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THE CONFLUENCE OF LANGUAGE AND LEARNING DISORDERS AND THE SCHOOL-TO-PRISON PIPELINE AMONG MINORITY STUDENTS OF COLOR: A CRITICAL RACE THEORY

SHAMEKA STANFORD

BAHIYYAH MUHAMMAD

I. INTRODUCTION

Exposure to law enforcement and the juvenile justice system is reported to have a devastating impact on a student's mental health, as well as increasing the risk of criminal recidivism to more serious crimes.¹ According to the *Free Thought Project*, "approximately 260,000 students were referred to law enforcement during the 2011 to 2012 school year. Within that same year, approximately 92,000 students were arrested on school property."² The recidivism rates for juveniles, aged fifteen to twenty, released from prison is significantly higher than any other age group.³ For example, 76% of juveniles under the age of twenty-five who were released from prison were rearrested within three years.⁴ Additionally, 80% of African Americans were rearrested within five years.⁵

1. Justin Gardner, *School-to-Prison Pipeline Complete — New Law Makes Schoolyard Fights a Felony*, THE FREE THOUGHT PROJECT (Dec. 21, 2016), <http://thefreethoughtproject.com/school-fights-felony-prison-pipeline/#1EQAH8keuViO6xE0.99>.

2. *Id.*

3. THE COUNCIL OF STATE GOV'TS JUSTICE CTR., REDUCING RECIDIVISM AND IMPROVING OTHER OUTCOMES FOR YOUNG ADULTS IN THE JUVENILE AND ADULT CRIMINAL JUSTICE SYSTEMS' 3 (Nov. 2015), <https://csgjusticecenter.org/wp-content/uploads/2015/11/Transitional-Age-Brief.pdf> (last visited Mar. 8, 2018) [hereinafter CSG JUSTICE CTR.].

4. *Id.*

5. *Id.*; see also MATTHEW R. DUROSE ET. AL., BUREAU OF JUSTICE STATISTICS, US DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS

There is extreme disparity in the rates of incarceration between racial groups. Although African Americans make up a mere 13% of the U.S. population, they comprise over 40% of young adult inmates in jails and prisons.⁶ To date, one in twenty-three white males are sentenced to jail in their lifetime as compared to one in four black males.⁷ These numbers are likely to be most prevalent amongst minority male students from low socio-economic backgrounds, whose school districts have less resources.⁸ To this extent, disproportionate mass incarceration continues to produce long-term detrimental effects such as: 1) reinforcement of violent behavior and attitudes; 2) limited education; 3) exacerbated mental health issues and learning disabilities; and 4) increased future involvement in the criminal justice system.⁹ This disparate treatment has persisted for over five decades.¹⁰

Since the judgment of *Brown v. Board of Education* and, with it, the desegregation of schools, schools nationwide have placed African American students in special education programs at an alarmingly disproportionate rate.¹¹ African American students represent 20.2% of the total population of students receiving special education in the United States.¹² This

FROM 2005 TO 2010 13 (2014), <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

6. ASHLEY NELLIS, THE SENTENCING PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 4 (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>; CSG' JUSTICE CTR., *supra* note 3, at 3.

7. THOMAS P. BONCZAR & ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, US DEP'T OF JUSTICE, LIFETIME LIKELIHOOD OF GOING TO STATE OR FEDERAL PRISON 1 (1997), <https://bjs.gov/content/pub/pdf/Llgsfp.pdf>.

8. See generally Jason P. Nance, *Students, Police, and the School-To-Prison Pipeline*, 93 WASH. U.L. REV. 919, 944-45 (2016) (explaining poverty is correlated to poor academic achievement due to the various barriers it creates and lack of resources afforded to teachers in impoverished school districts).

9. *Id.* at 954.

10. See Russell J. Skiba et al., *Achieving Equity in Special Education: History, Status, and Current Challenges*, 74 COUNCIL FOR EXCEPTIONAL CHILD. 264, 265 (2008) [hereinafter *Achieving Equity*] (suggesting that the lengthy history of oppression of and negative viewpoints towards African Americans in the United States contributes to the disproportionate representation of African American students in special education programs).

11. “” *Id.* at 265-66 (noting that the “overrepresentation of ethnic and language minority students in self-contained special education classrooms raised significant civil rights and educational concerns”).

12. CTR. FOR PUB. EDUC., *Table 4. Students Ages 6 Through 21 Served Under IDEA, Part B, by Race (2006)*, <http://www.centerforpubliceducation.org/Libraries/Document-Library/IDEA-Part-B/Table-4-Students-ages-6-through-21-served-under-IDEA-Part-B-by-race-2006.html> (last visited Oct. 7, 2017).

representation becomes more prevalent when the student is a minority who exhibits any level of a language or learning disorder.¹³ When language and learning disorders are misdiagnosed, undiagnosed, or improper services are provided, academic and vocational impacts may persist throughout the child's life into adulthood.¹⁴ These results will affect literacy; behavioral, social, and pragmatic decision-making; and expressive and receptive language skills.¹⁵ As a result, students in special education—especially those who are African American and living with an undiagnosed and untreated language and learning disorder—have a higher school drop-out rate and enter society with significantly higher incarceration rates than their peers of other races.¹⁶

Many factors contribute to the prevalence of young minorities within the special education system who are trapped in the criminal justice system. One particular factor is the presence of symbolic and institutional racism.¹⁷ In this context, symbolic and institutional racism refers to the challenges facing African American students in special education who are oppressed by a

13. See Thomas Parrish, *Racial Disparities in the Identification, Funding, and Provision of Special Education*, in RACIAL INEQUALITY IN SPECIAL EDUCATION 15, 22-23 (Daniel J. Losen & Gary Orfield eds., 2002); see also Russel J. Skiba et al., *Disparate Access: The Disproportionality of African American Students with Disabilities Across Educational Environments*, 72 COUNCIL FOR EXCEPTIONAL CHILD. 411, 417-18 (2006) [hereinafter *Disparate Access*]; NAT'L CTR. FOR EDUC. STATISTICS, TABLE 204.50. CHILDREN 3 TO 21 YEARS OLD SERVED UNDER INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA), PART B, BY AGE GROUP AND SEX, RACE/ETHNICITY, AND TYPE OF DISABILITY: 2014-15 (2006), https://nces.ed.gov/programs/digest/d16/tables/dt16_204.50.asp.

14. Alfredo J. Artiles et al., *Justifying and Explaining Disproportionality, 1968-2008: A Critique of Underlying View of Culture*, 76 COUNCIL FOR EXCEPTIONAL CHILD. 279, 284-85 (April 2010).

15. *Id.* at 282.

16. *Id.* at 285; see also *Disparate Access*, *supra* note 13, at 411, 417-19 (concluding that African American students with disabilities are simultaneously underrepresented in general education classrooms and overrepresented in separated classes). See generally DANIEL J. LOSEN & JONATHAN GILLESPIE, THE CIVIL RIGHTS PROJECT, OPPORTUNITIES SUSPENDED: THE DISPARATE IMPACT OF DISCIPLINARY EXCLUSION FROM SCHOOL 1, 6-7 (2012) (explaining that classroom suspensions are among the leading indicators of risk of future school dropout and/or incarceration and showing that African American students with disabilities were suspended at disproportionately higher rates than other groups).

17. See Christopher Tarman & David O. Sears, *The Conceptualization of Symbolic Racism*, 67 J. OF POL. 731, 733 (2005) (defining symbolic racism as a beliefs that: African Americans no longer experience much prejudice or discrimination; their failure to progress is a result of their unwillingness to work hard enough; they make excessive demands; and that they have gotten more than they deserve).

system of power secondary to their race, ethnicity, socio-economic status, and cognitive and educational abilities.¹⁸ The overrepresentation of African American students in special education within United States school systems and in the U.S. criminal justice system invokes questions about civil rights violations secondary to its direct correlation to the “school-to-prison pipeline” phenomenon.¹⁹

In Parts I and II of this paper, the author will examine the correlation between minority students of color with language and learning disorders as well as the school-to-prison pipeline from a critical race theory perspective. Part III will outline the presence and impact of language and learning disorders on African-American students. Part IV will detail the development and use of zero-tolerance policies in schools and analyze these policies. Part V will detail the disproportionate and subjectively harsh disciplinary laws implemented in low socioeconomic status (“low-SES”) Title I schools within the United States and how these laws may be fueled by symbolic and institutional racism. Parts VI through VIII will assess the school-to-prison pipeline and its correlation to special education systems for minority students with language and learning disorders. Finally, Part XI will discuss recommendations for reducing disproportionately harsh disciplinary actions in low-SES Title I schools. This section will also include a discussion of utilizing federal and state laws such as the Federal Equal Protection Clause and Title VI of the Civil Rights Act of 1964 to assist in reducing the school-to-prison pipeline epidemic for minorities with language and learning disorders.

II. DECREASED ACCESS TO SERVICES FOR MINORITY STUDENTS WITH LANGUAGE AND LEARNING DISORDERS

Language and learning disabilities, secondary to an individual’s communication and cognitive abilities, are defined as a deficit or significant impairment in the primary functions of attention; memory; problem-solving; emotional functioning; comprehension and production; literacy; pragmatics; and social, expressive, and receptive language skills.²⁰ Currently, language

18. *See id.*; *see also Achieving Equity*, *supra* note 10, at 265 ““(explaining that institutional discrimination is a result of the country’s history of oppression and discrimination).

19. Nance, *supra* note 8, at 942; *see also* LOSEN & GILLESPIE, *supra* note 16, at 10 (suggesting civil rights concerns around the disparate rate of suspension of African American students with disabilities).

20. *Language-Based Learning Disabilities (Reading, Spelling, and Writing)*, AM. SPEECH-LANGUAGE-HEARING ASS’N, <http://www.asha.org/public/speech/disorders/LBLD.htm> (last visited Sept. 5, 2017) [hereinafter *Language-Based Learning Disabilities*] (describing the symptoms of

and learning disorders are less actively addressed in public school systems where the majority population is comprised of minority students with low-SES.²¹ Language and learning disorders can impact a student's communication and comprehension skills in a way that impairs their ability to fully participate in all aspects of an academic setting (e.g., socially, behaviorally, vocationally, and educationally).²² When an individual is affected by a language and learning disorder, their ability to comprehend and complete classwork becomes an added burden to their academic success.²³

African-American students with disabilities are the most vulnerable student population within the public-school system, as they are more susceptible to civil rights violations and criminal institutionalization.²⁴ Because of the limited educational and therapeutic resources for disabled African American students in public schools, the majority of these students are on a path toward entering the criminal justice system as soon as they enroll in school.²⁵ Research has indicated that teachers and school officials are more likely to accuse students of color of subjective infractions.²⁶ This, in turn, triggers harsh disciplinary punishments (e.g., school arrests, zero

language-based learning disabilities such as dyslexia).

21. See *Achieving Equity*, *supra* note 10, at 274 (describing the disparities in instruction between high SES and low SES schools). *But see Disparate Access*, *supra* note 13, at 420-21 (asserting that African American students are overrepresented in more restrictive classroom settings regardless of disability type).

22. See generally 'JOAN MCCORD ET. AL., JUVENILE CRIME, JUVENILE JUSTICE 68 (2001) (summarizing research on behavioral and social challenges faced by children with certain types of learning disabilities).

23. See ULRICH BOSER, CTR. FOR PUB. EDUC., SPECIAL EDUCATION: A BETTER PERSPECTIVE,

<http://www.centerforpubliceducation.org/Main-Menu/Evaluating-performance/Special-education-At-a-glance/Special-education-A-better-perspective-full-report.html> (last visited Sept. 5, 2017) (identifying low rates of diploma achievement among students with learning disabilities).

24. Gwendolyn Cartledge & Charles Dukes, *Disproportionality of African American Children in Special Education: Definitions and Dimensions*, in THE SAGE HANDBOOK OF AFRICAN AMERICAN EDUCATION 383 (Linda C. Tillman ed., 2009) (discussing the high incidence of disproportionality of African-American students with special needs being taught in the most restrictive settings).

25. See LOSEN & GILLESPIE, *supra* note 16, at 1, 10-11 (identifying the correlation between high suspension rates of minority students and the risk suspension poses to dropping out and entering the juvenile justice system); Nance, *supra* note 8, at 945, 957-58 (addressing racial disparities in school discipline and increased risk of entering the juvenile justice system).

26. Russell J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URB. REV. 317, 335 (2002) [hereinafter *The Color of Discipline*].

tolerance policies, expulsions, and suspensions) secondary to implicit and explicit racial biases.²⁷ Implicit and explicit racial biases are present in zero-tolerance policies because of the “one-size-fits-all” method to discipline students regardless of their behaviors, deficits, or special needs.²⁸

African American students with language and learning disorders are vulnerable to failing within general education classrooms because educators are not always culturally competent and prepared to recognize and address students’ needs.²⁹ Most school teachers in the United States are white.³⁰ More specifically, while 83% of teachers are white only 7% of teachers are African-American.³¹ This leads to disproportionate discipline, secondary to race.³² Cultural aspects, such as race and SES, impact how a student engages within an academic setting, thus affecting how they are perceived by adults in authority.³³

Further, public schools located in low-SES minority communities have a history of decreased access to routine and specialized treatment and intervention.³⁴ Reduced access prevents early diagnosis and intervention of learning disorders, and it hinders the early specialized assessment and treatment of communication and cognitive disorders in minority students.³⁵

27. *Id.* at 322.

28. *Id.*; see Nance, *supra* note 8, at 933 (highlighting the “zero ”tolerance” concept’s “mandated punitive consequences for violations “regardless of the gravity of behavior, mitigating circumstances, or situational context”).”

29. See Artiles, *supra* note 14, at 288-89 (explaining different approaches to research regarding the disproportionality of students of color in special education); *The Color of Discipline*, *supra* note 26, at 336 (suggesting that cultural competency training, classroom management training and mental health support can help develop a more supportive class environment); see also Brenda L. Townsend, *The Disproportionate Discipline of African American Learners: Reducing School Suspensions and Expulsions*, 66 EXCEPTIONAL CHILD. 381, 384 (2000) (suggesting that students may purposely resist school-sanctioned behaviors that are oppositional to their culture).

30. ”TABLE 209.10, NUMBER AND PERCENTAGE DISTRIBUTION OF TEACHERS IN PUBLIC AND PRIVATE ELEMENTARY AND SECONDARY SCHOOLS, BY SELECTED TEACHER CHARACTERISTICS: SELECTED YEARS, 1987-88 THROUGH 2011-12 (2013), https://nces.ed.gov/programs/digest/d15/tables/dt15_209.10.asp [hereinafter TABLE 209.10].

31. *Id.*

32. See *The Color of Discipline*, *supra* note 26, at 338.

33. See Townsend, *supra* note 29, at 386 (suggesting methods by which teachers can minimize the effects of cultural differences in academic settings).

34. Nance, *supra* note 8, at 942-45.

35. See Patrice L. Engle & Maureen M. Black, *The Effect of Poverty on Child Development and Educational Outcomes*, 1136 ANNALS N.Y. ACAD. SCI. 243, 244 (2008), http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1002&context=psyed_f

The National Association of State Directors of Special Education reported that a number of children with a documented disorder is steadily increasing at a rate almost three times faster than the overall general education student population.³⁶ Specifically, the number of students ages six to twenty-one, served under the Individuals with Disabilities Education Act (“IDEA”) – Part B, has increased over 51% in the last ten years explicitly in the area of Speech Language Impairment (“SLI”), which is a “primary” disorder.³⁷ IDEA stipulates the allowance of a free and appropriate public education in the least restrictive environment appropriate for a student’s needs.³⁸ IDEA is designed to: 1) provide an education that meets the unique learning requirements of children with special needs preparing them for further education, employment, and independent living; and 2) protect the rights of children with disabilities and their parents.³⁹

Despite the increasing number of children served under IDEA, there are not enough speech and language pathologists (“SLPs”) to address the needs of the growing population of minority students experiencing language and learning disorders.⁴⁰ According to the American Speech-Language and Hearing Association Schools Survey, there is a shortage of SLPs available to treat language and learning disorders in schools, particularly in urban areas.⁴¹ School districts with a poverty level of 21% to 38% have the largest number of speech-language pathology vacancies.⁴² The limited availability

ac (noting generally the link between poverty and low academic achievement).

36. *Telepractice and the Shortage of Speech Pathologists*, THERAPLATFORM (Feb. 13, 2017), <https://www.theraplatform.com/blog/236/telepractice-and-the-shortage-of-speech-pathologists>. [hereinafter *Telepractice*].

37. Christina A. Samuels, *Number of U.S. Students in Special Education Ticks Upward*, EDUC. WEEK (Apr. 19, 2016), <https://www.edweek.org/ew/articles/2016/04/20/number-of-us-students-in-special-education.html>.

38. *See generally* BOSER., *supra* note 23 (recognizing explaining that the fact that local districts have flexibility in the methods they administer to identify students with disabilities leads to variations in state statistics).

39. *See id.* (explaining the goals of special education); OFFICE OF SPECIAL EDUC. AND REHAB. SERVS., DEP’T OF EDUC., 38TH ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT xv (2016) [hereinafter 38TH ANNUAL REPORT].

40. *See* ELAINE CARLSON ET AL., DEP’T OF EDUC., STUDY OF PERSONNEL NEEDS IN SPECIAL EDUCATION: KEY FINDINGS 1 (2002).

41. *See generally* GAIL BROOK, AM. SPEECH-LANGUAGE-HEARING ASS’N, SCHOOLS SURVEY REPORT: SLP CASELOAD CHARACTERISTICS TRENDS 1995–2016 ’’1, 2-3 (2016) (finding that the median caseload for the surveyed SLPs was fifty students at a time).

42. *See* CARLSON ET AL., *supra* note 40, at 1 (noting that higher-poverty districts found insufficient salary and benefits to be a barrier to hiring qualified SLP applicants).

of SLPs available to address the language and learning needs of minority students has resulted in an overload of minority students referred to special education for minimal impairments or disturbances, whom otherwise should receive services within the general education classroom. Further, Title I administrators have reported that in low-SES communities there are not enough SLPs to “go around.”⁴³ Therefore, many children run the risk of not receiving language and learning treatment intervention.⁴⁴ As a result, minority students with untreated language and learning needs are disproportionately disciplined, which can result in suspension or expulsion from school.⁴⁵ Such absences ultimately result in denied access to their right to an equal, fair, and free education.

Parallel to the increasing incarceration rates of young students arrested during school, students enrolled in special education, with undiagnosed and untreated language and learning disabilities, are increasingly entering the juvenile criminal justice system.⁴⁶ The representation of students who are identified within two categories—racial minorities and children with disabilities—have been disproportionately caught in the school-to-prison pipeline.⁴⁷ Historically, research has documented two specific correlations of minorities students in public schools who enter the school-to-prison pipeline: academic underachievement and over-disciplining.⁴⁸ Academic underachievement has been directly correlated to the school-to-prison pipeline because of its direct relevance to disciplinary actions.⁴⁹ Nonetheless, addressing the subject of underachievement in a school setting secondary to the presence of untreated, undertreated, and undiagnosed language and learning disorders warrants a greater depth of examination. Additionally, the connection between incarceration; unaddressed language

43. Sharon L. Bass, *Schools Cite Shortage of Speech Therapists*, N.Y. TIMES (Feb. 7, 1988), <http://www.nytimes.com/1988/02/07/nyregion/schools-cite-shortage-of-speech-therapists.html?mcubz=2>.

44. *See id.*

45. *See The Color of Discipline*, *supra* note 27, at 335 (concluding that African American students are suspended from school at higher rates than white students).

46. CATHERINE Y. KIM & I. INDIA GERONIMO, AM. CIVIL LIBERTIES UNION, *POLICING IN SCHOOLS: DEVELOPING A GOVERNANCE DOCUMENT FOR SCHOOL RESOURCE OFFICERS IN K-12 SCHOOLS* 9 (2009).

47. *Id.*

48. Frances P. Solari & Julienne E. M. Balshaw, *Outlawed and Exiled: Zero Tolerance and Second-Generation Race Discrimination in Public Schools*, 29 N.C. CTR. L.J. 147, 149-51 (2007) (concluding that minority students are disciplined at a statistically higher rate than their white peers).

49. *See* Libby Nelson & Dara Lind, *The School to Prison Pipeline, Explained*, JUST. POL’Y INST. (Feb. 24, 2015), <http://www.justicepolicy.org/news/8775> (finding that students who get suspended or expelled are more likely to repeat a grade).

and learning disorders; academic underachievement; behavior; and disciplinary actions warrants a greater depth of examination as well. Prior research has found that suspensions increase the probability of entering the juvenile justice system, withdrawing from school, and the likelihood of being placed in lower-level classes.⁵⁰ This exhibits a plausible correlation between special education, discipline, race, and the juvenile justice system that is unexplainable on grounds other than race.⁵¹

III. ZERO TOLERANCE POLICY IN SCHOOLS

Zero-tolerance policies were introduced to schools across the country at the end of the 1980s and early 1990s, with many schools bound by laws to enforce harsh penalties for drugs or weapons on campus.⁵² These policies began with the Gun-Free Schools Act of 1994.⁵³ This was a federal law that made it a requirement for a school receiving federal money to have a policy in place that assured that it suspend any student caught with a firearm on a school campus.⁵⁴ The Gun-Free Act of 1994 was reauthorized in 2001 through the No Child Left Behind Act.⁵⁵ These federal policies opened the door for harsh punishments in schools, and while some schools only implemented harsh punishments for disciplinary actions pertaining to firearms on school grounds, others schools went beyond the policy by introducing zero tolerance rules and regulations in other areas.⁵⁶ For example, some school districts included other weapons such as daggers, knives with blades (more than 3 inches in length), and brass knuckles in their zero-tolerance policies.⁵⁷ In addition to the inclusion of various weapons, some states' school districts expanded their zero-tolerance policies to include drugs and behaviors that have been labeled "problematic" (i.e., classroom

50. Townsend, *supra* note 29, at 382.

51. *See id.*; *The Color of Discipline*, *supra* note 27, at 335.

52. *See generally* U.S.C. § 4601 (1986); 18 U.S.C. § 921 (1990); 20 U.S.C. § 5961 (1994); 20 U.S.C. § 2701 (1994); 20 U.S.C. § 7101 (1994); *see also* Russell J. Skiba & Kimberly Knesting, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*, 92 NEW DIRECTIONS FOR YOUTH DEV. 17, 19 (2001) [hereinafter *Zero Tolerance*].

53. 20 U.S.C. § 7961 (1994).

54. *Zero Tolerance*, *supra* note 52, at 19.

55. 20 U.S.C. § 6301 (2001).

56. Francisco A. Villaruel & Christopher Dunbar, *Culture, Race and Zero Tolerance Policy: The Implications*, 6 J. OF FORENSIC PSYCHOL. PRAC. 53, 57 (2006) [hereinafter *Culture, Race, and Zero Tolerance*].

57. Francisco A. Villaruel & Christopher Dunbar, *Urban School Leaders and The Implementation of Zero Tolerance Policy: An Examination of Its Implications*, 77 PEABODY J. OF EDUC. 82, 83 [hereinafter *Urban School Leaders*].

disruption or insubordination).⁵⁸ Expansion of the original implementation of zero-tolerance policies across the United States has created added burdens that adversely affect black schoolchildren and result in detrimental outcomes.⁵⁹ Zero-tolerance policies criminalize childish behaviors through its rigid approach of harshly punishing students regardless of the type of in-school disciplinary action.⁶⁰ In dealing with students, the initial reaction to addressing school infractions should be rehabilitative rather than intolerant.

The various case studies below highlight instances where children were characterized as being involved in delinquent behaviors and penalized accordingly when other disciplinary means could have been sought:

Brief Case Study 1: The parents of a nine-year-old boy in New York were called because he was threatened with suspension for bringing a two inch LEGO police officer carrying an equally diminutive plastic gun.⁶¹

Brief Case Study 2: A seven-year-old boy in New Jersey was charged with carrying an imitation gun onto school grounds. The charge was considered a criminal misdemeanor.⁶²

Brief Case Study 3: A sophomore in Texas was suspended from school for answering his cell phone when his dad called. His father was deployed in Iraq, and he had asked his mother to have his dad call when he could. Answering the phone violated the school's zero-tolerance policy on cell phones.⁶³

Brief Case Study 4: In New York, a twelve-year-old girl was arrested and escorted in handcuffs out of her school for doodling her name on her desk in erasable marker. The school admitted that handcuffing the girl was excessive, but still suspended her.⁶⁴

58. Robert Schwartz & Len Rieser, *Zero Tolerance as Mandatory Sentencing*, in *ZERO TOLERANCE: RESISTING THE DRIVE FOR PUNISHMENT IN OUR SCHOOLS* 126, 127-28 (William Ayers et al. eds., 2001).

59. *Culture, Race, and Zero Tolerance supra* note 56, at 55.

60. *Id.* at 57-58.

61. Carlin Miller, *Two-Inch LEGO Gun Gets 4th-Grader Patrick Timoney in Trouble; Where's the NRA?*, CBS NEWS (Feb. 4, 2010, 10:30 AM), <https://www.cbsnews.com/news/two-inch-lego-gun-gets-4th-grader-patrick-timoney-in-trouble-where-s-the-nra/>.

62. Teresa Masterson & David Chang, *Cops Charge 7-Year-Old for Bringing Toy Gun to Class*, NBC UNIVERSAL (Feb. 2, 2011, 3:27 PM), <https://www.nbcphiladelphia.com/news/local/Cops-Charge-7-Year-Old-for-Bringing-Toy-Gun-to-Class-115125844.html>.

63. *Texas School Suspends Student for Answering Call in Class from Dad in Iraq*, FOX NEWS (Apr. 12, 2008), <http://www.foxnews.com/story/2008/04/12/texas-school-suspends-student-for-answering-call-in-class-from-dad-in-iraq.html> [hereinafter *Texas School Suspends Student*].

64. Rachel Monahan, *Queens Girl Alexa Gonzalez Hauled out of School in Handcuffs After Getting Caught Doodling on Desk*, NY DAILY NEWS (Feb. 4, 2010, 11:57 PM), <http://www.nydailynews.com/new-york/education/queens-girl-hauled->

Brief Case Study 5: A six-year-old boy in Delaware was suspended for forty-five days because he brought his camping utensil—a combination spoon, fork, and knife—to school to eat his lunch. The school district has a zero-tolerance policy for knives on school grounds.⁶⁵

Brief Case Study 6: There are also documented cases of suspension and expulsion from schools for bringing aspirin, organic cough drops, nail files, paper clips, a model rocket, an inhaler for asthma, and a kitchen knife in a lunch box to cut chicken.⁶⁶

These case-studies highlight the real experiences that minority children face. Although zero tolerance policies have been around since the beginning of 1990, they have been joined by various additional forms of social control on school grounds.⁶⁷ In addition to zero tolerance policies, schools have not only begun using drug-sniffing dogs, private security detail, metal detectors, and surveillance cameras, but they have also increased the use of police officers who are on the local police departments' payroll.⁶⁸ Zero tolerance policies are similar to tough-on-crime policies that adopt severe disciplinary consequences for low-level incidents.⁶⁹

Similar to how criminal justice policies govern who is incarcerated and for what reasons, educational policies are dictating who is suspended or expelled from school campuses. Both, criminal justice and education policy, disproportionately affect black and brown children more so than their white counterparts.⁷⁰ Zero tolerance policies led to increased disparities in the experiences amongst black and white students within the same school districts.⁷¹ For instance, in most Title I schools, the presence of school resource officers is larger than in schools primarily populated with white students.⁷² Within Title I schools, resource officers arrest more minority

school-handcuffs-caught-doodling-desk-article-1.194141.

65. Ian Urbina, *It's a Fork, It's a Spoon, It's a . . . Weapon?*, N.Y. TIMES, (Oct. 11, 2009), http://www.nytimes.com/2009/10/12/education/12discipline.html?_r=0.

66. *Zero Tolerance*, in WEST'S ENCYC. OF AM. L., 454-55 (Jeffrey Lehman & Shirelle Phelps eds., 2d. ed. 2005) [hereinafter WEST'S ENCYC. OF AM. L.].

67. Meredith Bouchein, *School--to--Prison Pipeline: A Comparison in Discipline Policy Between Maryland and Texas Public Schools*, MD. EQUITY PROJECT 1, 10 (Aug. 2015), file:///C:/Users/lxlna/Downloads/Bouchein_School_to_Prison_Final_8.26.15_1.pdf.

68. AARON KUPCHIK, *HOMEROOM SECURITY: SCHOOL DISCIPLINE IN AN AGE OF FEAR* 2-3 (New York University Press 2010).

69. Solari & Balshaw, *supra* note 48, at 149.

70. Townsend, *supra* note 29, at 382.

71. *Id.*

72. Evie Blad & Alex Harwin, *Analysis Reveals Racial Disparities in School Arrests*, PBS NEWSHOUR (Feb. 27, 2017, 4:09PM), <http://www.pbs.org/newshour/updates/analysis-reveals-racial-disparities-school->

students and commonly refer minority students to law enforcement and juvenile courts as a form of disciplinary action.⁷³ This makes the probability of a minority student receiving a juvenile delinquency record much higher. This is secondary to the fact that even if the disciplinary action for the first offense was light, the discipline for the second offense is *likely* to be much harsher. Within that same vein, in the most severe form, school discipline regularly excludes minority students with language and learning disabilities from the general education classroom.⁷⁴

Despite that *Brown v. Board of Education* opened school doors for children of all colors, the zero-tolerance policy maintains separate and not equal doctrines through its use of in-school rules and guidelines that segregate low-SES minority students, especially those with language and learning disabilities.⁷⁵ Unfortunately, the combination of language and learning disorders creates a fertile opportunity for discriminatory practices to exist and feed students with disabilities into the juvenile and, eventually, criminal justice systems.⁷⁶

Educators and school officials enforce subjective discipline under the guise of the zero-tolerance policy.⁷⁷

When disciplinary actions are subjective, educators and school officials have the free-will to differentiate atypical and typical behavior based on their individual perception.⁷⁸ In this respect, atypical behavior leads to disciplinary action where the authority has insufficient cultural perspective to relate to the student's actions.⁷⁹ Educators and school officials lacking cultural competency or awareness of special education dynamics, increase the risk they will consider the behaviors of minority students with language and learning disabilities "atypical."⁸⁰ When this occurs, African American students are more likely to be referred to special education, suspended, or expelled from school, thus resulting in disciplinary decisions provided by educators and school officials whose justifications are subjective and not

arrests/.

73. Nelson & Lind, *supra* note 49.

74. Amanda Petteruti, *Education Under Arrest: The Case Against Police in Schools*, 23 JUST. POL'Y INST. 1, 5 (Nov. 15, 2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf.

75. *Zero Tolerance*, *supra* note 52, at 29.

76. KUPCHIK, *supra* note 68, at 174.

77. *Id.* at 174-175.

78. *Urban School Leaders*, *supra* note 57, at 84-85 (2002).

79. Townsend, *supra* note 29, at 383-384.

80. *Id.*

always culturally competent.⁸¹ In these instances, the justification for the disciplinary action is usually a result of subjective offenses (e.g., disrespect), as compared to white students, who are likely to be suspended for objective reasons (e.g., smoking).⁸² In turn, these subjective offenses eventually result in the perpetual referral of black children with language and learning disorders to special education, detention centers, and, ultimately, into the criminal justice system.

IV. SYMBOLIC RACISM: HARSH DISCIPLINARY LAWS IN LOW-SES TITLE I SCHOOLS

Few have questioned the role of symbolic racism in the school-to-prison pipeline phenomenon. Symbolic racism is one of the most prevalent forms of racism today.⁸³ It is a construct that is silently targeting minorities through the belief that minority students no longer face prejudice or discrimination in the schools and that the failure of a minority student within the school systems and entry into the criminal justice system is a result of his or her own lack of motivation to work hard and willingness to be valuable citizens.⁸⁴ This viewpoint has been shared by professionals within the school setting for over a decade. Scholar John Ogbu once stated, “[m]inorities have not developed a strong cultural ethic of hard work and perseverance in the pursuit of education.”⁸⁷ John McWhorter, a linguistics professor, was quoted stating that, “while there are some excellent black students . . . on the average, black students do not try as hard as other students. The reason . . . is not because they are inherently lazy . . . these students belong to a culture infected with an anti-intellectual strain, which . . . teaches them from birth not to embrace schoolwork.”⁸⁸ This perception of the African American student’s ability to succeed academically is grounded in symbolic racism.⁸⁹

81. *Zero Tolerance*, *supra* note 52, at 17, 31.

82. *The Color of Discipline*, *supra* note 26, at 334-35; *see generally*, Anne Gregory & Rhona S. Weinstein, *The Discipline Gap and African Americans: Defiance or Cooperation in the High School Classroom*, 46 J. SCH. PSYCHOL. 455, 461, 472 (2008) (explaining how teachers perceive African American students to be more defiant).

83. Psychology Research and Reference, SYMBOLIC RACISM, IResearchNet.com, <https://psychology.iresearchnet.com/social-psychology/prejudice/symbolic-racism/> (last visited Sept. 5, 2017).

84. *Zero Tolerance*, *supra* note 52, at 29.

87. John U. Ogbu, *Minority Education in Comparative Perspective*, 59 J. OF NEGRO EDUC. 45, 53 (1990).

88. Lynell George, *Stirring up a Rage in Black America*, LA TIMES (Oct. 17, 2000), <http://articles.latimes.com/2000/oct/17/news/cl-37495>.

89. *See The Color of Discipline*, *supra* note 26, at 335-336 (explaining that teachers

More times than not, the student's delinquent behaviors and frustration in class are related to unaddressed language and learning disorders and not to the subjective perception that African American students are defiant.⁹⁰ Students with language and learning disorders often act out in ways that manifest as juvenile delinquent behaviors because they are unduly pressured from the workload, teaching styles, and demands of the academic material.⁹¹ When teachers, and other educational administrative staff, begin to experience this frustration, the default response is to refer the struggling student to special education or to suspend or expel them without addressing the underlying issue.⁹² Special education continues to function in the space of a virulent epidemic for minority students, especially African American students with disabilities.⁹³

The silent presence of symbolic racism for African-American students has become so prevalent that the lack of resources, interventions, and functional educational transition programs have resulted in untreated language and learning disorders. Consequently, the experience of African American students' inclusion in special education can be considered an Adverse Childhood Experience ("ACE").⁹⁴ The recognition of a language and learning disorder experienced by minorities as an ACE explains the increase in minorities with disabilities within U.S. criminal justice system.⁹⁵ Many of these students are have a three-strike barrier to success; being African American, experiencing a language and learning disorder, and attending a low-SES minority Title I school.⁹⁶

often accept stereotypes and overlook underlying issues).

90. See generally MCCORD ET AL., *supra* note 22, at 88-89 (describing how lower test scores lead to emotional responses).

91. Petteruti, *supra* note 74, at 23.

92. *Culture, Race and Zero Tolerance*, *supra* note 56, at 56.

93. See generally U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION, DATA SNAPSHOT: SCHOOL DISCIPLINE, RESTRAINT, AND SECLUSION I (2014), <http://blogs.edweek.org/edweek/rulesforengagement/CRDC%20School%20Discipline%20Snapshot.pdf> (showing that minorities with learning disabilities are often put into special education).

94. See generally *Injury Prevention & Control*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://web.archive.org/web/20151227092712/http://www.cdc.gov/violenceprevention/acestudy/index.html> (last visited Mar. 9, 2018) (identifying the ACE study as one of the largest investigations into connecting the link between early childhood "maltreatment and later-life health and well-being").

95. See U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, *supra* note 91, at 1-2 (showing that minority students with learning disabilities are punished at a much higher rate).

96. See Linda Darling-Hammond, *Inequality in Teaching and Schooling: How*

African American students experience ACEs vastly different from their peers of other races.⁹⁷ An ACE is a conglomerate of adverse experiences an individual can experience during childhood that affects their quality of life.⁹⁸ When a student has experienced significant ACEs, it can affect academic performance, memory, and language development.⁹⁹ Children who “have experienced three or more ACEs” are six times more likely to have behavioral problems and four times more likely to experience academic failure.¹⁰⁰ African American students were disproportionately punished as compared to students of other races.¹⁰¹ Also, children with disabilities were disproportionately suspended and expelled from school, even when teachers were aware of their ACEs.¹⁰² Stuart Losen, a psychologist with specialization in the area of childhood disabilities, reported that suspensions for African American students with disabilities increase their likelihood of entering the criminal justice system.¹⁰³

Symbolic “racism represents the belief that minorities, specifically African Americans, are morally inferior to their white counterparts.”¹⁰⁴ This theory of racism illustrates that African American students are subjectively disciplined for violating the traditional values set forth by white

Opportunity is Rationed to Students of Color in America, in THE RIGHT THING TO DO, THE SMART THING TO DO: ENHANCING DIVERSITY IN THE HEALTH PROFESSIONS 208, 344 (2001) (discussing how a minority student in a predominate minority school can also have an undetected learning disability).

97. See MCCORD, *supra* note 22, at 85, 92 (explaining how ACE’s such as neighborhoods have a greater effect on black children than white).

98. See generally *Injury Prevention & Control*, *supra* note 92 (finding that certain adverse experiences are risk factors for illness, death, and poor quality of life).

99. *Id.*

100. CHRISTOPHER BLODGETT, WASH. STATE UNIV., NO SCHOOL ALONE: HOW COMMUNITY RISKS AND ASSETS CONTRIBUTE TO SCHOOL AND YOUTH SUCCESS 25 (2015), https://traumasensitiveschools.org/wp-content/uploads/2015/11/no_school_alone-Washington-State.pdf.

101. *The Color of Discipline*, *supra* note 26, at 332, 335, 338.

102. See generally TONY FABELO, BREAKING SCHOOLS’ RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE INVOLVEMENT 50 (2011) (showing statistics of 1 million Texas students supporting that minorities, even with ACE’s, are given disproportionate expulsions and suspensions).

103. Stuart M. Losen, *The Special Services Aide in the Schools: A New Approach to an Old Problem*, 7 PSYCHOL. IN THE SCH. 392, 392-396 (Oct. 1970).

104. Psychology Research and Reference, *Symbolic Racism*, IResearchNet.com, <https://psychology.iresearchnet.com/social-psychology/prejudice/symbolic-racism/> (last visited Sept. 5, 2017).

Americans.¹⁰⁵ This is most evident in school systems where the disciplinary actions for minor infractions are harsher for minorities.¹⁰⁶ Harsh disciplinary measures created in school systems affect minority students more than their counterparts of other races. Since the early 1970s, suspension rates between African Americans and other races has continued to widen.¹⁰⁷ Between 1997 and 2007, the U.S. Department of Justice saw a 38% jump in school resource officers.¹⁰⁸ The Southern Poverty Law Center (“SPLC”) asserts that the surge in police officers on school campuses has led to children being “far more likely to be subject to school-based arrests.”¹⁰⁹ These arrests disproportionately impact students of color and “students with disabilities.”¹¹⁰

In essence, children today are more likely to be arrested for school-based infractions than compared to the past two decades.¹¹¹ The vast majority of these arrests have been for nonviolent offenses.¹¹² In most cases, the students are merely disruptive.¹¹³ In addition, a recent United States Department of Education study found that more than 70% of students arrested in school-related incidents or referred to law enforcement were African American or Hispanic.¹¹⁴ Zero-tolerance policies, which set one-size-fits-all punishments for a variety of behaviors, have fed these trends.¹¹⁵ Safeguards, such as due process laws, have been put in place for screening committees to avoid unfair or mistaken exclusion from the educational process.¹¹⁶ On this matter, the Supreme Court of the United States wrote:

The concern would be mostly academic if the disciplinary process were an accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on

105. *Id.*

106. *The Color of Discipline*, *supra* note 26, at 332.

107. Losen, *supra* note 103, at PINCITE.

108. Petteruti, *supra* note 74, at 1.

109. Marilyn Elias, *The School-to-Prison Pipeline*, TEACHING TOLERANCE (2013), <https://www.tolerance.org/magazine/spring-2013/the-schooltoprison-pipeline>.

110. *Id.*

111. *Police Presence in Schools*, AM. C.L. UNION, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/police-presence-schools> (last visited Mar. 9, 2018).

112. Elias, *supra* note 107.

113. *Id.*

114. *Id.*

115. *Urban School Leaders*, *supra* note 57, at 86 (2002).

116. RICHARD LAWRENCE, *SCHOOL CRIME AND JUVENILE JUSTICE* 142-169 (1d ed. 1998).

the reports and advice of others; and the . . . facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process.¹¹⁷

Screening Committees are of great importance when dealing with students that have learning and language disabilities secondary to the assurance that they are not receiving unfair or rigid exclusion from the educational process (especially important for majority of African American children).¹¹⁸ Many of these children and their families are not provided with due process procedures to have their circumstances heard and tried in court.¹¹⁹ In fact, many of these children and their families have never received written explanation of the charges against them.¹²⁰ Screening Committees are set up to protect the children.¹²¹ It is within these committees that children have the opportunity to have the rights and protections afforded to them by the U.S. Constitution recognized.¹²²

Policies that encourage police presence and drastic disciplinary enforcement schools—such as harsh tactics for using physical restraint and automatic suspensions and out-of-class time—contribute significantly to the pipeline; however, the problem is complicated.¹²³ The school-to-prison pipeline can start, and be best avoided, in the classroom.¹²⁴ When combined with zero-tolerance policies, a teacher’s decision to refer students for punishment can push students out of the classroom, ultimately, making these students more likely to be introduced into the criminal justice system.¹²⁵ The SPLC advocates to end the school-to-prison pipeline and they have filed various lawsuits and civil rights complaints against districts with punitive discipline practices that have discriminatory impacts.¹²⁶

117. *Id.* at 175

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. KIM & GERONIMO, *supra* note 46, at 26 (mentioning that experts are forming a consensus that non-punitive approaches to discipline, such as conflict resolution, may reduce misconduct more than punitive actions).

124. *See id.* at 10-11 (explaining that zero tolerance policies that require arrests negatively impact both students that are arrested and students that witness such arrests).

125. *See id.* at 10 (elaborating that zero tolerance policies that require arrest make students more likely to quit school).

126. 'Children's Rights, S. POVERTY L. CTR.,

The majority of African American students in special education have received referrals because of disciplinary infractions that have occurred in class, resulting from an unaddressed concomitant language and learning behavior. These students, with learning and language disabilities, are not entirely capable of speaking and advocating for themselves, which makes them more susceptible to harsh disciplinary rules.

African American students are predicted to be 3.5 times more likely to be suspended or expelled than their white peers.¹²⁷ Approximately one in every four African American students with disabilities will be suspended at least once.¹²⁸ African American students make up 48% of all children who are suspended more than once.¹²⁹ Additionally, 35% of African American students in grades seven through twelve were suspended or expelled from school at some point during the school year as compared to 15% of white students.¹³⁰ Suspensions caused by harsh school disciplinary actions result in a 49% chance of a student dropping out if they are suspended at least twice.¹³¹ Conversely, drop-out rates have a correlation to juvenile and criminal justice interactions.

African American students make up 26% of all juvenile arrests, 46% of all youth sent to criminal court, and 58% percent of all youth sent to state prisons.¹³² In 2013, 73% percent of all arrests were of African Americans, and 87% percent of those arrests were for non-violent offenses.¹³³ Research has indicated that for students with disabilities, these harsh laws can affect their ability to learn.¹³⁴ Although students with disabilities make up a mere 12% of public school populations, within the juvenile detention centers, they

<https://www.splcenter.org/issues/childrens-rights> (last visited Mar. 9, 2018).

127. See generally U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, *supra* note 91, at 1, 3.

128. *Id.* at 4.

129. Tamar Lewin, *Black Students Face More Discipline, Data Suggests*, N.Y. TIMES (Mar. 6, 2012), <http://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-data-shows.html>.

130. *Id.*

131. All Things Considered, *Why Some Schools Want to Expel Suspensions*, NAT'L PUB. RADIO (June 2, 2013, 5:36 PM), <http://www.npr.org/2013/06/02/188125079/why-some-schools-want-to-expel-suspensions>.

132. *Criminal Justice Fact Sheet*, NAT'L ASS'N FOR THE ADVANCEMENT OF COLORED PEOPLE, <http://www.naacp.org/criminal-justice-fact-sheet/> (last visited Mar. 10, 2018).

133. *Unbalanced Youth Justice*, THE W. HAYWOOD BURNS INST. FOR JUV. FAIRNESS AND EQUITY, <http://data.burnsinstitute.org/#comparison=3&placement=3&racess=1,2,3,4,5,6&offenses=5,2,8,1,9,11,10&year=2013&view=map> (last visited Mar. 10, 2018).

134. *Id.*

make up more than 25% of the overall population.¹³⁵ This is exacerbated exponentially when the student is a minority.¹³⁶

Students with disabilities receive harsh punishments that violate their constitutional and human rights of protection against arbitrary arrests and detentions.¹³⁷ Arbitrary arrests are those that occur without a legal basis or where the arrest is not a reasonable or appropriate act in the circumstances. This can be seen in instances where students are disciplined for discriminatory reasons and without a reasonable and substantial cause.¹³⁸ Further, the presence of police on campuses interferes with maintaining a free and safe student environment and, thus, provides ample opportunity for physical “evidence” of misconduct to be utilized to incriminate a student on school premises. This violates their Fourth and Fifth Amendment rights against self-incrimination and unreasonable searches and seizures.¹³⁹

During the process of disciplinary action, including arrest, when students with language and learning disorders are presented with threatening accusations that they committed a crime, a multitude of constitutional rights may be violated.¹⁴⁰ These instances reflect a disconnect in the level of communication from the disciplinarian to the student who has a low level of comprehension and cognition. Additionally, not all students have the explicit understanding that 1) they have a Fourth Amendment right to remain

135. N.Y. CIVIL LIBERTIES UNION, ZERO TOLERANCE DISCIPLINE, DISCRIMINATION, AND THE SCHOOL TO PRISON PIPELINE 2(2007), https://www.nyclu.org/sites/default/files/publications/nyclu_school_to_prison_2007.pdf.

136. *See id.* (finding that “[b]lack students with learning disabilities are three times more likely to be suspended than white students with learning disabilities and four times more likely to end up in correctional facilities”).

137. *Compare* Human Rights Declaration, 9., UNITED NATIONS CYBERSCHOOLBUS, <https://web.archive.org/web/20070717235004/http://www0.un.org/cyberschoolbus/humanrights/declaration/9.asp> (last visited Mar. 10, 2018) (quoting Universal Declaration of Human Rights Art. 9, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948)), *with* U.S. CONST. amend. IV (protecting against “unreasonable” searches and seizures).

138. *See* Human Rights Declaration, *supra* note 135 (describing the right to not be subject to arbitrary arrest, detention, or exile).

139. *See* *Boyd v. United States*, 116 U.S. 616, 621 (1886). *But see* Thomas Y. Davies, *Farther and Farther from the Original Fifth Amendment: The Recharacterization of the Right Against Self-Incrimination as a ‘Trial-Right’* in *Chavez v. Martinez*, 70 TENN. L. REV. 987, 988 (2003) (arguing that contemporary Fourth and Fifth Amendment interpretations are different from what was originally intended in that Fourth Amendment reasonableness “analysis generally permits the [type] of discretionary arrest and search authority that the Fifth Amendment Due Process Clause and the Fourth Amendment . . . were meant to prohibit”).

silent when arrested, 2) there are consequences for choosing to speak once those rights have been explained, 3) they are not required to answer questions without the presence of their attorney and parent present when they are under aged minors, and 4) they cannot be unfairly detained.¹⁴¹ The United States Supreme Court ruling in *Goss v. Lopez* stated that students were entitled to due process when threatened with either suspension or expulsion.¹⁴² The Supreme Court requires that schools provide a written notice and some sort of hearing prior to suspending a student.¹⁴³ Nonetheless, 'authorities may bypass these requirements if the student does not promptly evoke them, disadvantaging students with language and learning skill deficiencies that affect their ability to comprehend these rights. Once in the custody of police authority, even if these rights are provided to the student, a level of clear understanding of what the rights mean and represent is not always possible.¹⁴⁴

Policies, such as the zero tolerance policy, are ineffective and unfair methods of discipline. These harsh disciplinary policies that disproportionately affect African American students and students with disabilities create a school environment more similar to prison than a learning community.¹⁴⁵ These policies, as applied, mentally and physically condition African American students to behave criminally and have created a system in which students suspended or expelled as a result of harsh disciplinary punishments are three times more likely to enter the juvenile system within a year.¹⁴⁶ These statistics are alarming for students with learning and language disabilities because they highlight how special education is the virulent epidemic that feeds the school-to-prison pipeline.¹⁴⁷ Children who require special education receive the harshest in-school and

141. See Davies, *supra* note 139, at 988 (explaining the Fifth Amendment has been incorrectly relegated to being only a trial right, and that the framers intended to prevent compulsion itself and not simply its "fruits").

142. See *Goss v. Lopez*, 419 U.S. 565, 576, 579 (1975).

143. See *id.* at 568-72, 579 (detailing how the ten-day out-of-school suspensions that nine students received, without formal hearings, violated the students' rights').

144. Nancy A. Heitzeg, *Race, Class and Legal Risk in the United States: Youth of Color and Colluding Systems of Social Control*, F. ON PUB. POL'Y 1, 1 (2009) [hereinafter *Race, Class and Legal Risk*]. See Nancy A. Heitzeg, *Criminalizing Education: Zero Tolerance Policies, Police in the Hallways and the School to Prison Pipeline*, in FROM EDUCATION TO INCARCERATION: DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 27 (Anthony J. Nocella II et al. eds., 2014) [hereinafter *Criminalizing Education*] (arguing that vagueness and inconsistency in application plague due process expectations in cases of school discipline).'

145. *Criminalizing Education*, *supra* note 144, at 12.

146. See *id.*

147. See *id.* at 19-20.

out-of-school punishments rather than being referred to the services they require to succeed.¹⁴⁸

V. THE SCHOOL-TO-PRISON PIPELINE: PUNISHMENT POLICY IN SCHOOLS

The school-to-prison pipeline is a phenomenon, which argues that aggressively harsh rules, security enhancements, and penalties for schools in low-SES communities lay the foundation for future criminal activity and subsequent incarceration.¹⁴⁹ Minority-serving schools are training students to become comfortable with and accept extremely high levels of social control that often lead students down a pathway to suspension or expulsion; this is the first stage in the school-to-prison pipeline.¹⁵⁰ According to the American Civil Liberties Union (“ACLU”), these harsh policies are described as impacting minority children who are disproportionately affected by life-altering hardships, including but not limited to: learning disabilities; histories of poverty; and abuse and neglect within their families and communities.¹⁵¹ These vulnerable students are among a national trend of black children who have been “funneled out of public school” environments into a vicious and cyclical pipeline straight “into the juvenile and criminal justice systems.”¹⁵² The ACLU further asserts: “[m]any of these children have learning disabilities . . . and would benefit from additional educational and counseling services. Instead, they are isolated, punished, and pushed out.”¹⁵³

For example, a study conducted in Missouri found that out-of-school suspensions were racially unbalanced and led to the overrepresentation of African American youth in the juvenile justice system through a disproportionate number of referrals.¹⁵⁴ In other words, low-achieving African American children have become targets in their schools, leading them to become potential detainees and inmates in the juvenile and criminal

148. *See id.* at 19-20, 27.

149. N.Y. CIVIL LIBERTIES UNION, *supra* note 133, at 1.

150. *See id.* at 1-2.

151. *See Police Presence in Schools*, *supra* note 109.

152. *See School-to-Prison Pipeline*, AM. C.L. UNION, <https://www.aclu.org/issues/racial-justice/race-and-inequality-education/school-prison-pipeline> (last visited Mar. 10, 2018).

153. *See id.*

154. *See* Sean Nicholason-Crotty et al., *Exploring the Impact of School Discipline on Racial Disproportion in the Juvenile Justice System*, 90 SOC. SCI. Q. 1003, 1015-16 (2009).

justice systems, respectively.¹⁵⁵ African American children should be educated, not incarcerated.

VI. THE CORRELATION BETWEEN SPECIAL EDUCATION AND THE CRIMINAL JUSTICE SYSTEM

The criminal justice referral pipeline for African American students with disabilities begins in pre-school.¹⁵⁶ Research has indicated that 48% of African American preschoolers were suspended more than once.¹⁵⁷ Further, five-year-old boys of incarcerated parents were identified as being substantially less behaviorally ready for school than five-years-olds of non-incarcerated parents—making them more likely to be identified and transitioned into special education classes for behavioral disabilities.¹⁵⁸ Although the Federal Government mandates that students with disabilities must receive a free appropriate public education via the Individuals with Disabilities Education Improvement Act (“IDEA”), the resources to adequately abide by this law are scarce.¹⁵⁹ This is particularly true for predominantly low-SES minority public schools.¹⁶⁰ Despite the inclusive wording of IDEA, for all children with disabilities regardless of race, ethnicity, or culture, the implications of symbolic racism have allowed school systems to discriminate by segregating students according to ability and inferred disability.¹⁶¹ The phenomenon of unspoken symbolic racism in school systems has enabled the practice of a separate but equal special education system. Consequently, the school-to-prison pipeline is facilitated by trends in education that primarily impact low-SES students of color.¹⁶² Trends include increasing poverty rates, race and class, segregation and re-segregation, high drop-out and push-out rates, and overrepresentation of low-SES students of color.¹⁶³

The apparent correlation between race and discriminatory discipline is

155. *Id.* at 1003-04, 1015-16.

156. *See* U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, *supra* note 91, at 1, 7.

157. *Id.* at 7.

158. *See* Dara Lind, *Boys with Incarcerated Fathers Are Screwed before They Even Get to School*, VOX (April 24, 2014, 3:40 PM), <https://www.vox.com/2014/4/24/5647660/boys-incarcerated-fathers-school-behavior-prison-pipeline>.

159. *See* Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1412(a)(1) (2017); *Criminalizing Education*, *supra* note 142, at 27.

160. *See Criminalizing Education*, *supra* note 142, at 19-20, 27.

161. *See* 20 U.S.C. § 1418; *id.*

162. N.Y. CIVIL LIBERTIES UNION, *supra* note 133, at 1.

163. *See Criminalizing Education*, *supra* note 142, at 19-20.

secondary to the relationship between race and social-economic status.¹⁶⁴ The racial disparity in educational achievement is most prevalent in low-SES communities with students who attend Title I schools.¹⁶⁵ Title I schools receive additional financial assistance under the Elementary and Secondary Education Act to ensure children meet state educational standards because the schools are predominantly populated with low-SES minority students.¹⁶⁶ This residential isolation results in segregation *de jure* and not *de facto*.¹⁶⁷ This creates a methodology to how students are shifted from school to suspension and expulsion, then to the streets, to crime, and ultimately to the criminal justice system.

Special education has become an alternative placement to exclusionary discipline such as suspension and expulsion. This alternative form of exclusionary discipline has negatively impacted the academic success of minority students, especially minority males.¹⁶⁸ “Students with disabilities [served by IDEA] are more than twice as likely to receive [one or more] . . . out-of-school suspensions [as] students without disabilities.”¹⁶⁹ Specifically, 13% of students with disabilities have received an out-of-school suspension, while only 6% of students without disabilities have received an out-of-school suspension.¹⁷⁰ In addition, approximately “one in five girls of color with disabilities receives an out-of-school suspension.”¹⁷¹ Of those students who are arrested or referred to law enforcement, 25% are students with disabilities that are served by IDEA, even though these students only represent a small, 12%, portion “of the . . . student population.”¹⁷² Furthermore, “[s]tudents with disabilities (served by IDEA) represent 12% of the student population, but 58% of those placed in seclusion or involuntary confinement, and 75% of those physically restrained at school to immobilize them or reduce their ability to move freely. Black students represent 19% of students with

164. See Janie Boschma & Ronald Brownstein, *The Concentration of Poverty in American Schools*, ATLANTIC (Feb. 19 2016), <https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american-schools/471414/>.

165. See *id.*

166. Elementary and Secondary Education Act, 20 U.S.C. §§ 6301-6304 (2017).

167. See generally Richard Rothstein, *The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods: A Constitutional Insult*, 7 RACE AND SOC. PROBS. 21, 24-26 (2014).

168. See *Criminalizing Education*, *supra* note 142, at 23-24.

169. U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, *supra* note 91, at 1.

170. *Id.*

171. *Id.*

172. *Id.* at 7.

disabilities served by IDEA.”¹⁷³

Excluding students from general education and referring them to ill-equipped or under-resourced special education settings where functional and culturally appropriate intervention is limited can result in future interaction with the juvenile justice system because these students 1) miss a critical window for effective and proactive treatment and 2) are not adequately prepared socially, emotionally, or academically.¹⁷⁴ Although many theorists do not believe in symbolic and institutional racism, attempting to discredit the disproportion between African American and white students’ academic successes and failures is an injustice and another example of symbolic racism. Teachers and school administrators tend to identify the disruptive behavior of white students as a need for medical intervention and do not administer zero tolerance discipline.¹⁷⁵ Whereas, when the student is African American, the disruptive behavior is identified as being defiant, disrespectful, or even insubordinate and is perceived as necessitating zero-tolerance discipline.¹⁷⁶ African American and white students’ successes, failures, resources, infractions, and severity of punishments is important to highlight because it is where the most concrete evidence of disproportionality resides.¹⁷⁷ Here, we argue that African American youth are disproportionately placed into special education programs that work in conjunction with zero tolerance policies and fuel the school-to-prison pipeline. It is evident that there is a connection between a student’s status as being disruptive, having special education needs, and their inevitable entrance into the juvenile and criminal justice systems.

Available data on student populations and disciplinary actions taken on students of different races is proof of the inconsistent application of harsh disciplinary measures on students of color with disabilities.¹⁷⁸ Statistically,

173. See . . . *id.*, at 1; see also NANCY LEE JONES & JODY FEDER, CONG. RESEARCH SER., THE USE OF SECLUSION AND RESTRAINT IN PUBLIC SCHOOLS: THE LEGAL ISSUES 2-3 (2010) ““(defining “seclusion” as the “involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving . . . “. It does not include a timeout, which is a behavior management technique that is part of an approved program. Timeouts involve the monitored separation of the student in a non-locked setting and are implemented for the purpose of calming).

174. Jackie Mader & Sarah Butrymowicz, *Pipeline to Prison: Special Education Too Often Leads to Jail for Thousands of American Children*, THE HECHINGER REP. (2014), <http://hechingerreport.org/pipeline-prison-special-education-often-leads-jail-thousands-american-children/>.

175. *Race, Class and Legal Risk*, *supra* note 142, at ’19; *Criminalizing Education*, *supra* note 142, at 24.

176. See *Criminalizing Education*, *supra* note 142, at 23-24.

177. See *id.*

178. KIM & GERONIMO, *supra* note 46, at 9 (noting that, in Florida, black youth

minority students are punished at higher rates than their white peers.¹⁷⁹ The disproportionality evidenced in statistics supports the inference of discriminatory intent and the systemic racism theory.

VII. CORPORAL PUNISHMENT IN SCHOOLS: ARE BLACK CHILDREN STILL BEING SPANKED IN CLASSROOMS?

Currently, corporal punishment has been banned in thirty-one states; however, nineteen states still allow corporal punishment in schools.¹⁸⁰ These nineteen states allow school districts to make policies that include spanking as a punishment option.¹⁸¹ There are no strict rules related to corporal punishment in schools; rather, there are loose guidelines.¹⁸² These guidelines serve to determine the specific number of times a student will be paddled in a single spanking.¹⁸³ Additionally, many of these states do not require that parents be notified before their child is spanked at school.¹⁸⁴ Although it is required that parents be made aware of their child's in-school spanking, this practice is not always conducted.¹⁸⁵ Furthermore, if a parent has requested that their child not be spanked, and the spanking occurs anyway, the parent has no legal standing to sue the school.¹⁸⁶

Corporal punishment in schools is very troubling in its own right but it is also used more frequently to punish African American students. Throughout the country, African American students are punished at a higher rate and are

make up 47% “of all school-based referrals,”””” and only 22% “of the overall juvenile populations, while students with disabilities accounted for 23% of all school-based referrals).

179. *See id.*

180. Valerie Strauss, *19 States Still Allow Corporal Punishment in School*, WASH. POST (Sept. 18, 2014), https://www.washingtonpost.com/news/answer-sheet/wp/2014/09/18/19-states-still-allow-corporal-punishment-in-school/?utm_term=.26f41ebcc82c (noting some of the states that still allow corporal punishment in schools including Alabama, Arkansas, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee and Texas).

181. Talk of the Nation, *Corporal Punishment in Schools: Does it Work?*, NAT'L PUB. RADIO (Sept. 11, 2012, 1:00 PM), <http://www.npr.org/2012/09/11/160952356/corporal-punishment-in-schools-does-it-work>.

182. *See id.* (commenting that, in Florida, school officials may use corporal punishment against a parent's wishes).

183. *See id.*

184. *See id.*

185. *See id.*

186. *See id.* (outlining an exception for excessive force or cruel and unusual punishment claims).

at greater risk for receiving corporal punishment than white students.¹⁸⁷ As far back as “1976, 29% of youth who were spanked in school were black,” and this percentage reached up to 39% in the 1990s.¹⁸⁸

Spanking in schools in the twenty-first century is unacceptable. No child should be subjected to such treatment. This zero tolerance approach allows for an open disregard for the physical and social welfare of African American youth in classrooms. Even at a time when parents, in all states, have only a limited right to spank their children at home, educational personnel are still getting away with spanking children at school.¹⁸⁹ Spanking gives the school more disciplinary power than that of a legal guardian or biological parent because schools are more attenuated from liability, save for cruel and unusual punishment or unnecessary force.¹⁹⁰ With children spending most of their days in school, the rules that govern school environments supersede the rules of the home. The school-to-prison pipeline, which has been facilitated by a zero-tolerance framework, sets the stage for further disadvantaging minority students by using corporal punishment.

VIII. CONCLUSION: RECOMMENDATIONS FOR REDUCTION OF HARSH POLICY DISPROPORTIONALITY

Zero tolerance policies enforced in schools across forty-one states encourage subjective enforcement, despite their objective appearance.¹⁹¹ There are many concerns about the legality of the subjectivity of the zero tolerance policies in schools such as:

1. The lack of efficient due process procedures for students being charged with major infractions for minor incidences.¹⁹²

187. See ELIZABETH T. GERSHOFF & SARAH A. FONT, CORPORAL PUNISHMENT IN U.S. PUBLIC SCHOOLS: PREVALENCE, DISPARITIES IN USE, AND STATUS IN STATE AND FEDERAL POLICY, 30 SOCIAL POLICY REPORT 9 (2016) (explaining that the racial disparities found in application of corporal punishment are similar to those found in application of expulsions and suspensions).

188. See KRISTIN A. BATES & RICHELLE S. SWAN, JUVENILE DELINQUENCY IN A DIVERSE SOCIETY 239 (2d ed., 2017).

189. See Ave Mince-Didier, *Criminal Consequences of Spanking Your Children*, CRIM. DEF. LAW., <http://www.criminaldefenselawyer.com/resources/criminal-defense/criminal-offense/charges-that-can-be-brought-up-for-spanking-you> (last visited on Mar. 10, 2018) (discussing the unclear line between child abuse and legal spanking that parents must take note of to prevent Child Protective Services intervention).

190. See Talk of the Nation, *supra* note 179.

191. See generally Russell Skiba et al., *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations: A Report by the American Psychological Association Zero Tolerance Task Force*, 63 AM. PSYCHOL. ASS'N. 852, 854, 856 (2008) [hereinafter *Zero Tolerance Policies Effective*].

192. Russell J. Skiba et al., *African-American Disproportionality in School*

2. Harsh disciplinary action for harmless, general conduct, such as humming in class or tapping fingers on a desk.¹⁹³

Further, these zero tolerance policies negatively impact students with disabilities and disregard students' right to an education that meets their unique learning needs under IDEA by depriving students of much-needed services and punishing students for behaviors that are manifestations of their disabilities. Students of color, particularly those with language and learning disabilities, are increasingly subjected to legal consequences through the inequalities posed by zero tolerance policies.¹⁹⁴ Zero tolerance policies negatively impact the constitutional rights of minority students with language and learning disorders.¹⁹⁵ The Fourteenth Amendment mandates that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."¹⁹⁶ This means protecting children with cognitive and communication disorders from being harshly disciplined for actions they may not fully comprehend or be able to voluntarily control. This presumes that zero tolerance policies, referrals to juvenile systems, and placement in special education classes secondary to behavior could be deemed unconstitutional under the Fourteenth Amendment and could violate IDEA.

Due to the statutory vagueness of zero tolerance policies, creating distinctions and consistent processes for disciplinary violations, definitions, and actions at the state and local school district levels would be beneficial. Current zero-tolerance policies do not clearly distinguish between students who are intentionally being disruptive, disrespectful, or subordinate, and those who are experiencing cognitive, behavioral, and communication disorders.¹⁹⁷ The majority of referrals to place students in special education classrooms; exclude them from classes; send them to the juvenile justice system; or punish them under perceived violations of school and district policies, are subjectively enforced by teachers and school administrators.¹⁹⁸ We recommended that school districts revise disciplinary policies and

Discipline: The Divide Between Best Evidence and Legal Remedy, 54 N.Y.L. SCH. L. REV. 1071, 1080-82 (2009) [hereinafter *African-American Disproportionality*] (explaining that school officials can easily take away students' due process rights by "merely . . . employ[ing]" fair procedures to handle violations of school rules).

193. See Solari & Balshaw, *supra* note 48, at 149 (observing that zero tolerance policies place harsh punishments on harmless or minor disruptions).

194. *Criminalizing Education*, *supra* note 142, at 12.

195. See *id.* at 27-28.

196. U.S. CONST. amend. XIV, § 1.

197. *Criminalizing Education*, *supra* note 142, at 21.

198. See *African-American Disproportionality*, *supra* note 192, at 1072-73 (explaining how American schools adopted the British concept of *loco parentis*, which gives the schools some of the same rights as parents).

procedures to provide more objective approaches for suspensions, expulsions, and referrals to special education classes and the juvenile justice system.

The zero-tolerance policy is directly responsible for the racial and ethnic disproportionality and disparities in school discipline.²⁰⁰ These policies have transformed schools into pipelines to the juvenile justice system. The increase in criminal charges filed against juveniles for in-school behaviors is reported as one of the most detrimental results of the zero tolerance policies. Abandoning zero tolerance policies can assist the current disproportional impact on students of color and students with disabilities and the school-to-prison pipeline. Instead of applying such strict consequences, school districts should address the root of students' behaviors by providing services, particularly for students with disabilities and African American students. Districts should not involve police or resource officers when the infraction is minor or nonviolent.

Even when a student with disabilities is expelled from school, the school district is mandated to continue to provide special education services to the student.²⁰¹ Although this is expected, it is not consistently practiced once the student receives an infraction from school resource officers, who have referred the student to the juvenile justice system.²⁰² Referrals to the juvenile justice system based on zero tolerance policies create a funnel into the criminal justice system for students.²⁰³ There should be no referral to special education or the criminal justice system before due diligence has been done to address the areas of concern and behaviors with therapeutic intervention. Schools should work on eliminating harsh disciplinary policies and creating restorative justice programs that focus on building relationships and understanding among students, administrators, and teachers.²⁰⁴ Lastly, but equally as important, cultural competence training to assist staff in understanding minority students with disabilities should be increased and be consistent within school systems.

In the book titled *Homeroom Security*, Kupchik examines discipline in American schools.²⁰⁵

200. Solari & Balshaw, *supra* note 48, at 150.

201. See *African-American Disproportionality*, *supra* note 196, at 1082-83.

202. See *Criminalizing Education*, *supra* note 142, at 24 (concluding that many states have no real guidelines for due process, which leads to inconsistent disciplinary practices).

203. See *id.* at 21.

204. See Nelson & Lind, ''*supra* note 49 (describing how several districts have taken steps to move away from disciplinary actions that involve suspension or police action).

205. See *generally* KUPCHIK, *supra* note 68, at 5-9.

He argues against such policies for five main reasons:

1. Schools are overreacting: The tough on crime rhetoric that has plagued the adult and juvenile justice system should not be used as a “scared straight” tactic to keep African American children with cognitive and behavioral impairments in line within their school environments. Schools have gone so far down the wrong path that it seems that a pivot in their actions is unlikely. When schools are funneling minority children into juvenile detention facilities and adult correctional institutions as a means to addressing minor behavioral, language and learning difficulties and thereby empowering the school-to-prison pipeline, this becomes and has become, a silent epidemic. This silent epidemic is a consequence of an overreaction to the rigid enforcement of zero tolerance policies.²⁰⁶
2. Real student problems are often ignored: Within school environments, minority students are facing serious cognitive and behavioral impairments that have continued to go unnoticed and ignored. Zero tolerance laws/policies should not be used as the default answer to apply a bandage approach to answering real student concerns. With the significant number of undiagnosed language disorders, subjective harsh punishments send out the wrong message and don’t help students matriculate toward graduation or in-school success.²⁰⁷
3. Students are being taught the wrong lessons: With the strict enforcement of zero tolerance policies, students and their parents have no opportunity for their voices to be heard or due process in fighting injustices. By not allowing due process, this sends the message that the student’s side of the story is inconsequential and the lack of due process invalidates the student’s point of view. Schools with subjective zero tolerance policies teach low-SES minority students that their aim is to push students out of school and back into unsafe environments. It does not teach students, especially those with behavioral and communication disorders, that school is supposed to be a safe space for learning and growth.²⁰⁸
4. Student misbehavior is likely to get worse with subjective disciplinary policies: School rules that are extremely rigid and subjective in nature do not work in the favor of the children, especially minority children with behavior and communication disorders. Zero tolerance policies only provide for punishments and do not consider improved behaviors among students with special needs. Such environments breed negativity and leave a child with no options or incentives for behavioral improvements

206. *Id.* at 5-6.

207. *See id.* at 6 (discussing how schools often do not consider the reasons that students misbehave before administering punishments).

208. *See id.* at 6-7 (explaining that current disciplinary codes hinder students’ healthy development of critical thinking skills regarding school and even governmental practices).

resulting in a continuance of negative behaviors. As the behaviors of the students' increase, the subjective discipline becomes harsher ultimately resulting in referral to the criminal justice systems.²⁰⁹

5. At-risk students are at greater risk: Harsh and unreasonable in-school policies have been found to increase the likelihood of low-SES minority students currently on the verge of expulsion, dropping out, or being suspended on a recurring basis. In fact, zero tolerance policies with high prevalence of subjective disciplining primarily in minority populations, make it easier for such students to easily navigate into the juvenile and/or criminal justice system. As well as, these students becoming at greater risk for criminal recidivism and less school success.²¹⁰

In conclusion, zero tolerance policies are counterproductive, and the use of hyper-security and intolerance has dire effects on African American school children. More specifically, it has significant negative effects on African American students with language and learning disorders. Zero tolerance policies, and a lack of understanding of the aforementioned reasons, assist in making the journey from the schools to the prisons more likely for minority students with language and learning disorders enrolled in low-SES Title I school districts.

209. *See id.* at 7-8 (pointing out that students are more likely to follow school rules when those rules are perceived as being fair and consistent; when student are not given a voice in regard to punishments and the rules are administered inconsistently, students become more likely to break rules).

210. *See id.* at 8-9 (noting that school policies today are rejecting their traditional role of teaching academics in addition to behavior and goals, like the No Child Left Behind Act, that aims to help disadvantaged children, and instead are focusing solely on academic teaching and removing students that are seen as disruptive, which disproportionately targets disadvantaged children).