrested at a young age, expelled, and suspended); Clayton County Public Schools, *Blue Ribbon Commission on School Discipline: A Written Report Presented to the Superintendent and Board of Education*, 1-67 (2007), available at <http://www.clayton.k12.ga.us/departments/student-services/handbooks/BlueRibbonExecutiveReport.pdf> (attributing a jump in school-referred delinquency cases in Clayton County, Georgia, from ninety in 1996 to twelve hundred in 2004 to the presence SROs at schools); Mukherjee, *supra* note 26.

39. Krezmien et al., *supra* note 2, at 286.

40. *Id.* at 290.

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

42. Neelum Arya & Ian Augarten, *Critical Condition: African-American Youth in the Justice System*, 33 THE CAMPAIGN FOR YOUTH JUSTICE (2008), available at [http://www.nijn.org/media/resources/public/resource\\_852.pdf](http://www.nijn.org/media/resources/public/resource_852.pdf).

almost tripled in seven years.<sup>43</sup> In Philadelphia, between the 1999-2000 school year and the 2002-2003 school year, the number of arrests in schools increased from 1632 to 2194.<sup>44</sup> In Denver, juvenile law enforcement referrals rose 71% from 818 in 2000-2001 to 1401 in 2003-2004.<sup>45</sup> Likewise, in Florida there were over 21,000 arrests and referrals of students to the state's Department of Juvenile Justice in 2007-2008, and 69% of them were for misdemeanor offenses.<sup>46</sup> In Los Angeles, 12,000 students were fined up to \$250 each just for being late or away from school in 2008.<sup>47</sup> Additionally, in 2004-2005 in Los Angeles Unified School District Local District 7 there were 9,251 suspensions, at 34% of the student enrollment.<sup>48</sup> Furthermore, in 2007-2008, over 45% of Los Angeles Unified School District Local District 7 suspensions were to African American students; in 2008-2009, that percentage rose to over 47%.<sup>49</sup> In both instances, these percentages were over twice the proportion of African American students in LD7 schools.<sup>50</sup> Moreover, between 2004 and 2009, the Los Angeles School Police Department gave out 13,118 citations, summons, and/or tickets, and the Los Angeles Police Department dispensed nearly 34,000 tickets between 2004 and 2007.<sup>51</sup> Maryland also represents the alarming trend of increasing disciplinary action for non-violent offenses such as disrespect, insubordination, and absenteeism. In 2006-2007, out-of-school suspensions for non-serious, non-violent offenses accounted for 37.2% of suspensions in Maryland, whereas only 6.7% of suspensions were issued for dan-

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43. Advancement Project, *Test*, *supra* note 3, at 4.

44. Advancement Project, *Education*, *supra* note 3, at 15.

45. Mukherjee, *supra* note 26, at 6.

46. Advancement Project, *Test*, *supra* note 3.

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

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

49. *Id.*

50. Community Asset Development Re-defining Education (CADRE), Mental Health Advocacy Services, Inc. & Public Counsel Law Center, *Redefining Dignity in Our Schools: A Shadow Report on School-Wide Positive Behavior Support Implementation in South Los Angeles 2007-2010, Executive Summary*, Cmty Asset Dev. Re-defining Educ. 3, 5-6 (2010), [hereinafter CADRE, *Executive Summary*] available at [http://www.dignityinschools.org/files/Redef\\_Dignity\\_Full\\_Report.pdf](http://www.dignityinschools.org/files/Redef_Dignity_Full_Report.pdf).

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

gerous substances, weapons, arsons, and sex offenses combined.<sup>52</sup> Similar data was reported for the 2007-2008 school year as disrespect, insubordination, and disruption accounted for 37.4% of out-of-school suspensions, while suspensions for dangerous substances, weapons, arsons, and sex offenses represented only 7.1% of total suspensions.<sup>53</sup> In Baltimore City, disrespect, insubordination, and disruption were the primary reasons for suspension, accounting for 32.9% of out-of-school suspensions.<sup>54</sup>

### A. The Negative Impacts of Zero Tolerance Policies

Emerging in the late 1980s, zero tolerance policies became widespread in the early 1990s.<sup>55</sup> Zero tolerance can be viewed comprehensively as a composite of perspectives related to punishment, deterrence, and incapacitation.<sup>56</sup> Beginning with a national focus on drug-related offenses, the concept of zero tolerance has been aligned with crime-related politics.<sup>57</sup> As a result, zero tolerance became the rallying cry in the war against youth crime. This war spread quickly from the streets into the schools, and intolerance was declared against serious offenses, such as possession of weapons, to minor offenses, such as talking back to teachers.<sup>58</sup> These concerns about school crime, despite their discon-

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52. Donald Stone & Linda Stone, *Dangerous and Disruptive or Simply Cutting Class; When Should Schools Kick Kids to the Curb?: An Empirical Study of School Suspension and Due Process Rights*, 13 J. L. & FAM. STUD. 1, 12 (2011).

53. *Id.*

54. *Id.*

55. Advancement Project, *Education*, *supra* note 3, at 15-16; Advancement Project, *Test*, *supra* note 3, at 9-11, 17; Archer, *supra* note 3, at 868-69; American Psychological Association Zero Tolerance Task Force, *supra* note 3, at 852; Tonya M. Boyd, Symposium Response, *Confronting Racial Disparity: Legislative Responses to the School-to-Prison Pipeline*, 44 HARV. C.R.C.L. L. REV. 571, 573-75 (2009); Johanna Wald & Daniel J. Losen, *Out of Sight: The Journey Through the School-to-Prison Pipeline*, in *INVISIBLE CHILDREN IN THE SOCIETY AND ITS SCHOOLS* 23, 25 (Sue Books ed., 2d ed. 2006); Am. Civil Liberties Union, *Dignity Denied: The Effect of "Zero Tolerance" Policies on Students' Human Rights*, ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, YALE LAW SCHOOL 1-47 (2008), available at [http://www.aclu.org/pdfs/humanrights/dignitydenied\\_november2008.pdf](http://www.aclu.org/pdfs/humanrights/dignitydenied_november2008.pdf); Am. Civil Liberties Union & the ACLU of Conn., *Hard Lessons: School Resource Officer Programs and School-Based Arrests in Three Connecticut Towns* (2008) available at [http://www.aclu.org/files/pdfs/humanrights/dignitydenied\\_november2008.pdf](http://www.aclu.org/files/pdfs/humanrights/dignitydenied_november2008.pdf).

56. Stinchcomb et al., *supra* note 1, at 125-28.

57. Advancement Project, *Education*, *supra* note 3, at 15; Advancement Project, *Test*, *supra* note 3, at 9; Stinchcomb et al., *supra* note 1, at 124; Boyd, *supra* note 55.

58. Advancement Project, *Test*, *supra* note 3, at 13-14; Stinchcomb et al., *supra* note 1, at 127; Christopher Sullivan et al., *Rebalancing Response to School-Based Offenses: A Civil Citation Program*, *Youth and Juvenile Justice* 8279, 280-281 (2010); Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* (Harvard University Press 2008).

nection from actual crime rates, created a powerful demand for tougher policies to make schools safer and have contributed to the physical and ideological transformation of public schools into regimented, high-security environments. Zero tolerance policies in schools clearly reflect an approach to discipline that mirrors the criminal justice system. As in the criminal context, the mandatory punishments of school zero tolerance policies are designed to be highly punitive in order to send a strong deterrent message. Although zero tolerance resonates politically, studies have shown it is ineffective as a corrective measure.<sup>59</sup> Instead, students are put at a greater risk for entering the juvenile justice system and become disconnected from the school community.<sup>60</sup>

Underlying zero tolerance, suspension, and expulsion is the belief that punishment is a just consequence for misbehavior.<sup>61</sup> As research has consistently shown, there is a continuum of entry points into the school-to-prison pipeline ranging from early school-based behavior problems that result in suspensions, expulsions, or alternative education program placements, to more serious law breaking and probation violations which involve the juvenile justice system and, ultimately, criminal prosecution and incarceration by the adult penal system.<sup>62</sup> Scholars, lawyers, policymakers, educators, and activists have labeled the school-to-prison pipeline one of the most pressing civil and human rights challenges.<sup>63</sup>

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59. Advancement Project, *Test*, *supra* note 3, at 17; American Psychological Association Zero Tolerance Task Force, *supra* note 3; Stinchcomb et al., *supra* note 1, at 130; Russell Skiba & M. Karcga Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, in *Handbook of Classroom Management: Research, Practice, and Contemporary Issues* 1063-1077 (Carolyn M. Evertson & Carol S. Weinstein eds., Lawrence Erlbaum Associates 2006); Morrison, *supra* note 1.

60. Advancement Project, *Education*, *supra* note 3; Reyes, *supra* note 3; Mississippi Youth Justice Project, *supra* note 3; Cobb, *supra* note 3; Archer, *supra* note 3; Louisiana School-to-Prison Reform Coalition, *supra* note 3; Advancement Project, *Test*, *supra* note 3; American Psychological Association Zero Tolerance Task Force, *supra* note 3; Boyd, *supra* note 55; Losen & Skiba, *supra* note 2; Kupchik, *supra* note 2; Majd, *supra* note 19; Paul Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the United States*, 12 *Theoretical Criminology* 79, 84 (2008).

61. Stinchcomb et al., *supra* note 1, at 125-26.

62. Advancement Project, *Education*, *supra* note 3; Reyes, *supra* note 3; Mississippi Youth Justice Project, *supra* note 3; Cobb, *supra* note 3; Archer, *supra* note 3; Louisiana School-to-Prison Reform Coalition, *supra* note 3; Advancement Project, *Test*, *supra* note 3; American Psychological Association Zero Tolerance Task Force, *supra* note 3; Boyd, *supra* note 55; Wald & Losen, *supra* note 55; Hirschfield, *supra* note 60, at 79-91 (2008); CADRE, *Executive Summary*, *supra* note 50.

63. Interview with Daniel Fuentes, *supra* note 17 (affirming critical need for restorative justice as an alternative to punitive discipline); Interview with Benjamin Cairns, *supra* note 17; Interview with Maisie Chin, Dir./Co-Founder, CADRE, in L.A., Cal. (June 23, 2011) (executive director of leading parent organization describing organization's work in past decade to end school

Given that school-based referrals to the juvenile court system represent such an important entry point into the prison system, understanding methods through which students are referred are critical.<sup>64</sup> It is well documented that punitive discipline practices and zero tolerance policies have dramatically increased the representation of minority and disabled students in the juvenile justice system.<sup>65</sup> As numerous studies have clearly illustrated, punitive disciplinary practices impact minority students

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pushout); Interview with Daniel Garcia Restorative Justice School Mediation Specialist, Parkrose School District, in Portland, Or. (May 10, 2010) (addressing relationship between alternative to punitive discipline and the school-to-prison pipeline; identified school-to-prison pipeline as critical issue in Portland); Interview with Bob Tallman, School Resource Officer, Parkrose School District, in Portland, Or. (May 10, 2010) (discussing use of restorative justice in Parkrose School District); Archer, *supra* note 3, at 868; Advancement Project, *Test, supra* note 3, at 15-16; Advancement Project, *Opportunities Suspended, supra* note 37; NAACP Legal Defense and Education Fund, Inc., *Dismantling the School-to-Prison Pipeline*, NAACP LDF (2006), available at [http://naacpldf.org/files/case\\_issue/Dismantling\\_the\\_School\\_to\\_Prison\\_Pipeline.pdf](http://naacpldf.org/files/case_issue/Dismantling_the_School_to_Prison_Pipeline.pdf); Anthony V. Alfieri, Essay, *Post-Racialism in the Inner City: Structure and Culture in Lawyering*, 98 GEO. L.J. 921, 957-60 (2010); Interview with Robert Schwartz, Exec. Dir., Juvenile Law Center, in Gainesville, Fla. (Feb. 19, 2010); Fla. State Conference, *Arresting Development: Addressing the School Discipline Crisis in Florida*, NAACP (2006), available at <http://www.advancementproject.org/sites/default/files/full%20report.pdf>; *Deprived of Dignity: Degrading Treatment and Abusive Discipline in New York City & Los Angeles Public Schools*, Nat. Econ. & Soc. Rights Initiative, [hereinafter NESRI], available at <http://www.nesri.org/resources/deprived-of-dignity-degrading-treatment-and-abusive-discipline-in-new-york-city-and-los-angeles-public-schools>; ACLU of Or., Report, *Oregon's School to Prison Pipeline* 1-6 (2008).

64. DMC/Juvenile Justice Action Network, *Introducing the DMC Action Network* (Nov., 12, 2008), available at [http://www.cclp.org/documents/DMC/DMC\\_eNews\\_001.pdf](http://www.cclp.org/documents/DMC/DMC_eNews_001.pdf); Amber Evenson et al., *Zero Tolerance Polices and Public Schools: When Suspension Is No Longer Effective*, 37 COMMUNIQUE 5, 1-2 (Jan./Feb. 2009); Michael Rocque, *Office Discipline and Student Behavior: Does Race Matter?*, 116 AM. J. EDUC. 557, 575-76 (2010); Michael Rocque & Raymond Paternoster, *Understanding the Antecedents of the "School-to-Jail" Link: The Relationship Between Race and School Discipline*, 101 J. CRIM. L. & CRIMINOLOGY 633, 633-34 (2011); Russell Skiba et al., *Race is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCHOL. REV. 85, 104 (2011); Ashley Nellis & Brad Richardson, *Getting Beyond Failure: Promising Approaches for Reducing DMC*, YOUTH VIOLENCE & JUV. JUST 8 266, 267 (2010); Alex R. Piquero, *Disproportionate Minority Contact*, THE FUTURE OF CHILDREN, 18, 59-80 (2008).

65. Advancement Project, *Test, supra* note 3, at 21-24 (For example, in Ohio the number of out-of-school suspensions per Black student increased by 34% in three years, from 2004-2005 to 2007-2008); Michael Krezmien, Peter Leone, & Georgianna Achilles, *Suspension, Race, and Disability: Analysis of Statewide Practices and Reporting*, 14 J. OF EMOTIONAL AND BEHAV. DISORDERS 217, 217 (2006); Pamela Fenning & Jennifer Rose, *Overrepresentation of African American Students in Exclusionary Discipline: The Role of School Policy*, 42 URBAN EDUC. 536, 541-49 (2007); Ruth Zweifler & Julia De Beers, *The Children Left Behind: How Zero Tolerance Impacts Our Most Vulnerable Youth*, 8 MICH. J. RACE & L. 191, 204-06 (2002); Anthony V. Alfieri, *Integrating Into a Burning House: Race and Identity Conscious Visions in Brown's Inner City*, 84 S. CAL. L. REV. 541, 579 (2011); Majd, *supra* note 19, at 360-86; ACLU of Or., Report, *supra* note 63; CADRE, *Executive Summary, supra* note 50.

disproportionately to their white counterparts.<sup>66</sup> For example, in the 2006-2007 school year, there was no state in which African American students were not suspended more often than white students.<sup>67</sup> Similarly, in forty states and the District of Columbia, Latino students experienced negative unequal application of discipline policies.<sup>68</sup>

## B. School Pushout and Student Disengagement

Significant qualitative research has been conducted to examine the impact of discipline policies that result in student removal or “push out” from the school community, either through suspension or expulsion.<sup>69</sup> Once removed from schools, students experience decreased academic achievement, further fueling negative attitudes and leading to increased dropout rates.<sup>70</sup> As researchers have consistently emphasized, understanding how punitive discipline serves as a push out factor for many students is an important first step in developing and implementing plans to reduce the number of dropouts and increasing graduation rates.<sup>71</sup>

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66. Wald & Losen, *supra* note 7, at 10-11; Advancement Project, *Test*, *supra* note 3, at 15, 20-24; Tara Brown, *Lost and Turned Out*, 42 URBAN. EDUC. 432, 436 (2007); Alfieri, *supra* note 63; Adira Siman, *Challenging Zero Tolerance: Federal and State Legal Remedies for Students of Color*, 14 CORNELL J.L. & PUB. POL’Y 327, 329 (2005); Russel J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, INDIANA EDUCATION POLICY CENTER (2000), available at <http://www.indiana.edu/~safeschl/cod.pdf>; Robin L. Dahlberg, ACLU, *Locking Up Our Children: The Secure Detention of Massachusetts Youth After Arraignment and Before Adjudication*, AM. CIV. LIBERTIES UNION (2008), available at [http://www.aclu.org/pdfs/racialjustice/locking\\_up\\_our\\_children\\_web\\_ma.pdf](http://www.aclu.org/pdfs/racialjustice/locking_up_our_children_web_ma.pdf); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* 95-101 (New Press 2010); Majd, *supra* note 19; ACLU of Or., Report, *supra* note 63.

67. Advancement Project, *Test*, *supra* note 3, at 21.

68. *Id.*

69. See generally *supra* note 19, Christle et al., *supra* note 4, Elisa Hyman, *School Push-Outs: An Urban Case Study*, 38 CLEARINGHOUSE REV. 684, 685 (2005); Reginald R. Shuford, *Why Affirmative Action Remains Essential in the Age of Obama*, 31 CAMPBELL L. REV. 503, 514-15 (2009).

70. Brown, *supra* note 66, at 437-39; Elizabeth Stearns & Elizabeth Glennie, *When and Why Dropouts Leave High School*, 38 YOUTH & SOC’Y 29, 31-32 (2006); Robert Balfanz, Lisa Herzog & Douglas J. Mac Iver, *Preventing Student Disengagement and Keeping Students on the Graduation Path in Urban Middle-Grades Schools: Early Identification and Effective Interventions*, 42 EDUC. PSYCHOLOGIST 223, 228 (2007); Robert Balfanz, *What Your Community Can Do to End its Drop-Out Crisis: Learnings from Research and Practice*, CTR. FOR SOCIAL ORG. OF SCH., (2007); Robert Balfanz et al., *Grad Nation: A Guidebook to Help Communities Tackle the Dropout Crisis*, EVERYONE GRADUATES CTR. (2009), available at [http://www.every1graduates.org/PDFs/GradNation\\_Guidebook\\_Final.pdf](http://www.every1graduates.org/PDFs/GradNation_Guidebook_Final.pdf).

71. Brown, *supra* note 66; Stearns & Glennie, *supra* note 70; Balfanz et al., note 71; Valerie E. Lee & David T. Burkam, *Dropping out of High School: The Role of School Organization and Structure*, 40 AM. EDUC. RES. J. 353, 358-60 (2003); ACLU of Or., Report, *supra* note 63; Dignity in Schools, *supra* note 48.

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

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

73. Mac Iver & Mac Iver, *supra* note 72.

74. Louisiana School-to-Prison Reform Coalition, *supra* note 3, at 2; *2006-2007 Louisiana State Education Progress Report*, LA. DEP'T OF EDUC. 17, 20-21 (2008), available at [http://www.louisianaschools.net/LDE/pair/StateReport0607/09-Louisianas\\_students.pdf](http://www.louisianaschools.net/LDE/pair/StateReport0607/09-Louisianas_students.pdf). See also *ACLU Speaks Out Against School "Pushout"*, AM. CIVIL LIBERTIES UNION (2009), <http://www.aclu.org/human-rights-racial-justice/aclu-speaks-out-against-school-pushout>.

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

76. ACLU of Or., *Report*, *supra* note 63, at 1.



schools, and juvenile arrests contributed significantly to student dropout rates.<sup>77</sup> The report found that in 2007-2008 African Americans represented 2.97% of the total 9-12 grade student population and 5.71% of the dropouts.<sup>78</sup> Hispanics or Latinos represented 13.87% of the total high school student population and 24.12% of the dropouts.<sup>79</sup> Native Americans represented 2.24% of all the 9-12 grade students and 3.52% of the dropouts.<sup>80</sup> In Massachusetts, nearly 8,600 high school students dropped out of public schools in 2009.<sup>81</sup> Similar to findings in Denver, absence from school was found to be a significant predictor of dropping out,<sup>82</sup> as well as discipline and behavioral problems.<sup>83</sup> As established in a recent education policy report, considering the impact of school discipline practices in Massachusetts, testimony from three public hearings<sup>84</sup> provided that excessive disciplinary action for non-violent offenses, such as tardiness and truancy, exacerbates the dropout crisis. Testimony indicated that students already behind in school are often forced to miss additional days through suspensions, which leads to a loss of credits and an inability to catch up.<sup>85</sup> Similar testimony has been documented in Los Angeles.<sup>86</sup> The Community Rights Campaign has interviewed students in the Los Angeles Unified School District who have received tickets and concludes that zero tolerance policies create 'pre-prison' conditions in schools.<sup>87</sup> Furthermore, national data shows that current disciplinary rates are the highest in our nation's history and have more than doubled

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77. *Id.* at 2.

78. *Id.* at 4.

79. *Id.*

80. *Id.*

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

82. John M. Bridgeland, John J. DiJulio & Karen Burke Morison, *The Silent Epidemic: Perspectives of High School Dropout*, CIVIC ENTERPRISES, available at [http://www.civicerprises.net/reports/the\\_silent\\_epidemic.pdf](http://www.civicerprises.net/reports/the_silent_epidemic.pdf); Boston Youth Transitions Task Force (2006); *Too Big to be Seen: The Invisible Dropout Crisis in Boston and America*, BOSTON PRIVATE INDUS. COUNCIL, available at [www.bostonpic.org/resources/too-big-be-seen-invisible-dropout-crisis-boston-and-america](http://www.bostonpic.org/resources/too-big-be-seen-invisible-dropout-crisis-boston-and-america).

83. *Id.*

84. MA Report, *supra* note 81.

85. *Id.*

86. *Voices from the Students: Testimonies from Students Receiving Daytime Curfew "Truancy Tickets,"* COMMUNITY RIGHTS CAMPAIGN, available at [www.thestrategycenter.org/report/voices-students-testimonies-daytime-curfew-truancy-tickets](http://www.thestrategycenter.org/report/voices-students-testimonies-daytime-curfew-truancy-tickets).

87. *Id.*

over the past three decades, and fewer than seven out of ten students graduate from high school nationwide.<sup>88</sup>

### C. School Safety and Punitive Discipline

Supporters of punitive discipline policies often suggest that they create safer school environments. This is simply not true. As the 2006 American Psychological Association ten-year evidentiary review of zero tolerance policies concluded, the presence and use of exclusionary zero tolerance policies did not improve school safety.<sup>89</sup> Additionally, the study concluded that schools with higher suspensions and expulsions resulting from zero tolerance policies had less satisfactory ratings of overall school climate.<sup>90</sup> The study also found that out-of-school suspensions and expulsions did not reduce the likelihood of future student misconduct.<sup>91</sup> Other studies have also determined that suspension and expulsion policies cannot be correlated with any certainty to overall school safety or improved student behavior.<sup>92</sup> Instead of promoting learning in a safe environment, zero tolerance policies promote an irrational climate of fear.<sup>93</sup> Studies focused on school safety find that when schools approach discipline through responsive, reintegrative, and restorative mechanisms, they are more effective at maintaining safe communities.<sup>94</sup> By developing more balanced responses to student behavior, such as restorative justice, schools can promote stronger academic environments, which in

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88. See *A Shadow Report on School-Wide Positive Behavior Support Implementation*, *supra* note 50.

89. American Psychological Association Zero Tolerance Task Force, *supra* note 3, at 853-54.

90. *Id.* at 854.

91. *Id.* at 854-56.

92. Skiba, *supra* note 3. They attribute this finding, and the suspension recidivism rate, to the fact that school exclusion, in and of itself, offers students no help in addressing the behaviors that got them in trouble. See Brown, *supra* note 66, at 435.

93. Morrison et al., *supra* note 16; Interview with Daniel Fuentes, *supra* note 17 (school disciplinarian discussing use of zero tolerance policies in Denver Public Schools and North High School); Interview with Benjamin Cairns, *supra* note 17 (discussing climate of fear created by zero tolerance policies; discussed state task force's assessment of the impacts of school discipline on school climate and culture); Interview with Bob Tallman, School Resource Officer, Parkrose School Dist. in Portland, Or. (May 10, 2010) (providing baseline data and discussing importance of promoting safe school communities through non-punitive discipline); E-mail from Benjamin Cairns, Restorative Justice Coordinator, North High School, (June 28, 2011, 08:11 PST) (on file with author).

94. Payne et al., *supra* note 17; Goddard, *supra* note 17; Greenberg et al., *supra* note 17; Stinchcomb et al., *supra* note 1, at 132-42; Interview with Daniel Fuentes, *supra* note 17 (discussing individual student cases where restorative justice promoted school safety); Morrison et al., *supra* note 16; Michael Wenzel et al., *Retributive and Restorative Justice*, 32 LAW & HUM. BEHAV. 375, 376-78 (2008).

turn improve school safety.<sup>95</sup> Policies that focus on repairing the harm, establishing accountability, and developing a strong school community have been found to prevent future actions.<sup>96</sup> As research has shown, students feel safer and more connected to schools when they perceive their teachers to have high expectations for positive behavior, demonstrate that they care, and implement discipline fairly and tolerantly.<sup>97</sup>

### III. RESTORATIVE JUSTICE IN SCHOOLS

#### A. Background and Philosophy

The first documented use of restorative justice in schools began in the early 1990s with initiatives in Australia led by Margaret Thorsborne in

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95. Stinchcomb et al., *supra* note 1; Interview with Daniel Garcia, *supra* note 63 (discussing interlocking system of responsive regulation and school safety and suggesting that restorative justice allows for individual and institutional changes that promote safer school communities); Interview with Bob Tallman, *supra* note 63 (discussing how restorative justice is focused on institutionalizing practice among diverse members of school community and not on adding a program to a school); Interview with Kenneth Chavez, Officer, School Resource Officer, North High School, Denver Police Dep't, in Denver, Colo. (Nov. 12, 2009) (reporting safer school environment as a result of non-punitive discipline and use of restorative justice in Denver public schools); Karp & Breslin, *supra* note 1; Interview with Timothy Turley, Program Manager, Denver Public School Prevention and Intervention Services, in Denver, Colo. (June 12, 2011) (co-creator (along with Robert Anderson) of Denver's restorative justice program discussing significance of balanced responses in school discipline and reasons behind Denver's decision to implement restorative justice and Denver's three levels of responsive regulation and aim of developing climate of fairness, dignity, and safety); Interview with Robert Anderson, Director Denver Public School Prevention and Intervention Services, in Denver, Colo. (June 13, 2011) (discussing continuums of restorative practice used in Denver Public Schools and affirming restorative justice program as allowing for greater responsiveness to behavior); Interview with Benjamin Cairns, *supra* note 17 (discussing restorative justice and responsive regulation as broad vision that allows for individualized responses and aim of restorative practice to develop individual and institutional relationships, in contrast to zero tolerance policies).

96. Interview with Daniel Fuentes, *supra* note 17 (stating that restorative practice has decreased repeat offenses compared to previous discipline practice); Interview with Benjamin Cairns, *supra* note 17 (discussing student's use of informal restorative practices as early intervention strategies); Interview with Timothy Turley, *supra* note 95; Interview with Robert Anderson, *supra* note 95; Interview with Daniel Garcia, *supra* note 63 (discussing impact of restorative justice on decreasing repeat offenders); Interview with Bob Tallman, *supra* note 63 (discussing impact of restorative justice on decreasing repeat offenders); Gordon Bazemore, *The Fork in the Road to Juvenile Court Reform*, 564 THE ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 81, 81-108 (1999); Gordon Bazemore, *Young People, Trouble, and Crime: Restorative Justice as a Normative Theory of Informal Social Control and Social Support*, 33 YOUTH & SOC'Y 199, 199-226. (2001); Christle et al., *supra* note 4.

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

response to issues raised by a serious assault after a school dance.<sup>98</sup> Reflecting on the early trials of restorative justice in Australian schools, Cameron and Thorsborne suggested that a key characteristic of restorative justice was an “attention on relationships between all members of the school community.”<sup>99</sup> Since this time, school based restorative justice programs have been studied internationally and in the United States.<sup>100</sup> Schools as an institution at the societal level and as communities at the micro level are the cornerstone for youth socialization and the social control of delinquent behavior.<sup>101</sup> Thus, restorative justice programs in school settings prioritize building school community capacity over punitive responses to behaviors to create safer environments.<sup>102</sup> One of the goals of school-based restorative practice is for all individuals involved in a conflict, and those in the larger community, to recognize and understand the harmfulness of their behaviors and to prevent the reoccurrence of the behavior in the future.<sup>103</sup>

Restorative justice is a diverse multi-layered concept, which requires a philosophical shift away from punitive and retributive control mechanisms. Restorative justice is based on core principles: repairing the harm, stakeholder involvement, and transforming the community relationship.<sup>104</sup> When implemented in school settings, the concept of restorative justice develops to meet the needs of the whole school community.<sup>105</sup>

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98. Cameron & Thorsborne, *supra* note 12.

99. *Id.*

100. *See supra* note 1.

101. Karp & Breslin, *supra* note 1; Janice Wearmouth, Rawiri McKinney & Ted Glynn, *Restorative Justice: Two Examples from New Zealand Schools*, 34 BRITISH JOURNAL OF SPECIAL EDUCATION 196, 196 (2007); Stinchcomb, et al., *supra* note 1, at 124-25.

102. David Karp & Todd R. Clear, *Community Justice: A Conceptual Framework*, 2 NAT'L INST. OF JUSTICE 323, 323-68 (2000); Interview with Timothy Turley, *supra* note 95 (discussing positive youth development as central to improving school communities); Interview with Benjamin Cairns, *supra* note 17 (discussing student feelings of respect and connection to community as significant factors in success of restorative justice program); Interview with Daniel Fuentes, *supra* note 17 (discussing social learning through restorative process as significant factor in effectiveness of North High School program).

103. Stinchcomb et al., *supra* note 1, at 131.

104. *Id.*; Daniel W. Van Ness & Karen Heetderks Strong, *Restoring Justice* (Anderson Publishing Company 1997).

105. Hopkins, *supra* note 21; Reimer, *supra* note 13, at 20-29 (2011); Varnham, *supra* note 1; Interview with Efrem Martin, Restorative Justice Coordinator, Montbello High School, in Denver, Colo. (Jun. 14, 2011) (discussing restorative practices and school community at Montbello High School); Interview with Sarah Hartman, Sch. Soc. Worker, George Washington High School, in Denver, Colo. (Jun. 14, 2011) (discussing restorative practices and school community at George Washington High School); Interview with Josh Lynch, Restorative Justice Coordinator, George Washington High School, in Denver, Colo. (Jun. 14, 2011) (discussing restorative practices and school community at George Washington High School).

As restorative justice models have evolved within schools, it is clear that they contribute to the aims of education by emphasizing accountability, restitution, and restoration of a community.<sup>106</sup> More specifically, the underlying assumption of restorative justice is that when a student commits a delinquent or offending act their behavior breaches the social contract between the student and the school community.<sup>107</sup> Therefore, it is ultimately the school community's responsibility to ensure the student is held accountable in order to correct or restore the harm. This focus acts to reintegrate the student as a productive member of the school community, rather than further exiling the student and thereby increasing the potential for separation, resentment, and recidivism. In primary and secondary schools, restorative justice has been used as a response to crime, bullying, and disciplinary violations, often providing an alternative to the use of more traditional processes.<sup>108</sup> In this context, restorative justice practices convert the misbehavior from one of zero tolerance to interventions that accentuate accountability, fairness, and situational responses to unique events. The framework of school-based restorative justice is, therefore, in sharp contrast to exclusionary discipline policies, which rather than correct student misbehavior, actually promote increased student suspensions, increased poor academic achievement, loss of reputation among peers, social isolation, psychological problems, and ultimately juvenile delinquency.<sup>109</sup> Such practices also undermine the development of social capital within a school community.<sup>110</sup> Restorative practices, proactive or reactive, emphasize the importance of relationships, in other words, social capital.<sup>111</sup> Schools that adopt restorative practices as alternatives to punitive policies establish environments where members

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106. Morrison et al., *supra* note 16; John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, CRIME AND JUSTICE: A REVIEW OF RESEARCH 1, 25-30; Braithwaite, *supra* note 22; Blood & Thorsborne, *supra* note 21.

107. Morrison et al., *supra* note 16; Interview with Timothy Turley, *supra* note 95; Interview with Benjamin Cairns, *supra* note 17 (providing specific context of North High School); Interview with Daniel Garcia, *supra* note 63 (providing specific context of Parkrose School District); Interview with Daniel Fuentes, *supra* note 17 (providing specific context of North High School).

108. Stinchcomb et al., *supra* note 1, at 124-25.

109. Varnham, *supra* note 1; Virginia Costenbader & Samia Markson, *School Suspension: A Study with Secondary Students*, 36 J. OF SCH. PSYCHOLOGY, 59, 59 (1998). See also discussion in Part II of this article.

110. Morrison et al., *supra* note 16; Roche, *supra* note 21, at 217, 224; McCluskey et al., *supra* note 1; Harrison, *supra* note 1; Tom Macready, *Learning Social Responsibility in Schools: A Restorative Practice*, 25 EDUC. PSYCHOLOGY IN PRACTICE 211, 216-19 (2009).

111. Morrison et al., *supra* note 16.

of the community take responsibility to repair harm when it occurs, hold each other accountable, and build skills in collective problem solving. In such an environment, shared values of pro-social behavior are learned through modeling, conflict resolution, and mutual support.<sup>112</sup>

## B. Models of Practice

The practice of restorative justice in schools has changed in response to the institutional framework of education.<sup>113</sup> Early incorporation of restorative justice in schools used victim-offender mediation, which involved a structured group, family, or circle conferencing aimed at conflict resolution.<sup>114</sup> In the victim-offender mediation model, a trained mediator facilitates discussions between the victim and the offender.<sup>115</sup> Comparatively, in family and group conferencing, another model implemented in initial school-based restorative justice programs, members of the school community and family members of those involved are invited to participate.<sup>116</sup> In this model of restorative practice, the aim is to include input from not only the victim and offender, but from everyone involved in the incident or conflict.<sup>117</sup> This practice was characterized by community-created sanctions.<sup>118</sup> Similar to family and group conferencing in schools, circle conferencing has also been used within schools.<sup>119</sup> Under this model of practice, the conference includes students directly harmed or involved in the incident, additional students, teachers, parents, coaches, administrators, and any other member of the school community who was involved or indirectly harmed by the incident.<sup>120</sup>

A significant development in the field of school-based restorative justice practice was a movement beyond conferencing models and the establishment of a continuum of restorative approaches. A continuum model allows school communities to adopt restorative practices ranging from the informal to formal.<sup>121</sup> While the continuum model requires a

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112. Stinchomb et al., *supra* note 1, at 131; Macready, *supra* note 110.

113. Morrison et al., *supra* note 16, at 336-37; Jennings et al., *supra* note 14, at 171-73.

114. Bazemore, Fork, *supra* note 96; Jennings et al., *supra* note 14, at 172.

115. Bazemore, Fork, *supra* note 96, at 89.

116. Jennings et al., *supra* note 14, at 172.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* at 172-73. See also Robert Coates, Betty Vos & Mark Umbreit, *Restorative Justice Circles: An Exploratory Study*, 6 CONTEMPORARY JUSTICE REVIEW 265, 274 (2003).

121. Ted Wachtel, *Restorative Justice in Everyday Life: Beyond Formal Ritual*, CAMBRIDGE UNIV. PRESS 114-30 (2001); Morrison et al., *supra* note 16, at 338.

more holistic integration within the school community to address issues and offenses such practices have been found to have the highest level of impact.<sup>122</sup> Within the continuum model restorative practices include affective statements, questions, informal conferences, large group circles, and formal conferences. The use of diverse restorative practices is consistent with the whole-school approach, or in the case of Denver, whole district, to address negative impacts of punitive school discipline policies.<sup>123</sup> Guided by Braithwaite's work on responsive regulation, a whole-school model of restorative justice was developed based on three levels of intervention: primary, secondary, and tertiary.<sup>124</sup> In a whole-school approach, restorative practices include, but are not limited to: restorative inquiry, mediation, community conferences, small group conferences, problem-solving circles, and family conferences. The whole-school approach is grounded in a shared set of values, respect, openness, empowerment, inclusion, tolerance, integrity, and congruence.<sup>125</sup> From these values, participants learn the skills of remaining impartial and non-judgmental, respecting the perspective of all involved, developing rapport, actively and empathically listening, creative questioning, empowerment, compassion, and patience.<sup>126</sup> Together these skills and values seek to involve the school community in the restorative process in order to collectively address the needs and obligations of the entire school. Thorsborne and Vinegrad also envisioned a continuum of restorative practices to include both proactive and reactive processes.<sup>127</sup>

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122. Wachtel, *supra* note 116; Stinchcomb et al., *supra* note 1, at 131. See generally *infra* notes 139-251; Brenda Morrison, *Restoring Safe School Communities, A Whole School Response to Bullying, Violence and Alienation* 113-114 (The Federation Press 2007). In this book Morrison cites an unpublished manuscript by Thorsborne and Vinegrad (Thorsborne, M. and Vinegrad, D. (2004) *Restorative Practices in Classrooms: Rethinking Behaviour Management*. Unpublished manuscript held by Margaret Thorsborne and Associates, Buderim, Queensland, Australia.)

123. Morrison, *supra* note 122; Hopkins, *supra* note 21; Interview with Timothy Turley, *supra* note 95 (discussing three-phase implementation of restorative practices to reach whole school and whole district approach); Morrison et al., *supra* note 16, at 351; Interview with Robert Anderson, *supra* note 95 (discussing three-phase implementation of restorative practices to reach whole school and whole district approach); Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (Jun. 29, 2011) (discussing evolution of practice at North High School to whole school approach and restorative practice); Interview with Efreem Martin, *supra* note 105 (discussing goal of whole school adoption at Montbello High School); Interview with Sarah Hartman, *supra* note 105 (discussing goal of whole school adoption at George Washington High School); Interview with Josh Lynch, *supra* note 105 (discussing goal of whole school adoption at George Washington High School).

124. Braithwaite, *supra* note 22; Morrison et al., *supra* note 16.

125. Morrison et al., *supra* note 16.

126. Hopkins, *supra* note 21; Morrison et al., *supra* note 16.

127. Morrison et al., *supra* note 16, at 125.

They differentiate between two types of conference models: proactive, which functions to enhance teaching and learning; and reactive, which responds to harm and wrongdoing.<sup>128</sup> The proactive classroom conference focuses on supporting learning outcomes, setting boundaries and developing relationships.<sup>129</sup> These processes link curriculum, pedagogy, and behavior management. The reactive classroom conference provides an interpersonal and disciplinary link in the classroom.<sup>130</sup> School-based restorative justice practices, developed within a framework of responsive regulation, present an opportunity for schools to adopt a range of institutional mechanisms to address of student discipline, student performance, school safety, student dropout, and the school to prison pipeline without a disproportionate reliance on punitive policies.

### C. Implementation of Restorative Justice in Schools

It is important to understand that the implementation of restorative practice in every school will be different.<sup>131</sup> Some schools will turn to restorative practices to address high suspension or expulsion rates.<sup>132</sup> Others schools will implement restorative practices to address issues of school safety, disrespectful relationships and behaviors<sup>133</sup> or to improve academic success and student performance.<sup>134</sup> As Blood and Thorsborne note in *Overcoming Resistance to Whole-School Uptake of Restorative Practices*, for implementation of restorative practice to be successful there must be a shift in value placement on developing relationships and connectedness across the school community, rather than promoting exclusion and separation from the school community.<sup>135</sup> Undoubtedly,

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128. *Id.* at 125.

129. *Id.* at 126.

130. *Id.* at 113.

131. *Id.* at 114-15. See generally *infra* notes 139-251.

132. Nancy Riestenberg, *Aides, Administrators and all the Teachers You Can Get*, 13 VOMA CONNECTIONS Winter 2003, at 7; Morrison, *supra* note 1, at 701. See also Stinchcomb et al., *supra* note 1, at 125-28; *Findings From Schools Implementing Restorative Practices*, INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES GRADUATE SCHOOL (2009) [hereinafter *IIRP 2009*].

133. Stinchcomb et al., *supra* note 1 at 125; Morrison, *supra* note 1; *IIRP 2009*, *supra* note 132. See generally *infra* notes 139-251; Morrison et al., *supra* note 16, at 89.

134. Morrison, *supra* note 1; Morrison et al., *supra* note 16, at 119; Jennings et al., *supra* note 14, at 173; Interview with Efrem Martin, *supra* note 105 (discussing preliminary data from Montebello High School highlighting improved academic success); Interview with Sarah Hartman, *supra* note 105 (discussing use of restorative practice and its relationship to positive improvements in academic success at George Washington); Interview with Josh Lynch, *supra* note 105 (discussing use of restorative practice and its relationship to positive improvements in academic success at George Washington).

135. Blood & Thorsborne, *supra* note 21.



developing alternatives to punitive policies demands an investment of time and effort. Such efforts are often met with resistance and require changes in school discipline codes and policies.<sup>136</sup> The central point for school communities to recognize is that cultural change does not happen quickly and a long-term sustainable approach must be taken. Schools should envision a three to five year implementation plan that focuses on five key areas.<sup>137</sup> First, gaining commitment from the school community. This process requires establishing the reasons for implementation, as well as buy-in from key members of the school community. Second, developing a clear institutional vision with short, medium, and long-term goals. Third, establishing responsive and effective practice. Fourth, developing policies that align with restorative practice to transition into a whole school approach, rather than a program based model. Fifth, investing in an ongoing system of growth and development for all members of the school community.<sup>138</sup> Ultimately, in the context of sustaining school-wide behavioral change, it is important for schools to recognize that the implementation of restorative practice is not simply a case of overlaying the justice model of conferencing and achieving sustained outcomes.<sup>139</sup> Unlike criminal justice settings, where victims and offenders may not see each other again, members of a school community often see each other the next day. As a consequence, minor incidents can quickly escalate if not fully addressed. Thus, restorative practices must be clearly embedded in the culture of the school for successful and sustained implementation to occur.

Not all efforts to implement restorative justice in schools have been successful. Furthermore, few studies have been conducted on the implementation of restorative in urban schools comprised of low-income students of color. For the most part, successful outcomes seem to be related to linking restorative justice to broader school reform<sup>140</sup> or at least a larger strategic vision that extends beyond one isolated program model.<sup>141</sup>

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

137. Morrison et al., *supra* note 16, at 334.

138. *Id.* at 352.

139. *Id.* at 344-53.

140. *Id.* at 344-56; Stinchcomb et al., *supra* note 1 at 140-42; Morrison et al., *supra* note 16 at 170-76; Interview with Timothy Turley, *supra* note 95 (discussing strategic vision of restorative justice and Denver Public School's potential as model for school reform); Interview with Robert Anderson, *supra* note 95 (discussing relationship between restorative justice program and overarching district goals to address disproportionate impact of school discipline on students of color).

141. Thelton E. Henderson Center for Social Justice, *supra* note 14 (discussing the limits of the Cole Middle School study as a one school pilot).

Additionally, findings from Denver Public Schools suggest that the use of a full-time restorative justice coordinator who is an employee of the district, not an outside consultant or project contractor, promotes increased commitment from the school community.<sup>142</sup> Consistent with Morrison, Blood, and Thorsborne's earlier findings, districts that adopt school discipline code policies, which incorporate restorative justice within the discipline matrix, face decreased resistance during the initial phases of implementation and whole-school adoption.<sup>143</sup> Consider the examples discussed *infra*, where efforts to implement restorative justice were connected to district-wide training programs, workshops, and additional funding opportunities to establish a restorative culture within the schools and district.

### 1. California

In 2005, the principal and disciplinary case manager of Cole Middle School in West Oakland, California began consideration of alternative discipline practices to move away from traditional discipline policies, which they believed were detrimental both to the students and to the school's culture.<sup>144</sup> After discussions with teachers and staff about how to implement a restorative justice program, the school received permission from the Oakland Unified School District to begin a pilot restorative justice program.<sup>145</sup> Similar to implementation in US-based<sup>146</sup> and international settings<sup>147</sup> all teachers and staff took part in the initial training sessions. The restorative practice began with students involved as participants in disciplinary circles.<sup>148</sup> Within the first year pilot, a restorative justice framework was adopted into to non-disciplinary community building

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142. Interview with Robert Anderson, *supra* note 95 (attributing success of North High School and other Denver Public Schools to use of full time restorative justice coordinator); Interview with Benjamin Cairns, *supra* note 17 (discussing parent and student feedback indicating that subject's status as accepted member of community enabled him to engage in more effective practice); Interview with Daniel Fuentes, *supra* note 17 (attributing success of North High School to its use of full time coordinator); *see also* Part III of this Article.

143. Morrison et al., *supra* note 16, at 336; Morrison, *supra* note 1, at 112; Interview with Timothy Turley, *supra* note 95 (comparing success of implementation at school sites before after passage of revised 2008 school discipline matrix); Interview with Robert Anderson, *supra* note 95 (comparing success of implementation at school sites before after passage of revised 2008 school discipline matrix); Interview with Daniel Fuentes, *supra* note 17 (attributing success of North High School to use of full time coordinator).

144. Thelton E. Henderson Center for Social Justice, *supra* note 14, at 10.

145. *Id.*

146. *See supra* note 13.

147. *See supra* note 14.

148. Thelton E. Henderson Center for Social Justice, *see supra* note 14, at 10.

activities.<sup>149</sup> In the second year of the pilot project, the disciplinary case manager began whole-school implementation, teaching a restorative justice class to seventh grade and eighth grade students.<sup>150</sup> Suspension rates decreased significantly in 2007, the year that restorative justice was introduced to the entire school.<sup>151</sup> The average suspension rate in the three years before restorative justice was implemented was fifty suspensions per one hundred students.<sup>152</sup> In the two years after restorative justice was implemented, the rate fell to only six suspensions per one hundred students. Additionally, expulsions at Cole Middle School also decreased.<sup>153</sup> At the same time the Cole Middle School restorative justice program was being piloted and studied, the Oakland Unified School District passed a resolution adopting restorative justice as a system-wide alternative to zero tolerance discipline and as an approach to creating healthier school communities.<sup>154</sup>

In October 2009, the San Francisco Unified School District Board of Education adopted Resolution No. 96-23A1, incorporating a restorative approach into the district education policy. Recognizing both a sharp rise in suspensions and expulsions within the district and a disproportionate percentage of minorities being suspended, San Francisco Unified School District recommended an “accelerated ‘culture shift’” in how the district handles discipline issues in schools.<sup>155</sup> The Board created the Restorative Justice Framework & Alternatives To Suspensions & Expulsions, with the goal of building a “culture of fair and caring schools in San Francisco Unified School District.”<sup>156</sup> In its first year of implementation, 2010-2011, the initiative aimed to familiarize the San Francisco Unified School District community with the restorative approach, and offer in-depth training and professional development in restorative practices.<sup>157</sup> The pro-

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149. *Id.*

150. *Id.*

151. *Id.* at 31.

152. *Id.*

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

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

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

156. *Id.* at 4.

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

gram held presentations and workshops on restorative practices, and the implementation plan to numerous groups, including, but not limited to, middle and high school principals, the Parent Advisory Council, the San Francisco Unified School District Instructional Cabinet, and the Boys and Girls Club.<sup>158</sup> Additionally, restorative justice was introduced at fifteen different schools to identify three school-sites to become restorative practices demonstration schools. In collaboration with the Institute for Restorative Practices and Educators for Social Responsibility, professional development trainings were held throughout the district. As a part of this effort, central district supervisors, administrators, student support service staff, and selected site Leadership teams from all San Francisco Unified School District school-sites received a six-hour introductory training to restorative practices.<sup>159</sup> A total of 823 San Francisco Unified School District employees participated in restorative practices trainings and professional development during the 2010-2011 academic year.<sup>160</sup> In the upcoming school year, three selected school sites will begin a two-year restorative justice project, undergoing an intensive school-wide training and implementation of restorative practices.<sup>161</sup> The program will also focus on expanding training to reach the wider school community, including teachers and parents, and the San Francisco Unified School District Restorative Coordinator will shift from a part-time to full-time position. Implementing restorative practices is currently one of the top thirteen initiatives for the school district.<sup>162</sup>

## 2. Florida

The Institute of Youth and Justice Studies at Florida Gulf Coast University has helped implement restorative practices at numerous Florida schools. Currently four school districts, Collier County Public Schools, Duvall County Public Schools, Lee County Public Schools, Marion County Public Schools, and Leon County Schools, have implemented restorative justice programs.<sup>163</sup> Varying by district, a continuum

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158. *Id.*

159. *Id.* at 2.

160. *Id.*

161. *Id.* at 3.

162. Telephone Interview with Kerry Berkowitz, SFUSD Restorative Practice Coordinator, (June 29, 2001) (providing description of current restorative justice program and defining program within district priorities).

163. Telephone Interview with Dr. Sandra Pavelka, Dir., Inst. For Youth and Justice Studies, (June 27, 2011) (providing overview of restorative justice program and districts with current programs).

of restorative practices is employed, ranging from more informal peer mediation, to formal community conferencing. Collier County Public Schools, for example, located in Everglades City, Immokalee, Marco Island, and Naples, began implementing restorative practices during the 2004-2005 school year.<sup>164</sup> Several Collier County schools utilize Student Accountability Boards, a prevention program comprised of five students, a School Resource Officer, and a Faculty Facilitator.<sup>165</sup> The program aims to identify at-risk youth and divert them from the juvenile justice system using a restorative approach.<sup>166</sup> Students referred to Student Accountability Boards participate in conferences with representatives of the school community, in which the impact caused by incidents are discussed and agreements are created. The Student Accountability Boards then create case plans to address the risk factors and needs of the referred students, and ensure their progress by providing assistance when necessary. Forty-eight of fifty cases referred in two Collier middle schools resulted in students completing and turning in all assignments and not reappearing before Student Accountability Boards.<sup>167</sup> Implementation of restorative justice programs in three additional schools districts, Sarasota County Schools, Marion County Public Schools, and Miami-Dade County Public Schools begins in the fall of 2011.<sup>168</sup>

### 3. Illinois

The Peoria Public Schools, located in Peoria, Illinois, are implementing restorative justice to reduce racial and ethnic disparities in the juvenile justice system.<sup>169</sup> Specifically, Peoria has replaced zero tolerance policies and referrals to law enforcement with a restorative approach to conflict. Schools in the district have begun community conferencing, called Community Peace Conferencing, with great success. At Children's Home Kiefer School, an alternative day school for children with severe emotional and behavior problems, the Children's Home

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164. *Id.*

165. Sandra O'Brien, *Restoring Schools: A Case of School Accountability Boards*, in PERSISTENTLY SAFE SCHOOL 2005: THE NATIONAL CONFERENCE OF THE HAMILTON FISH INSTITUTE ON SCHOOL AND COMMUNITY VIOLENCE, 180 (2005).

166. *Id.* at 179.

167. *Id.* at 180.

168. Interview with Dr. Sandra Pavelka, *supra* note 163 (discussing future sites of implementation).

169. See DMC/Juvenile Justice Action Network, *supra* note 64.

Association of Illinois implemented Peacemaking Circles. Used in all classrooms, Peacemaking Circles help to set standards of classroom behavior and resolve classroom disputes.<sup>170</sup> As of 2008, detention referrals dropped by thirty-five percent in those schools, and the percentage of referrals dropped more dramatically among African-American students with a decrease of 43 percent.<sup>171</sup>

Manual High School uses peer juries, set up by Illinois Models for Change and the Children's Home Association of Illinois. Each jury, comprised of twelve student volunteers, receives two eight-hour days of training. Police were frequently called to the school for minor infractions prior to the introduction of peer juries, but now the police are a last resort. According to the Program Coordinator, Lori Brown, students referred to peer juries frequently become more active in the school community and do not commit the same offense a second time.<sup>172</sup>

#### 4. Iowa

Since implementation in 2006, restorative practices have become a fundamental component of the school culture at Walnut Creek Campus. This alternative school in West Des Moines, Iowa adheres to restorative practices, designating an entire section of the school's handbook to restorative justice.<sup>173</sup> Walnut Creek utilizes conflict mediation, circles, and restitution as alternatives to traditional disciplinary procedures.<sup>174</sup> According to Dr. Kim Davis, the school's principal, "we started the process of using restorative practices and it has just strengthened and expanded over time."<sup>175</sup>

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

171. *Spring IBARJ Meeting in Peoria*, *supra* note 170.

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

173. Walnut Creek Campus, *2011 Summer School Handbook*, <http://www.wdmcs.org/wcc/documents/handbook11.pdf>.

174. *Id.*

175. E-mail from Dr. Kim Davis, Principal, Walnut Creek Campus, (June 20, 2011) (on file with author).

### 5. Oregon

In 2008 Resolutions Northwest, the Department of Community Justice developed a collaborative partnership with the Parkrose School District to implement restorative discipline practices.<sup>176</sup> The goals of the restorative justice project include reducing student referrals to juvenile justice and decreasing in-school and out-of-school suspensions and expulsions, in particular for minority students.<sup>177</sup> The Department of Community Justice and the City of Portland funded and implemented the restorative justice project as a three-year pilot.<sup>178</sup> The Parkrose restorative justice program, understanding that the impact of restorative justice implementation cannot simply be captured by quantitative data, collected data regarding the 162 facilitated cases reflecting the outcomes and student satisfaction. In 2008-2009, the Parkrose restorative justice program reported that 89% of cases resulted in agreements, 91% of cases closed with no further incidents 90 days after the agreement, 89% of students felt confident in their ability to complete their agreement, 85% of students felt satisfied with the restorative intervention process, and 75% of students felt the harm had been repaired. In 2009-2010, 175 cases were referred to the restorative justice program. Such qualitative data is critical to understanding the processes of implementation.<sup>179</sup> In the 175 cases, 86 restorative meetings were facilitated, 105 agreements were reached, 101 agreements were completed, and 71 days of suspension were avoided.<sup>180</sup> In the third year of the pilot, Resolutions Northwest reported that from September to February 132 students were referred to the restorative justice project, 98 cases were facilitated with 95% resulting in agreements, and 108 days of suspension avoided.<sup>181</sup> Based on the

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176. See Interview with Daniel Garcia, (July 28, 2011), *supra* note 63.

177. *Id.*; Portland, Or., City Council Ordinance No. 18472 (2010). The ordinance states: "The City of Portland and the Parkrose School District recognize that in-school disciplinary referrals and referrals to Juvenile Justice reflect a disproportionate number of minority youth."

178. See *id.*

179. See Thelton E. Henderson Center for Social Justice, *supra* note 14, at 16-21 (discussing student, teacher, and parent perceptions of the restorative justice program); see Stinchcomb et al., *supra* note 1, at 138-39 (discussing experiential accounts of teachers and students); Nancy Riestenberg, *Restorative Measures in Schools: Alternatives to Suspensions In-School Behavior Intervention Grants*, in *PERSISTENTLY SAFE SCHOOL 2005: THE NATIONAL CONFERENCE OF THE HAMILTON FISH INSTITUTE ON SCHOOL AND COMMUNITY VIOLENCE* 42, (2004); see also Morrison et al., *supra* note 16, at 170-73; see also *IIRP 2009*, *supra* note 132 (discussing perceptions of restorative justice program by schools administrator, community members, and teachers).

180. Resolutions Northwest Report to Portland City Council, *Creating Community Safety by Keeping Kids in School RNW's School Restorative Justice Pilot Project*, Nov. 2010 (on file with author).

181. *Id.*

results of the pilot project, it will be expanded in 2010-2011. Expansion efforts include adding full-time restorative justice staff, beginning implementation in Portland Public Schools District, engaging in intensive community-based education and teacher trainings on restorative justice.<sup>182</sup>

## 6. Maryland

Several organizations promote restorative justice in Baltimore, Maryland, the second most violent city in the country.<sup>183</sup> The Community Conferencing Center, a nonprofit community-based organization,<sup>184</sup> has worked in the Baltimore County School District since 1998 to provide alternatives to suspension and arrest.<sup>185</sup> Currently serving fifty to sixty schools in the District, the Community Conferencing Center trains teachers to lead informal classroom circles, called the Daily Rap, and organizes and facilitates Community Conferencing.<sup>186</sup> Of the 450 documented Community Conferences, 97% resulted in a written agreement, and there was a 95% rate of compliance with the agreements.<sup>187</sup> The Daily Rap, in which 2,200 teachers have been trained,<sup>188</sup> has also been successful: 61% of teachers are better able to manage misbehavior, and 44% reported fewer office referrals.<sup>189</sup> The Conflict Resolution Center of Baltimore County provides restorative solutions to the Baltimore City Public Schools. The Conflict Resolution Center has taken referrals from thirty-two elementary, middle, and high schools, offering students both community conferencing and community mediation.<sup>190</sup> The Conflict

182. Interview with Daniel Garcia, Restorative Justice School Mediation Specialist, Parkrose School District, in Portland, Or. (Jul. 28, 2011) (discussing future plans for restorative justice program).

183. Laura Mirsky, *The Community Conferencing Center: Restorative Practices in Baltimore, Maryland*, RESTORATIVE PRACTICES E-FORUM, 1 (MARCH 9, 2004), available at <http://www.iirp.org/pdf/cccbaltimore.pdf>.

184. Telephone Interview with Laura Abramson, Exec. Dir., Cmty. Conflict Ctr., (June 15, 2011) (describing Community Conferencing Center and its relationship with the Baltimore Co. school district); see also <http://www.communityconferencing.org/>.

185. *Id.*

186. Interview with Abramson, see note 185; see also [http://www.communityconferencing.org/programs/school.php#daily\\_rap](http://www.communityconferencing.org/programs/school.php#daily_rap).

187. E-mail from Laura Abramson, Exec. Dir., Cmty. Conflict Ctr., (June 16, 2011) (on file with author).

188. See Interview with Abramson, *supra* note 184; see also Community Conflict Center, *Summary of Daily Rap Impact*, [http://media.communityconferencing.org/uploads/main/Daily\\_Rap\\_Teacher\\_Surveys.pdf](http://media.communityconferencing.org/uploads/main/Daily_Rap_Teacher_Surveys.pdf), at 2.

189. *Id.*

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



Resolution Center is currently addressing a University of Maryland 2011 report, which examines the disproportionate minority contact within the Maryland juvenile justice system.<sup>191</sup> The report identifies school referrals to law enforcement as a primary point of contact with the juvenile justice system, and recommends community conferencing and the creation of restorative agreements as an effective alternative to police involvement in schools.<sup>192</sup> The Conflict Resolution Center, in collaboration with the Baltimore Police Department, the Juvenile Court, Baltimore County School District, and other community stakeholders, are preparing to implement a pilot program in two to four schools in order to decrease the disproportionate rate of minority youth in the juvenile justice system.<sup>193</sup>

The Baltimore Curriculum Project, another nonprofit organization, implemented restorative practices in three Baltimore County School District charter schools.<sup>194</sup> At City Springs School, where 99% of students are from families living below the poverty line, restorative practices implemented in 2007 have been embraced school-wide.<sup>195</sup> In addition to hiring an on-site restorative practices facilitator, the entire school staff was trained, including cafeteria workers.<sup>196</sup> From the 2008-09 to the 2009-10 academic year, the suspension rate decreased by 88%, the Maryland state assessment score increased, and the number of students functioning at grade level tripled.<sup>197</sup> The impactful change of restorative practices resulted in the school adopting a two-year "Whole-School Change Program" in the fall of 2010.<sup>198</sup>

## 7. Michigan

In 2004, the Lansing School District began implementation of a restorative justice program as part of a larger United Way grant. The pro-

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191. *Id.*

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

193. See Telephone Interview with Misty Fae, *supra* note 190.

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

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

196. *Id.*

197. *Id.* at 3.

198. *Id.* at 1; see also International Institute for Restorative Practices, *Restorative Practices: Whole-School Implementation Overview* (2010), [http://www.iirp.org/pdf/SSS\\_Implementation\\_Overview.pdf](http://www.iirp.org/pdf/SSS_Implementation_Overview.pdf).

gram initially piloted in one elementary school has expanded to include nineteen schools as of 2009.<sup>199</sup> In 2005, the pilot school reported a 15% decrease in suspensions.<sup>200</sup> Since its implementation, Lansing School District reported that 1500 students have been involved with the program, with 507 of the 522 cases resolved, 11 cases were in lieu of expulsion, and more than 1600 days of student suspension were avoided.<sup>201</sup> Similar to the Parkrose restorative justice program, the Lansing School District conducted long-term surveys with participants and report that 90% of participants learned new skills to solve or avoid conflicts after the restorative justice intervention.<sup>202</sup>

### 8. Minnesota

In 1998, the Minnesota Legislature appropriated \$300,000 to the Department of Children, Families & Learning for the implementation and evaluation of alternative approaches to suspensions and expulsions.<sup>203</sup> Eighty-five districts applied for three-year funding and four districts were selected. Each of the selected districts implemented a range of restorative practices and developed an evaluation plan aimed at measuring the impact in five areas: suspensions, expulsions, attendance, academics, and school climate. Like many others throughout the country, Minnesota schools experienced high rates of suspensions, expulsions, dropping out, truancy, and behavioral infractions.<sup>204</sup> In the early 1990s, the Minnesota statewide expulsion rate increased from around 100 to more than 300 as an apparent result of the implementation of zero tolerance policies by school districts. These efforts appeared to signal a gradual shift in the school system's response to misconduct from punishment to problem solving.<sup>205</sup> As Stinchcomb, et al., found, the use of restorative justice practices at several case study schools impacted school safety and

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

200. See Porter, *supra* note 199.

201. *Id.*

202. *Id.*

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

204. See Stinchcomb et al., *supra* note 1, at 134.

205. See Riestenberg, *supra* note 203.

presented positive indicators of decreased suspensions and expulsions, as well as acts of physical aggression.<sup>206</sup> For example, at Lincoln Center Elementary acts of physical aggression dropped from 733 in 1997-1998 to 153 in 2000-2001, the number of in-school suspension dropped from 126 in 1999-2000 to 42 in 2000-2001, out-of-school suspensions declined from 30 in 1998-1999 to 11 in 2000-2001, and the number of behavioral referrals decreased from 1,143 in 1998-1999 to 407 in 2000-2001.<sup>207</sup> Though less clearly linked to the use of restorative justice processes, administrators reported that average daily attendance improved from 85.0% in 1997-1998 to 95.5% in 2000-2001.<sup>208</sup>

### 9. Missouri

Community Conflict Services of St. Louis utilizes restorative principles to repair harm and build understanding at Long Middle School, where 46% of students are non-native English speakers and 89% receive free/reduced lunches. The majority of Long students attend Roosevelt, the high school with the highest suspension rate in the entire city and a graduation rate of 46%.<sup>209</sup> Since the fall of 2007, Community Conflict Services has taken a whole-school implementation approach at Long. The organization trains faculty in talking circles, and leads a six-week curriculum for students designed to build understanding about restorative principles and talking circles. In addition to biweekly talking circles led by teachers and staff, Community Conflict Services works with the administration to identify and assist teachers with high referral rates, offers special circles for students with repeated disciplinary problems, and facilitates re-entry circles for suspended students and their parents.<sup>210</sup>

After only two years of implementing restorative practices, Long Middle School saw a 27% decrease in the severity of suspensions, and an 18% reduction in affinity group-based violence.<sup>211</sup> In programs targeting specific students with discipline problems, teachers have seen increases in attendance, timeliness, and accountability for behavior. The entire school community is embracing restorative justice: the compli-

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206. Stinchcomb et al., *supra* note 1, at 135-39.

207. *Id.* at 136.

208. *Id.*

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

210. *Id.*

211. *Id.*

ance rate with restorative agreements over four years is averaged at 90.5%, and in surveys taken by parents, there was 98% satisfaction with re-entry circles. Restorative practices have been so effective at Long Middle School that Roosevelt High School is currently working with Community Conflict Services to revamp the high school discipline program and will begin training high school student mentors in the fall of 2011 to facilitate at Long Middle School.<sup>212</sup>

### 10. New Mexico

After three years of growing support for restorative practices in select Santa Fe Public Schools, a restorative justice program was funded by an appropriation from the New Mexico Legislature and incorporated into the Santa Fe Public School's Code of Conduct as an alternative to traditional discipline in the fall of 2007.<sup>213</sup> The Restorative Justice Initiative, funded by a second appropriation from the Legislature and by a city grant in the 2008-2009 academic year, employs various restorative practices, and is offered at all grade levels. Restorative Justice Circles are held in elementary and high schools, and Peer Panels, based mainly in middle and in some elementary schools, are facilitated by students who assign their peers restorative-based consequences. At the high school level, students are trained in Restorative Justice/Mediation elective classes and facilitate Restorative Circles with peers about issues such as fighting, classroom discipline, and personal challenges.<sup>214</sup> The Santa Fe Public Schools Restorative Justice Coordinator, Mary Beth Brady, supports training and provides technical assistance to middle and high schools, and co-facilitates circles with site staff at the elementary level.<sup>215</sup> During the 2010-2011 academic year, Brady and a hip-hop artist from a local NGO co-facilitated the "School Success Class," a program for thirty high-risk middle school students with a restorative justice and art focus. The program was highly successful: there was a forty to fifty percent reduction in serious incidents and out-of-school suspensions.<sup>216</sup>

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212. *Id.*

213. See *Restorative Justice Initiative*, *supra* note 14, at 8; see also, Santa Fe Public Schools, *Code of Conduct: A Comprehensive Plan for Safe Schools 2010-2011*, (2010), <http://www.sfps.info/DocumentView.aspx?DID=2251>.

214. See *Restorative Justice Initiative*, *supra* note 14, at 5, 8.

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

216. E-mail from Mary Beth Brady, Restorative Justice Coordinator, Santa Fe Public School, (July 7, 2011, 10:23 PST) (on file with author).

In the 2008-2009 school year, over 975 students from thirteen schools participated in the Restorative Justice program.<sup>217</sup> At Santa Fe High School, the Restorative Justice/Mediation class received forty-two referrals, and provided advocacy to seventy-eight students at Santa Fe High School and two middle schools.<sup>218</sup> In the 2007-2008 year, Santa Fe High School Restorative Justice students provided mentorship to twenty middle school participants in ten meetings throughout the year, and led four-hour training sessions with seventy seventh graders who chose to lead Peer Panels.<sup>219</sup>

### *11. Pennsylvania*

Administrators at West Philadelphia High School learned about restorative practices in spring 2008 and began implementing the practices immediately. The school had its first formal restorative practices training in fall 2008.<sup>220</sup> From April to December 2008, suspensions decreased by half and recidivism plummeted.<sup>221</sup> The school's administrators credit restorative practices for these improvements.<sup>222</sup> As a report by the International Institute for Restorative Practices found, subsequent to implementation of restorative justice practices, violent acts and serious incidents were down 52% in the 2007-2008 year compared to 2006-2007.<sup>223</sup> Moreover, violent acts and serious incidents were down an additional 40% for 2008-2009.<sup>224</sup>

Before restorative practices were introduced at Pottstown High School in Pennsylvania, the school was on academic probation and in danger of being taken over by the state. When the manufacturing industry in Pottstown withered away and poverty settled in, the school not only experienced a decline in academic performance, but also confronted a school climate of disrespect, classroom disruptions, ditching class, and fighting.<sup>225</sup> The school principal, Stephan J. Rodriguez, began vigorously implementing restorative practices in the fall of 2006. Ten enthusias-

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

218. *Id.* at 13.

219. *Id.* at 2.

220. *HRP 2009*, *supra* note 132, at 6.

221. *Id.*

222. *Id.*

223. *Id.* at 6-7.

224. *Id.* at 7-8.

225. *Id.* at 9.

tic teachers attended restorative conferencing training and began facilitating conferences upon their return.<sup>226</sup> As of 2009, the entire school staff was trained, including teachers, counselors, and instructional aides. Every educator was also required to incorporate restorative practices into his or her work in some fashion. Restorative practices have yielded very positive results at Pottstown High: the school was removed from academic probation, student test scores and behavior significantly improved, and staff reported feeling united and inspired in their work.<sup>227</sup> Disciplinary problems have also decreased: between the 2005-2006 and 2007-2008 academic years, fighting incidents fell from twenty to nine, out-of-school suspensions reduced from 140 to 108, and incidents of misbehavior, timeout or detention decreased from 168 to 37.<sup>228</sup>

Newtown Middle School, a relatively affluent school in Pennsylvania, began implementing restorative practices in 2006.<sup>229</sup> After learning about the SaferSanerSchools program, then-assistant principal, Richard Hollahan, began introducing restorative practices and had his staff trained. Hollahan described the restorative model as a “financial boon,” and as having transformed the school culture to one of mutual support and community building.<sup>230</sup> Discipline problems also drastically decreased: there were thirty suspensions during the 2007-2008 school year, and only five as of December, 2008.<sup>231</sup> Moreover, between the 2003-2004 and 2005-2006 school years, incidents of physical altercations decreased from forty-one to nine, and incidents of misbehavior fell from 147 to 69.<sup>232</sup> In response to Newtown’s successful program, other schools in the Council Rock School District are also implementing restorative practices.<sup>233</sup>

Restorative justice reached the Palisades School District, in Kintnersville, Pennsylvania during the 1998-1999 school year, when Palisades High School became the first International Institute for Restorative Practices pilot school.<sup>234</sup> That same year, Palisades High

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226. *Id.*

227. *Id.*

228. *Id.* at 10.

229. *Id.* at 11.

230. *Id.*

231. *Id.* at 12.

232. *Id.*

233. *Id.* at 11.

234. Laura Mirsky, *SaferSanerSchools: Transforming School Culture with Restorative Practices*, Restorative Practices e-Forum, (May 20, 2003), available at [http://www.iirp.org/iirpWebsites/web/uploads/article\\_pdfs/ssspilots.pdf](http://www.iirp.org/iirpWebsites/web/uploads/article_pdfs/ssspilots.pdf), at 1-2.

School launched a new program called the Academy, designed for students struggling with academics or behavior, and who felt disconnected from the school. Despite an unsuccessful beginning, the Academy was ultimately able to thrive after it began employing a continuum of restorative practices. The Academy staff, trained by the International Institute for Restorative Practices, utilized affective statements and questions, circles, interventions, one-on-ones, and group meetings with students. Moreover, teachers incorporated “check-in” and “check-out” circles into their classroom routines to set goals and expectations among students.<sup>235</sup> Restorative practices were so effective in the school’s most difficult setting that Palisades High School decided to incorporate restorative practices throughout the entire school over a three-year period.<sup>236</sup> The program was successful in decreasing behavioral problems, increasing academics, and fostering a more positive relationship among students and staff.<sup>237</sup> Disciplinary referrals decreased from 1,752 in the 1998-1999 academic year to 1,154 in the 2001-2002 school year, incidents of disruptive behavior fell from 273 to 153, administrative detentions dropped from 716 to 282, and out-of-school suspensions reduced from 105 to 65.<sup>238</sup> The SaferSanerSchools program expanded to Palisades Middle School in 2000, when the principal was inspired by Palisades High’s success. Prior to implementing restorative practices, Palisades Middle School struggled with a school climate of disrespect and fighting, and suspended about 200 students a year.<sup>239</sup> All staff members were trained in restorative justice, and the school introduced the entire spectrum of practices, from effective statements and questions to formal restorative conferences. In addition to positive effects on academic performance, the number of disciplinary referrals dropped from 913 in 2000-2001 to 516 in 2001-2002, and incidents of fighting decreased from twenty-seven to sixteen.<sup>240</sup>

After helping implement restorative practices at Palisades High School, Principal Joseph Roy introduced restorative practices to Springfield Township High School in Erdenheim, Pennsylvania in January of 2000.<sup>241</sup> Initially, small groups of teachers were trained, but by the fall of 2001 the entire faculty was introduced to restorative prac-

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235. *Id.* at 2-3.

236. *Id.* at 3.

237. *Id.* at 2.

238. *Id.*

239. *Id.* at 4.

240. *Id.*

241. *Id.* at 5.

tices.<sup>242</sup> Many teachers started incorporating circles into their classrooms, and the Assistant Principal began facilitating formal restorative conferences in the case of a serious issue.<sup>243</sup> Despite the challenge of shifting the traditional school culture, the school climate soon became one of acceptance and support, and students and staff attribute this transformation to restorative justice.<sup>244</sup> Statistical data also reflects the positive effects of restorative justice at Springfield: between the 2000-2001 and the 2001-2002 school years, incidents of inappropriate behavior dropped from ninety-nine to thirty-two, incidents of disrespect to teachers dropped from seventy-one to twenty-one, and incidents of classroom disruption decreased from ninety to twenty-six.<sup>245</sup>

## 12. Virginia

Although the Fairfax County Public Schools, located in Fairfax, Virginia, have been training staff in restorative justice for over eight years, the Northern Virginia Mediation Service (NVMS) Restorative Justice Task Force first began collaborating with Fairfax County Public Schools (FCPS) on a school-based restorative justice program in 2008.<sup>246</sup> The NVMS-FCPS Program serves elementary, middle, secondary, and high schools, as well as Alternative Learning Centers in the nation's 11th largest district, an ethnically diverse community comprised of nearly 200 schools.<sup>247</sup> Consistent with FCPS' "Student Rights and Responsibilities," which encourages conflict resolution and peer mediation,<sup>248</sup> the NVMS-FCPS Program centers on providing alternative solutions to traditional disciplinary action. The Program includes two coordinators, who allocate referred cases and lead training for teachers and administrators several times a year, a six to seven person Leadership Team, and twenty trained facilitators, most of whom are certified and practicing mediators.<sup>249</sup> Facilitators are available seven days a week,

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242. *Id.*

243. *Id.* at 6.

244. *Id.* at 7.

245. *Id.* at 6.

246. E-mail from Marjorie Bleiweis, Northern Va. Mediation Serv., (June 15, 2011, 02:06 EST) (on file with author).

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

248. *Student Rights and Responsibilities Grades K-12*, REGULATION 2601 (Fairfax Cnty. Pub. Sch., Fairfax, Va.), Aug. 2011, at 9.

249. Adler, *supra* note 47, at 3.



though they visit onsite offices at the two largest schools served on a scheduled basis.<sup>250</sup> A continuum of restorative practices is employed, including, but not limited to, circles and formal conferencing, and typically a two-facilitator approach is utilized.<sup>251</sup> The NVMS-FCPS Program has grown rapidly, with seven cases in fiscal year 2009, thirty-two in 2010, and eighty in 2011.<sup>252</sup> In light of the Program's success, the state's largest high school, Westfield, created a formal partnership with NVMS in 2010.<sup>253</sup> Westfield High and other frequent users of the Program report a sharp drop in suspensions, and the same students are rarely seen, indicating a low recidivism rate.<sup>254</sup>

While it is important to remember that a long history of educational research suggests that achieving school transformation requires an extended period of time, the examples highlighted in Part III reflect the ability of local districts' efforts to prioritize education over punishment. These are not isolated instances of districts moving away from traditional retributive discipline practices, but rather a global movement for restoring justice in public schools. School-based restorative justice programs across the country have begun the difficult task of reversing the negative impacts of punitive discipline policies. Multiple studies have shown school-based restorative justice<sup>255</sup> can transform the educational experience of students from what it is: one focused on exclusion and zero tolerance, to what it should be: one focused on academic achievement. Unfortunately, a significant obstacle faced by many school districts across the United States is a lack of funding. Despite quantitative and qualitative evidence of the positive impacts of school-based restorative justice programs, many districts are forced to discontinue restorative programs due to lack of funding. For example, the Memphis City Schools implemented an effective restorative justice program in twenty-two schools, with a trained behavioral specialist at each school, as well as a victim empathy-training program. The program ended in December 2010, after only seven months, when funding for the behavior specialists

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250. *Id.*

251. *Id.* at 4, 6-7.

252. E-mail from David Deal, Northern Va. Mediation Srv., (July 7, 2011, 02:19 EST) (on file with author).

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

254. E-mail from David Deal, *see* note 253.

255. *See generally* note 15.

was cut.<sup>256</sup> The successful NVMS-FCPS in program in Fairfax, Virginia has yet to receive its funding for the 2011-2012 school year,<sup>257</sup> and the future of the restorative justice program at Peoria's Manual High School is uncertain.<sup>258</sup> Similarly, the Santa Fe Public Schools' Restorative Justice Initiative will also likely discontinue in the upcoming school year without sufficient funding, despite significant support in the schools and in the community.<sup>259</sup> These districts are just several examples of restorative justice programs, which transform school communities, but are cut short before the full impact of restorative practices can be realized. Indeed, as districts with long-standing programs exemplify, implementation of restorative justice is not a short-term concept, but considering the significant benefits of such programs, from fiscal and social, to individual and collective, it is clear such investment must be made to address the school-to-prison pipeline and ensure the success of our nation's youth.

#### IV. THE NORTH HIGH SCHOOL RESTORATIVE JUSTICE PROGRAM

##### A. Background

The Restorative Justice Program at North High School represents one example of a sustained school-based restorative justice practice focused on the implementation of non-exclusionary discipline processes to build a safer school culture, reduce suspensions and referrals to law enforcement, and impact educational performance. Since 2003, Denver Public Schools have implemented restorative justice interventions into their discipline and behavior management processes.<sup>260</sup> The implementation

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

257. E-mail from David Deal, *supra* note 252.

258. See *Spring IBARJ Meeting in Peoria*, *supra* note 170.

259. Telephone Interview with Mary Beth Brady, Restorative Justice Coordinator, Santa Fe Pub. Sch., (July 6, 2011) (discussing funding limitations of restorative justice program and community response to program).

260. Interview with Timothy Turley, Program Manager, Denver Pub. School Prevention and Intervention Serv., in Denver, Colo. (June 14, 2011) (discussing pilot program at Cole Middle School and process of implementation of restorative justice program); Interview with Robert Anderson, Dir., Denver Pub. School Prevention and Intervention Serv., in Denver, Colo. (June 15, 2011) (discussing inclusion of formal and informal implementation of restorative and responsive interventions in discipline); Interview with Barbara Downing, Mental Health and Assessment Serv., Prevention Serv., Denver Pub. School, in Denver, Colo. (June 14, 2011) (discussing district

process in Denver Public Schools was characterized by both strategies at the district-level and individual school building level.<sup>261</sup> Like many urban school districts across the United States, Denver Public Schools faced challenges of high rates of student dropout, suspensions, and expulsions with a disproportionate representation among minority students in each of these areas.<sup>262</sup> For example, from the 2000-2001 to 2004-2005 school years, Denver Public Schools reported a dramatic increase in the number of in-school suspensions, from 1,864 to 4,859, and out-of-school suspensions, from 9,846 to 13,487.<sup>263</sup> The 13,487 out-of-school suspensions in 2005 generally ranged from five to ten days, i.e., 67,435 to 134,870 days of education lost.<sup>264</sup> During that time period, there was also a 71% increase in the total number of police-issued tickets and arrests within Denver Public Schools, although the student population only rose 2%.<sup>265</sup> Of the police-issued tickets, 68% were for minor incidents that included the use of obscenities, disruptive appearance, and shoving matches.<sup>266</sup> A disproportionate number of the suspensions, expulsions, police-issued tickets, and arrests were among Latino and African-American students. In the 2004-2005 school year, Latino students represented 70% of the tickets issued, though they represented only 58% of the overall student population.<sup>267</sup> African-American students represented 35% of all expulsions and 34% of all out-of-school suspensions, though they represented only 19% of the student population.<sup>268</sup> Based on this significant data, the Office of Prevention and Intervention Initiatives determined that it was imperative for the district to begin moving away from reliance on punitive discipline and zero tolerance policies.<sup>269</sup>

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policy review to align with restorative justice practice implementation and district policy review to align with revised discipline matrix); Interview Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (June 16, 2011) (discussing implementation of professional development for non-restorative justice coordinators as means of creating larger community of school-based staff focused on positive behavior management).

261. *Id.*

262. Myriam L. Baker, *CDE Expelled and At-Risk Student Services Grant: First Year Report 2006-2007*, Denver Pub. Schs., Denver Public Schools Restorative Justice and Disciplinary Reform Project, 1 (2007); Mac Iver & Mac Iver, *supra* note 72.

263. Baker, *supra* note 262, at 1.

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. Interview with Timothy Turley, *supra* note 260 (discussing development pre-implementation of restorative justice program in Denver Public Schools); Interview with Robert Anderson,

## B. Denver Public Schools Implementation of Restorative Justice

The implementation of the restorative justice program in Denver Public Schools can be best understood in three phases: exploratory, grant-funded pilot phase, and district-wide adoption phase. The exploratory phase is characterized by a small pilot restorative justice project at Cole Middle School in the 2003-2004 academic year. Cole Middle School received the program because the school had some of the district's largest numbers of suspensions, tickets, and arrests.<sup>270</sup> The model implemented at Cole Middle School included both victim-offender mediation and large group circles. While data about the restorative justice pilot at Cole Middle School was limited, the project presented such promising results that the Office of Prevention and Intervention Initiatives applied for a Colorado Department of Education Expelled and At-Risk Student Services (EARSS) grant.<sup>271</sup>

In 2006, the Office of Prevention and Intervention Initiatives received the EARSS grant from the Colorado Department of Education.<sup>272</sup> Utilizing the EARSS grant, the Office of Prevention and Intervention Initiatives

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*supra* note 260 (discussing development and pre-implementation of restorative justice program in Denver Public Schools); Interview with Barbara Downing, *supra* note 260 (discussing collaboration with Office of Prevention and Intervention Initiatives to implement and monitor restorative justice program).

270. Interview with Timothy Turley, *supra* note 260 (discussing development and phased implementation of restorative justice program in Denver Public Schools); Interview with Robert Anderson, *supra* note 260 (discussing development and phased implementation of restorative justice program in Denver Public Schools).

271. Interview with Timothy Turley, *supra* note 260 (discussing development and implementation timeline for restorative justice program in Denver Public Schools; subject, in collaboration with Robert Anderson, wrote EARSS grant); Interview with Robert Anderson, *supra* note 260 (discussing development and implementation timeline for restorative justice program in Denver Public Schools).

272. As discussed *infra*, the proposal made to the Colorado Department of Education Prevention Initiatives Unit was based on alarming trends noted in prior years' discipline data for the district. In its proposal, the district's stated goal was to implement the restorative justice district-wide, and use the restorative justice program as the first stage of a reformation of the Denver Public Schools discipline policy. The district's discipline policy in 2006 was vague and enforcement varied from school to school. Specifically, under the Denver Public Schools Student Discipline policy, school principals "may develop a remedial discipline plan that shall address the student's disruptive behavior. Individual schools can determine what disruptive behavior would lead to removal from class, suspension, and potentially expulsion." As a result, the risk of expulsion was dependent upon the individual schools' suspension and discipline policies. Thus, students could face a higher risk of expulsion in one school and not another. *See* Interview with Timothy Turley, *supra* note 260 (discussing development and implementation timeline for phases of restorative justice program in Denver Public Schools); *see also* Interview with Robert Anderson, *supra* note 260 (discussing development and implementation timeline for restorative justice program in Denver Public Schools).

began whole school implementation of restorative justice programs at North High School and its three feeder middle schools: Skinner Middle School, Horace Mann Middle School, and Lake Middle School.<sup>273</sup> All four schools were identified as high-need, with some of the district's largest numbers of suspensions, tickets, and arrests. In the 2004-2005 school year, there were 350 out-of-school suspensions, four expulsions, and 72 tickets and arrests at Skinner Middle School;<sup>274</sup> 220 out-of-school suspensions, three expulsions, and 22 tickets and arrests at Horace Mann Middle School;<sup>275</sup> and 288 out-of-school suspensions, five expulsions, and 58 tickets and arrests at Lake Middle School.<sup>276</sup>

By the end of the 2006-2007 school year, 213 students had been referred to the pilot Restorative Justice Program at the four schools.<sup>277</sup> Out-of-school suspensions from the baseline school year, 2004-2005, fell 29% (reflecting a decrease from 1,146 to 835).<sup>278</sup> Expulsions at Skinner Middle School fell by 100% and at Horace Mann Middle School by 43%.<sup>279</sup> Cumulatively, there were 26% fewer students expelled across the four schools in the 2006-2007 school year.<sup>280</sup> In the 2007-2008 school year, 812 students were referred to the Restorative Justice Program.<sup>281</sup> In addition to the four pilot schools, the grant-funded phase of the Restorative Justice Program was expanded to include Abraham Lincoln High School, Rishel Middle School, and Kunsmiller Middle School.<sup>282</sup> District-wide outcomes of the Restorative Justice Program reflected positive progress in addressing the negative impacts of punitive discipline.<sup>283</sup> For example, all four of the original pilot schools showed a continued decrease in school expulsions, from twenty-three in 2005-2006 to six in

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273. *Id.*

274. *Id.*

275. *Id.*

276. Baker, *supra* note 262, at 4-5.

277. *Id.* at 8; *see also* Interview with Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (Mar. 26, 2010) (discussing implementation timeline for restorative justice program; the only full-year program implemented was at North High School; the programs at Skinner Middle School, Horace Mann Middle School, and Lake Middle School were implemented mid-year).

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

279. *Id.* at 14.

280. *Id.*

281. *Id.* at 1.

282. *Id.*

283. *Id.*

2007-2008.<sup>284</sup> Suspensions were also reduced at all four schools. At Horace Mann Middle School, suspensions decreased from 218 (2005-2006 baseline year) to 77 (2007-2008),<sup>285</sup> and at Skinner Middle School, suspensions decreased from 249 (2005-2006 baseline year) to 154 (2007-2008).<sup>286</sup>

During the grant-funded phase, outcomes of the Restorative Justice Program reflect that 15% of referred students showed an 87% reduction in the number of office referrals during the second semester compared to the first semester, and 13% had an average reduction of 92% in the number of out-of-school suspensions in the second semester.<sup>287</sup> In each of the pilot schools, including North High School, referred students also showed an improvement in attendance and tardiness. Specifically, 13% of all students referred to the Restorative Justice Program improved their attendance and 18% improved their tardiness.<sup>288</sup> Additionally, 13% of all referred students reduced the average number of their out-of-school suspensions, and 10% reduced office referrals they received.<sup>289</sup> Based on data collected in the 2007-2008 school year, students who showed improvements in these areas were also more likely to have participated in multiple restorative justice interventions.<sup>290</sup> In the 2008-2009 school year, 1,235 students were referred to the Restorative Justice Program across all of the grant-funded phase pilot schools.<sup>291</sup> Furthermore, in the 2008-2009 school year, 220 cases referred for restorative intervention were in lieu of out-of school suspension.<sup>292</sup> An additional eleven cases had reduced suspension due to participation in the Restorative Justice Program.<sup>293</sup> The Restorative Justice Program is responsible for an overall reduction of over 5,400 suspensions from the baseline school year of the grant-funded phase 2005-2006 to the 2008-2009 school year.<sup>294</sup> Expulsions also declined. Analysis of expulsions in the first two years of the grant-funded phase showed reductions ranging from 32% to 75%.<sup>295</sup>

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284. *Id.* at 6-7.

285. *Id.* at 6.

286. *Id.*

287. *Id.* at 5.

288. *Id.* at 3.

289. *Id.*

290. *Id.*

291. Myriam L. Baker, *DPS Restorative Justice Project: Year Three. Year End Report 2008-2009*, DENVER PUB. SCHS, 18 (2009).

292. *Id.* at 18.

293. *Id.* at 14.

294. *Id.* at 15.

295. *Id.* at 16.

In 2009-2010, a sample of 293 students who participated in at least three restorative interventions over the course of the school year was used to assess the impact of involvement in multiple instances of restorative interventions on such measures as school discipline, attendance, and social skills.<sup>296</sup> The numbers of failing grades for targeted students was compared between the first and second semesters. Failing grades decreased for 30% of the targeted students by 50%.<sup>297</sup> School attendance was measured as an indicator of school engagement. Absences were compared from the first semester of the school year to the last semester. Attendance improved for 31% of students receiving at least two restorative justice interventions by a 64% reduction in the number of period absences.<sup>298</sup> The average number was 72 per student in the first semester, and 44 in the second semester.<sup>299</sup> Timeliness was improved for 35% of targeted students, as evidenced by a 47% reduction in school tardies from the first semester average of nearly 19 per student to a second semester average of 10 per student.<sup>300</sup> Office referrals logged and out-of-school suspensions were compared for the sample of students between the first and last semesters of the school year. Office referrals were reduced for 20% of targeted students by an 88%, from a first semester average of nearly two per student to a second semester average of about one office referral for every five students.<sup>301</sup> Out of school suspensions were reduced for 13% of targeted students by 89%.<sup>302</sup>

During the grant-funded phase, the restorative justice model was refined, and the Office of Prevention and Intervention Initiatives developed short- and long-term strategies for district-wide implementation. The model for implementation during the grant-funded phase was the placement of a full-time restorative justice coordinator in each of the pilot schools.<sup>303</sup> The Office of Prevention and Intervention Initiatives also began working on revisions to the discipline policy to incorporate

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

297. *Id.* at 2.

298. *Id.* at 2-3.

299. *Id.*

300. *Id.* at 3.

301. *Id.*

302. *Id.* at 4.

303. Interview with Timothy Turley, *supra* note 260; Interview with Robert Anderson, *supra* note 260; Interview with Benjamin Cairns, *supra* note 260 (discussing experience as first full-time restorative justice coordinator).

restorative principles formally into all discipline processes.<sup>304</sup> The Office of Prevention and Intervention Initiatives recognized that without a formal district-wide shift from punitive and retributive practices, implementation of a sustained restorative justice program would be challenging.<sup>305</sup> As has been well-documented and discussed *supra*, punitive practices are often so ingrained with school and district culture that whole school, or whole district, adoption of restorative justice does not occur.<sup>306</sup> Consistent with best practices in sustained restorative justice programs, the 2008 revised discipline policy incorporated both traditional and restorative principles. The passage of the 2008 revised discipline code policy marked the beginning of the third phase of implementation in the district.

### C. North High School's Implementation of Restorative Justice

The development and implementation of the North High School Restorative Justice Program represented the beginning of the grant-funded phase discussed *supra*. The specific goal of the North High School Restorative Justice Program was to establish an institutional alternative to the exclusive use of punitive discipline.<sup>307</sup> North High School was identified as high-need, with some of the district's largest numbers of suspensions, tickets, and arrests.<sup>308</sup> For example, in the 2004-2005 school year, there were 288 out-of-school suspensions, five expulsions, and 68 tickets and arrests at North High School.<sup>309</sup> In addition to being identified as high-need by the Office of Prevention and Intervention Initiatives based on the

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304. Thalia González, *Restoring Justice: Community Organizing to Transform School Discipline Policies*, 15 UC DAVIS J. JUV. L. & POL'Y 1, 2-37 (2011); Interview with Timothy Turley, *supra* note 260 (discussing development and implementation timeline for restorative justice program in Denver Public Schools); Interview with Robert Anderson, *supra* note 260 (discussing development and implementation timeline for restorative justice program in Denver Public Schools).

305. See Gonzalez, *supra* note 304.

306. Interview with Timothy Turley, *supra* note 260 (discussing challenges of implementation in Denver Public Schools); Interview with Robert Anderson, *supra* note 260 (discussing challenges of implementation in Denver Public Schools); see also Karp & Breslin, *supra* note 1; Stinchcomb et al., *supra* note 1; Jennings et al., *supra* note 14.

307. Consistent with whole-school adoption discussed by Thorsborne and others, it was determined that the North High School Restorative Justice Program would become integrated into an broad range of educational services provided by the school focused on inclusion in the school community and academic success. See Interview with Timothy Turley, *supra* note 260 (discussing North High School program implementation).

308. See Baker, *supra* note 260.

309. See *id.*



significant numbers of suspensions, tickets, and arrests, North High School was also chosen as a pilot for a restorative justice program as a result of community organizing efforts by Padres y Jóvenes Unidos.<sup>310</sup>

Since the implementation of the North High School Restorative Justice Program, there have been two full-time restorative justice coordinators. Unlike other programs discussed *supra*, the restorative justice practice at North High School was developed and implemented by Denver Public School employees.<sup>311</sup> Such implementation is consistent with a whole school approach,<sup>312</sup> which focuses on creating a continuum of complex restorative practices based on sustained relationships between all members of the school community. As interviews with students, teachers, and administrators at North High School have all reflected, the placement of a full-time restorative justice coordinator within the school community, in contrast to a consultant or contract employee from an outside organization, facilitated the building of trust and involvement of the school leadership.<sup>313</sup> Based on the number of cases referred to the

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310. See González, *supra* note 304, at 23-26.

311. Interview with Timothy Turley, *supra* note 260 (discussing grant-funded phase implementation and changes from Cole Middle School pilot program); Interview with Robert Anderson, *supra* note 260 (discussing grant-funded phase implementation and changes from Cole Middle School pilot program).

312. See Hopkins, *supra* note 21; Morrison et al., *supra* note 16, at 106-09.

313. Interview with Benjamin Cairns, Restorative Justice Coordinator, North High Sch., in Denver, Colo. (Nov. 11, 2009) (discussing creation of North High School program and parent response in first three months of implementation); Interview with Robin Graham, Student Advisor, Smedley Elementary Sch., in Denver, Colo. (May 27, 2010) (discussing significance of full-time on-site restorative justice coordinator in establishing culture of restorative practice); Interview with North High School students, North High School, in Denver, Colo. (May 20-21, 2009) (discussing experiences with restorative justice and how restorative justice coordinator was viewed within school community); Interview with North High School students, North High School, in Denver, Colo. (Nov. 12-13, 2009) (discussing initial reluctance yet ultimate acceptance of restorative justice coordinator as member of school community and emphasizing importance of restorative justice coordinator's bilingual skills in generating trust); Interview with North High School students, North High School, in Denver, Colo. (Apr. 19, 2010); Interview with North High School students, North High School, in Denver, Colo. (April 21, 2010); Interview with Kenna Moreland, Teacher, North High School, in Denver, Colo. (May 26, 2010) (describing work with restorative justice coordinator); Interview with Beth Pino, Teacher, North High School, in Denver Colo. (May 26, 2010) (describing work with restorative justice coordinator); Interview with Tamara Sealy, Teacher, North High School, in Denver, Colo. (May 27, 2010) (describing role as facilitator at restorative justice conferences); Interview with Kari Searles, Teacher, North High School, in Denver, Colo. (May 27, 2010); Interview with Patricia Lopez, Counselor, North High School, in Denver, Colo. (May 27, 2010) (describing work with restorative justice coordinator); Interview with Ryan McKillop, Teacher, North High School, in Denver, Colo. (May 27, 2010) (describing work with restorative justice coordinator and use of restorative justice practices in classroom); Interview with Daniel Fuentes, *supra* note 17 (discussing positive impact of having fulltime restorative justice coordinator); Interview with Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (May 27, 2010; June 15 & 28, 2011) (discussed trust building at North High School).

Restorative Justice Program, in its second year a paraprofessional was added to increase targeted restorative interventions.<sup>314</sup> Throughout the grant-funded phase of the North High School Restorative Justice Program the restorative justice team conducted trainings for student advisors, disciplinarians, and teachers to integrate the restorative justice program into the school culture and meet the goals of the EARSS grant to transition away from reliance on punitive discipline.<sup>315</sup>

Understanding that school culture change does not happen in one year, the North High School Restorative Justice Program established short, medium, and long-term implementation goals. The initial goal, consistent with the EARSS grant, was to reduce suspensions, expulsions, and referrals to law enforcement by 20% per year during the first three years by adopting restorative justice practices in lieu of referrals to these traditional punishments.<sup>316</sup> Moving beyond the initial goal, the North High School restorative justice and discipline team began focusing on reducing fights, improving school safety, and lowering discipline referrals.<sup>317</sup> The North High School restorative justice and discipline team also committed to sustained impacts on school safety through the development of relationships based on mutual respect and meaningful accountability to support a culture of high academic achievement.<sup>318</sup>

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314. Interview with Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (June 16, 2011) (discussing need for additional restorative justice practice due to caseload).

315. Based on interviews conducted from 2008-2011, it is clear there has been a school wide shift in the culture and acceptance of restorative justice practices. For example, restorative justice questions are now used within classrooms to handle emerging disruptions, students formal and informal lead restorative justice interventions, and all administrators and disciplinarians utilize restorative justice practices when addressing behavioral issues. Interview with Benjamin Cairns, *supra* note 313; Interview with Ryan McKillop, *supra* note 313 (discussing use of restorative justice in classroom without facilitator); Interview with Daniel Fuentes, *supra* note 17 (discussing use of informal restorative practice among teachers and students); Interview with Kenneth Chavez, *supra* note 95 (discussing use of informal restorative practice among teachers and students; discussed personal use of restorative questions and practice with students); E-mail from Benjamin Cairns, Restorative Justice Coordinator, North High School, (June 28, 2011) (on file with author).

316. Interview with Timothy Turley, *supra* note 260 (discussing goals established by EARSS grant); Interview with Robert Anderson, *supra* note 260 (discussing goals of reducing suspensions, expulsions, and referrals to law enforcement).

317. Interview with Daniel Fuentes, *supra* note 17 (discussing goals consistent with systemic practice); Interview with Kenneth Chavez, *supra* note 95 (discussing safe school regulation and restorative practice); Interview with Benjamin Cairns, Restorative Justice Coordinator, North High School, in Denver, Colo. (Nov. 13, 2009) (discussing monitoring and development of North High School restorative justice program).

318. *See generally supra* note 314.

#### D. North High School Restorative Justice Program Practices

Consistent with findings by Karp and Breslin<sup>319</sup> that school based restorative justice program implementation requires adaptation to specific school culture, the North High School Restorative Justice Program utilizes diverse restorative methods. Since its implementation, the goal of the Restorative Justice Program has been to provide a multi-level alternative to punitive discipline policies and practices in order to promote a healthy school community, impact school safety, and improve academic success. The North High School Restorative Justice Program is based on close and interconnected relationships between the restorative justice coordinator, school resource officer, teachers, and school administrators.<sup>320</sup> While initial research of the restorative justice program at North High School outlined a one-dimensional model for the program, the current Restorative Justice Program utilizes a continuum model, which includes formal and informal restorative practices.<sup>321</sup> These practices include mediations, conferences, and circles.<sup>322</sup> Each of these practices emphasizes key restorative principles of identifying harm, establishing responsibility, and developing a remedy.<sup>323</sup> The aim of the North High School restorative justice practice is to develop relationships between affected parties, including students, parents, teachers, administrators, and the community. This goal is consistent with a balanced restorative justice model, which encourages integration of victims, offenders, and the school community.

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319. See Karp & Breslin, *supra* note 1.

320. Interview with Robin Graham, *supra* note 313 (describing experiences, including facilitated conferences, with North High School restorative justice coordinator); Interview with Kenna Moreland, *supra* note 313 (describing experiences with North High School restorative justice coordinator); Interview with Beth Pino, *supra* note 313 (describing experiences, including facilitated conferences, with North High School restorative justice coordinator); Interview with Tamara Sealy, *supra* note 313 (describing experiences with North High School restorative justice coordinator); Interview with Kari Searles, *supra* note 313 (describing experiences, including facilitated conferences, with North High School restorative justice coordinator); Interview with Patricia Lopez, *supra* note 313 (describing experiences, including facilitated conferences, with North High School restorative justice coordinator); Interview with Ryan McKillop, *supra* note 313 (describing experiences, including facilitated conferences, with North High School restorative justice coordinator); Interview with Daniel Fuentes, *supra* note 17 (describing restorative justice cases referred to North High School restorative justice coordinator); Interview with Kenneth Chavez, *supra* note 95 (discussing collaboration with North High School restorative justice coordinator).

321. Jennings et al., *supra* note 14.

322. See generally *supra* notes 118-133.

323. See generally *supra* notes 109, 110.

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

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

Currently, the North High School Restorative Justice Program utilizes restorative dialogues, preventative classroom circles, mediations, conferences, group conferences, and student-led circles.<sup>324</sup> Each of these practices specifically link to the Denver Public Schools discipline code policy and discipline matrix. For example, restorative dialogues are one-on-one conversations between a teacher and a student using the restorative justice questions.<sup>325</sup> Such interventions are used when the issue or behavior correlates with the first step of the discipline ladder. Restorative practices are also connected to the type of issue, nature of responsibility, and impact of the issue.<sup>326</sup> For example, restorative mediations are used when both parties bear equal responsibility for an incident (e.g., when a fight occurs). The restorative mediation is structured in a manner that allows facilitated dialogue, where each party takes turns answering basic restorative questions until an agreement is reached.

Consistent with underlying assumptions of restorative practice, the role of the restorative justice coordinator is to remain neutral. Restorative conferences are similar to mediations, but occur when there is not an equally shared responsibility between parties, for example, when bullying occurs. During a restorative conference, the restorative justice coordinator focuses on correcting an imbalance of power between parties and creating a structure to protect the victim.<sup>327</sup> Additionally, the restorative justice coordinator is responsible for balancing the needs of the victim and the offender.<sup>328</sup> Restorative circles,

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324. Interview with Benjamin Cairns, *supra* note 313 (discussing models of restorative practice used at North High School); E-mail from Benjamin Cairns, Restorative Justice Coordinator, North High School, (June 28, 2011) (on file with author).

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.*

characterized as group conferences in other research, are used for incidents between multiple parties. At North High School a restorative circle is similar to a restorative mediation, in that each party takes turns answering basic restorative questions.<sup>329</sup> In contrast to a two-party restorative mediation, the participants are arranged in non-adversarial positions, and each answers the questions in the order they are sitting.<sup>330</sup> Restorative circles at North High School are also structured to include members of the school community who are indirectly impacted by an incident or behavior. Restorative circles are most commonly used in classrooms to support learning outcomes, set boundaries, and develop positive relationships.<sup>331</sup> The restorative circles are linked to curriculum, pedagogy, and behavior management.<sup>332</sup>

Typical outcomes of the Restorative Justice Program include personal apologies, public apologies, agreements to be polite, reestablished friendships, agreements to show mutual respect, agreements to address conflicts in private, and community service. After each restorative mediation, conference, or circle, the restorative justice coordinator follows up with all parties to ensure the restorative agreement or outcome is being met. As programmatic evaluations have indicated, restorative justice program participants exhibit an 80% satisfaction rate.<sup>333</sup> Additionally, results have shown that over 72% of participants feel that the agreements are followed completely.<sup>334</sup> Eighty-five percent of all participants felt satisfied with the outcome of the process.<sup>335</sup> In 2009, a student and faculty focus group conducted at North High School found strong support for the Restorative Justice Program and emphasized its positive impact on school culture.<sup>336</sup>

### **E. North High School's Restorative Justice Program Impact**

During its first two years, the Restorative Justice Program at North High School conducted an estimated 120 formal restorative mediations, conferences, and circles per academic year.<sup>337</sup> In the 2007-2008 school year, the

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329. *Id.*

330. *Id.*

331. *Id.*

332. *Id.*

333. Baker, *supra* note 260, at 11.

334. *Id.* at 17.

335. *Id.* at 11.

336. Baker, *supra* note 296, at 16.

337. *Id.* at 6.

Restorative Justice Program at North High School served 170 students based on 254 infractions.<sup>338</sup> Twenty-eight of the cases referred were known to be in lieu of out-of-school suspension, and an additional 26 cases had reduced length of suspension due to participation in the restorative justice program.<sup>339</sup> Twenty percent of the students in the program reduced their average number of out of school suspensions by 81% in the second semester and 17% of students showed an 80% reduction in the number of office referrals.<sup>340</sup> During the 2008-2009 school year, the program conducted 199 formal cases. Fifty-seven of these cases were in lieu of suspension.<sup>341</sup>

In the 2009-2010 school year the program conducted 190 formal cases involving 241 students involving 184 infractions.<sup>342</sup> Seventy-four of the cases were referred in lieu of, or as a condition of reduced out-of-school suspensions.<sup>343</sup> Twenty-six of the cases were referred as a condition of no ticket written by the school resource officer.<sup>344</sup> When considering the program outcomes, the positive impact for students at North High school is clear. Forty-one percent of students who participated in the restorative justice program showed improvement in attendance demonstrated by a 44% reduction in school absences from the first semester to the second, or from an average of over 122 period absences per student in the first semester to 68 in the second.<sup>345</sup> Forty-nine percent improved timely school arrival by a 50% reduction in school tardiness in the second semester compared to the first.<sup>346</sup> Thirty-seven percent improved behavior at school as evidenced by a 94% reduction in the number of office referrals made in the second semester compared with the first, or from an average of nearly two per student in the first semester to less than one for every nine student in the second.<sup>347</sup> Thirty percent further improved behavior evidenced by an 88% reduction in out-of-school suspension in the second semester compared with the first, or from an average of over two incidents per student to less than one for every nine students.<sup>348</sup>

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338. Baker, *supra* note 278.

339. *Id.* at 1.

340. *Id.* at 5.

341. Baker, *supra* note 296, at 16.

342. Baker, *supra* note 296.

343. *Id.* at 2.

344. *Id.*

345. *Id.* at 5.

346. *Id.*

347. *Id.*

348. *Id.*

Positive outcomes were also clearly demonstrated with respect to school discipline. Seventy-four of the cases were referred in lieu of or as a condition of reduced out-of-school suspensions and twenty-six as a condition for no ticket written by the school resource officer.<sup>349</sup> Out-of-school suspensions were reduced by 13% from the 2008-2009 school year, and by 34% since the program began four years ago.<sup>350</sup> Expulsions from school were reduced by 85% from the 2008-2009 school year, and by 82% since the project began.<sup>351</sup> Referrals to law enforcement were down by 70% compared with last year and 72% since the program began.<sup>352</sup> Since its development and implementation, over 830 formal restorative interventions have been conducted at North High School.<sup>353</sup> This data does not account for all of the informal restorative processes that have emerged within the North High School community.<sup>354</sup> For example, one North High School security guard estimated that he and the Dean conducted 100 informal conferences in the fall of 2009.<sup>355</sup>

To a large degree, the impact of the North High School Restorative Justice Program cannot be captured by quantitative data alone.<sup>356</sup> As discussed in Part III, school-based restorative justice implementation and development requires an institutional and individual shift from retributive and exclusionary practice to restorative and inclusionary practice. While quantitative data can exhibit downward trends in suspension and expulsions, as a result of restorative practice, there is not a quantitative measure for the development of positive relationships between students, teachers, and administrators. Moreover, as school-based restorative justice programs grow, school communities become increasingly self-reflective and

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349. *Id.* at 6.

350. *Id.*

351. *Id.*

352. *Id.*

353. Baker, *see* note 263; Baker, *see* note 279; Baker, *see* note 289; Baker, *see* note 297.

354. E-mail from Benjamin Cairns, Restorative Justice Coordinator, North High School, (June 28, 2011) (on file with author); *see generally supra* note 303. Given that these restorative interventions occur prior to an incident becoming a formal discipline matter and are preventative in nature it is difficult to quantitatively identify their impact.

355. Interview with C. Adams, Student Advisor, North High School, in Denver, Colo. (Nov. 13, 2009) (discussed cases referred formally and informally to subject during 2008-2009 school year).

356. This is consistent with the findings of researchers who have studied long-term school-based restorative justice programs. *See Stinchcomb et al., supra* note 1, at 132; Morrison et al., *supra* note 16, at 336, 351-52.

engaged.<sup>357</sup> In terms of school-wide disciplinary outcomes, findings from the North High School Restorative Justice Program are valuable in confirming that when schools adopt alternative processes to address discipline they can build a safer school culture, reduce entry into the school-to-prison pipeline, and positively impact educational performance.

## V. CONCLUSION

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

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357. Interview with Benjamin Cairns, *supra* note 313 (discussing experience at North High School); Interview with Erem Martin, *supra* note 105 (discussing experience at Montbello High School); Interview with Sarah Hartman, *supra* note 105 (discussing experience at George Washington High School); Interview with Josh Lynch, *supra* note 105 (discussing experience at George Washington High School).



