BIRMINGHAM **EDUCATION** FOUNDATION

SCHOOL DISCIPLINE AND RESTORATIVE JUSTICE POLICY REPORT

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SCHOOL DISCIPLINE AND RESTORATIVE JUSTICE

EXECUTIVE SUMMARY

Students who have been suspended from school are nearly three times as likely to be involved with the juvenile justice system within the following year, according to widely documented evidence. 42,44 This practice of exclusionary school discipline is clearly linked to the school-to-prison pipeline, both of which overwhelming affect students of color. 1,42,44 A potential countermeasure, restorative justice, is a disciplinary approach that uplifts every person involved in a misdeed by bringing all affected persons (such as the victim, offender, and community members) together to clarify why the misdeed occurred, how it made each person feel, and to find resolutions to address the damage that occurred. In addition to restorative justice, the Helping Families Initiative is an intergenerational approach that addresses the needs of student and family members to ensure that the root cause of potential future disciplinary issues are solved before they become more serious.

SCOPE OF THE PROBLEM

OVERVIEW

Currently, there is not a national consensus that would indicate or define what behaviors automatically constitute a zero-tolerance discipline policy.³⁶ Zero-tolerance is defined as a "swift, certain, and severe" punishment for any form of misbehavior or misdeed at school, even for minor infractions.³⁵ Broad interpretations of zero-tolerance policies have even resulted in model students becoming suspended for minor school violations such as being in possession of nail clippers or Advil.^{35,37} Exclusionary discipline practices and zero-tolerance policies were supposedly created for the intent of creating safer school environments for students, but unfortunately, these policies often lead to an increase in the prevalence of student suspensions and expulsions, and at some times, even involve law enforcement personnel.^{1,3} According to the American Psychological Association (2008), Fabelo et al. (2011), Kim, Losen, & Hewitt (2010), Skiba & Rausch (2006), and Kang-Brown et al. (2013), zero-tolerance policies are highly ineffective at creating safer school environments and reducing repeat offenders and these policies disproportionately impact students of color, students with disabilities or students from

low-income families.^{1,3,4,5,37,49,50} With repeated suspensions, expulsions, and re-entries into school, in addition to loss of time for classroom learning, these factors can profoundly impact students' academic progress and performance and can result in students being held back a grade or dropping out of school.^{4,5} As a result of exclusionary discipline practices in the 2011-2012 school year, Losen et al. (2015) estimated that public school students in the United States lost nearly 18 million days of learning.⁴⁶

Black students are more often disciplined for actions such as being disrespectful, making threats, loitering, and excessive noise, whereas white students are more likely to be referred to school discipline officers for less subjective offences such as smoking, leaving without permission, vandalism, and obscene language.² In a study conducted by Smith and Harper (2015), 1.2 million black students were suspended from K-12 public schools across the nation in a single academic year, 2011-2012.¹ In addition, of all the suspensions that occurred in that same academic year, Southern states (i.e. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas) accounted for 55% of those suspensions; and of all the expulsions that occurred in that same academic year, Southern districts were also responsible for 50% of black student expulsions.¹ In the Smith and Harper report, out of the 3,022 southern school districts that were analyzed, Black students comprised 24% of the student population.¹ Importantly, even though black students make up a minority of the population of K-12 students, they are suspended and expelled at disproportionately higher rates than their peers from other racial/ethnic groups.¹

According to Smith and Harper (2015), Alabama K-12 public schools suspended 45,750 black students in a single academic year, 2011-2012. Even though black students consisted of 34% of students in Alabama school districts, they accounted for 64% of suspensions and 58% of expulsions. Results of exclusionary discipline practices include lost learning time, lower rates of academic achievement, higher probability of being held back a grade, higher dropout rates, lower graduation rates, higher delinquency, and subsequent involvement in juvenile and criminal justice systems. In Birmingham City Schools, out of 24,882 students enrolled in the 2011-2012 year, there were 4,490 students that were suspended, 98% of whom were black students. District-wide, 91% of Birmingham City Schools' students identify as black.

Challenge #1: Implicit Bias Perpetuates Patterns of Inequality in Discipline

Zero-tolerance policies reinforce negative implicit bias that contribute to the racial disparities in the implementation of discipline.³⁸ Implicit bias is defined as "the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner" and is "activated involuntarily, without awareness or intentional control."³⁸ The disparity in discipline rates between black and white students could be attributed to implicit bias and the difference in the ways that exclusionary discipline practices are applied to offenses committed by students of color.

Challenge #2: Exclusionary Discipline Perpetuates the School-to-Prison Pipeline

Data shows that black male students are three times more likely than white male students to be suspended; and for black female students, they are six times more likely than white female students to be suspended. 42,44 In a single academic year, Birmingham City Schools suspended 18% of students that were enrolled, and out of the total suspensions, black students accounted for 98% of those suspensions. National estimates indicate that public school students lost almost 18 million days of class time as a result of out of school suspensions and that students who have been suspended are nearly three times more likely to be in contact with the juvenile system within the following year. 42,44,46 Thus, it is not surprising that communities of color are over-represented among our nation's incarcerated. Similarly, as more money is spent on the criminal justice system, funding is shifted away from education, which can destabilize lower-income communities and communities of color. 42,45

POLICY ALTERNATIVES

CURRENT LOCAL AND STATE POLICY

In Birmingham City Schools, principals ultimately have the authority to decide if an intermediate/class II offense (i.e. defiance of a school board employee's authority, physical contact with another student, fighting, bullying, etc.) or a major/class III offense (i.e. vandalism, drugs, alcoholic beverages, assault/battery, grand theft, etc.) will result in an out-of-school suspension or expulsion.⁴⁰ Additionally, repeated offenses under a certain class can result in students 'moving up' in the classes of offense and can increase the chances to a zero-tolerance consequence.⁴⁰ A detailed list of offenses and the procedures for punishment can be found in the Birmingham City Schools Code of Student Conduct.⁴⁰

The supposed intent of zero-tolerance policies was to create safer school environments for students, but as a result of implementing zero-tolerance policies, these policies have resulted in a demonstrable increase in the number of student suspensions and expulsions, and often involve law enforcement personnel.^{1,3} While it's critical to acknowledge that students may need to be removed from campus for safety concerns, exclusionary discipline and zero-tolerance policies have proven to be highly ineffective and affect black students more than any other ethnic group.

^{1,3,4,5,37,49,50} These policies disproportionately impact students of color, students with disabilities, or students from low-income families. ¹ Repeated in-school and out-of-school suspensions, expulsions, and re-entries into school reduce classroom learning time and negatively impact the academic progress and performance of students. ⁴ Exclusionary discipline & zero-tolerance practices have also resulted in students being held back a grade or dropping out of school. ⁵

Additionally, the language of Alabama Code 16-18-22 states that parents are responsible to ensure that their kids between the ages of 6-17 regularly attend school and are behaving properly.³³ According to Alabama Code 16-18-22 it states the following:

Each parent, guardian who fails to have the child enrolled or fails to require the child to regularly attend the school, or fails to compel the child to properly conduct himself shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars and may also be sentenced to hard labor for the county for not more than 90 days. Any parent, guardian who fails to require the child to regularly attend the school or tutor, or fails to compel the child to properly conduct himself shall be reported by the principal to the superintendent of education. The superintendent of education or his or her designee shall report suspected violations to the district attorney within 10 days. The district attorney shall vigorously enforce this section to ensure proper conduct and required attendance by any child enrolled in public school.³³

This Alabama code allows that parents and guardians help be responsible for the conduct of students such that they may encounter the justice system themselves, face misdemeanor charges, incur fines, or be subject to "up to 90 days of hard labor" for violations.³³ Principals and superintendents are required by law to report any absences and behavior violations to the district attorney, which can paint these individuals as adversaries to parents and their kids.³³ District attorneys vigorously enforce this code for the intent of ensuring required attendances and proper behavior.³³ In Mobile County of Alabama, nearly 300 parents were being sought by authorities after the 2016-2017 school year for failing to appear in court due to their children's truancy violations alone.⁴⁸ Not even the Alabama homicide statute uses the word "vigorously" like Alabama Code 16-18-22, an indication of just how strict this code is.²⁹ Since 18% of Birmingham City Schools' students were suspended in a single academic year,¹ this code has the potential to have a tremendous impact on students and families here.

OVERVIEW OF ALTERNATIVE POLICY

The alternative methods used to address the disproportionate impact of exclusionary discipline and zero-tolerance practices on students of color identified in this report are:

- **Restorative justice** is a philosophy that emphasizes repairing the harm caused by misbehavior by bringing together all affected persons to understand why the incident occurred and how to prevent it from happening again usually without removing the offending student from school.⁶
- The Helping Families Initiative, an intergenerational approach to preventing crime that has been created to improve family functioning, the well-being of a child, and educational outcomes. HFI provides family resources and case management before a student comes into contact with the juvenile justice system.

The following represents a summary of the benefits of restorative justice and HFI.

Alternative #1: Implement a Restorative Justice Program

Restorative justice is a philosophy that seeks to institutionalize peaceful, non-punitive methods that "guide the response to conflict and harm." This approach serves as an alternative to traditional school discipline that utilizes exclusionary consequences (like suspensions and expulsions), and instead focuses on building and cultivating a student's personal strengths and relationships with other students and school staff members. Restorative justice is an approach that can keep students in school by addressing the underlying causes of student misbehavior, repairing relationships between school community members, and prevent students from coming into contact with the justice system. There are three goals to any restorative justice initiative: accountability, community safety, and competency development. 51

One such model is that proposed by the New York State School Boards Association (NYSSBA). Components of NYSSBA's model include the following:

- 1. *Restorative Circles* Restorative circles are a practice in which community members (i.e. classroom students) come together to discuss how damage from a misconduct affects other students in the class and how that damage can be fixed.⁶ Restorative circles serve as catalysts to building and restoring student-teacher and student-student relationships.⁶
- 2. *Restorative Inquiry* Restorative inquiry is a line of questioning by school personnel that raise students' awareness of their underlying feelings and reasons related to a specific behavioral misconduct.⁶ This allows the process of mending relationships to begin.⁶
- 3. *Curriculum-embedded Restorative Justice* Teachers embed restorative justice directly in their school curriculum as a daily method to help students reflect on a variety of issues and create a stronger classroom community.⁶
- 4. *Mediation/Peer Mediation* Mediation/peer mediation is a framework that is used by a neutral third party (usually a student) to aid in resolving conflicts between students.⁶ It should be noted that mediation works more effectively with high school students than those in lower grades since they are able to developmentally, cognitively process the mediation.⁶ In addition, this practice actually helps the mediator to develop conflict resolution skills.
- 5. *Group Conferencing* Similar to mediation, group conferencing involves the aid of a mediator, but involves all persons affected in a dispute, including those that support them (i.e. family, community members).⁶ All affected individuals discuss what occurred and how it can be worked out through a formal plan.⁶ Group conferencing involves the facilitator checking in after the session to make sure that the student(s) who committed the offense is following through on the resolutions that were agreed upon.⁶

The NYSSBA's model of restorative justice requires teacher buy-in, system changes, relationship-building, and support.⁶ In order for a restorative justice model to be successful,

NYSSBA has found that involving and training teachers from the beginning will ensure the success of the program. NYSSBA's model emphasizes an open dialogue to address any questions or concerns teachers may have about the program. Through ongoing honest conversation, trust and credibility with teachers is built over time. NYSSBA's model also involves educating teachers and parents about the foundational mindset shifts required by restorative justice: consequences are not meant to be punitive but instead are a mechanism used to teach students how their actions impact others. Implementation of restorative justice can be a monumental shift in a school and it is critical that it is not rushed. This approach starts with a "committee that gauges interest in restorative justice, then moves to implementation that starts with school staff reading books like *The Little Book of Restorative Discipline for Schools* to build awareness of restorative justice, followed by training." ⁶ The NYSSBA also recommends that the model be implemented as a whole-school approach rather than on a case-by-case basis. NYSSBA's model has been featured in this report because it thoughtfully considers the obstacles of implementation and how to address them. ^{6,7}

Another restorative justice model is that which has been implemented by San Bernardino City Unified School District (SBCUSD). Components of the SBCUSD model include:

- 1. *Restorative Conferencing* Restorative conferencing is similar to group conferencing and this model emphasizes the use of this practice for rebuilding relationships and repairing harm instead of the isolation of individual behavior.⁴³
- 2. *Restorative Conversations* A restorative conversation is an early intervention tool that emphasizes prevention.⁴³ If there is an incident that causes concern, a teacher can discuss with a student about their behavior and encourage them to be accountable for their actions.⁴³ It involves a series of facilitated inquiries that focuses on the root of the problem rather than what the offender has done wrong.⁴³ This practice can be used for responding to minor difficulties in the classroom or school.
- 3. *Circle Conversations* A circle conversation is a practice used to build strong relationships among the students within a class. ⁴³ Circle conversations can cultivate a caring classroom atmosphere and can break barriers between the students. ⁴³ This practice can help students gain valuable skills that can develop students' interpersonal relationships and academic success and prepare them for their future work and relationships. ⁴³
- 4. *Classroom Conversations* A classroom conversation is an extension of a circle conversation that uses similar steps in a restorative conference. ⁴³ This practice can be used to address learning and behavior issues during times when tensions/problems have risen or during events that necessitate decisions be made. ⁴³ Examples of when this practice can be implemented include dealing with behavioral problems, such as class divisions, teasing, stealing, fights, threats, playground problems, etc. ⁴³

5. *Class lessons to pre-empt relational problems* - Class lessons can be used to deal with problems that commonly produce conflicts in school, such as tension between individuals/groups as a result of racism, sexual harassment, or discriminatory name-calling. ⁴³ Guidance lessons that are specifically aimed at addressing these issues can challenge the rhetoric that is supporting the problem. ⁴³

The SBCUSD model of restorative justice provides an excellent training manual for school personnel to implement restorative justice.⁴³ It emphasizes relationship-building and the needs of the victim.⁴³ The SBCUSD model acknowledges that these practices can be utilized in a school's response to intervention (RTI) program, a multi-tiered approach that schools utilize to support students with learning and behavior needs.⁴³ The SBCUSD's model is featured in this report because California is one of the few states that has been implementing restorative justice in its schools for many years. It should be noted that while SBCUSD and NYSSBA are two separate models, it is very possible for these two models to be integrated together.

Key practitioners of restorative justice have stated that considerable time and resources are needed to implement a restorative justice program. Funding can be generated through active pursuit of grant opportunities or through reallocation of existing funds within the district. Funding is important to be able to provide training for staff members for successful restorative justice implementation. Restorative justice is a systems-level initiative that involves shifting critical mindsets about the function of school discipline, further emphasizing the importance of teacher and leader investment.

Benefits

The following are the benefits for implementing a restorative justice program:

- Reduction in Suspensions and Violence: A review of studies has revealed that restorative justice programs have had a positive impact on school discipline, which include reducing out-of-school suspensions, but they also reduce the number of violent incidents in schools.⁶ Research has demonstrated the dramatic impact of restorative justice on school suspensions: in the case of a Texas middle school, suspensions decreased by 84% for 11-12 year olds; by 50% in Denver schools; and 87% in a middle school in Oakland, California.⁶ Restorative justice has also had a positive impact on the number of students with multiple suspensions: at Freedom High School in Bethlehem, Pennsylvania the number of students with multiple suspensions decreased by 64%; at Glenmount School in Baltimore, Maryland the number fell by 77%.⁹ Similarly, a Philadelphia high school experienced a 50% decrease in violence in the early stages of implementation of a restorative justice program, and another 40% decrease after six months.⁶
- *Reduction in Student Absences:* Restorative justice programs have an impact on student absenteeism.⁷ According to a 2014 study of Oakland middle schools, schools that implemented restorative justice programs experienced a 24% decrease in chronic

absenteeism, while schools that didn't implement programs saw a 62% increase.⁷ In Denver Public Schools, a sample of students showed a 30% improvement in school attendance and timeliness and a San Antonio middle schools experienced a 39% decrease in tardiness.⁴¹ Given the focus on chronic absenteeism in Alabama, these data points are particularly compelling. Restorative justice could be a potential solution to Alabama's chronic absenteeism challenge.

- *Reduction in Office Referrals:* Restorative justice initiatives also have an impact on the number of students sent to the office for misconduct, which ultimately results in fewer lost hours of instructional time. For example, at Hampstead Hill Pre-K-8th in Baltimore office referrals dropped from 103 in the 2008-2009 school year to 9 in 2013-2014, a 91% decrease over a five year period.⁹
- Cultivates Positive School Climate and Culture: School climate generally refers to the quality and character of school life, the experiences of individuals within the school, and the collective beliefs and attitudes of students, faculty, and staff. School culture refers to the shared values, rules, belief patterns, teaching and learning approaches, behaviors, and relationships among or across individuals in a school. Such practices may be dictated by school norms, unwritten rules, traditions, and expectations, and can impact the way individuals dress to the way they interact with each other. Restorative justice initiatives improve both school climate and school culture, reduce aggression, improve social skills among students, address conflicts and bullying, have a positive impact on social relationships, and increases feelings of interconnectedness between peers and with the community at large. Statistical school climate and school culture, reduce aggression and with the community at large.

Considerations

The following are considerations for implementing a restorative justice program:

- *Time to Implement:* Restorative justice calls for systems-level change, which could take months or years. ²⁸ Such programs attempt to shift the question from "who is to blame" to "what can be done to prevent this from happening again." Teachers themselves may be doubtful in the beginning, seeing such an approach as being too lenient on students, requiring strong leadership to maintain a successful program. ^{28,30} This method changes the system from one that punishes students to one that works with students to hold them accountable through the development of trusting relationships between teachers and students which may take time to yield a noticeable impact. ⁶ The results of a successful implementation are not evident overnight. It may take up to three years to positively affect students' perceptions about school discipline, while a significant shift in school climate can take anywhere between 3-5 years. ²⁸
- *Need for Funds:* Like most initiatives, consistent and sustainable funding is critical for successful implementation of, on-going training for, and coordination of a restorative justice program.^{28, 30}

Alternative #2: Implement the Helping Families Initiative [HFI] program

Using the direction of Alabama Code 16-18-22, the Helping Families Initiative (HFI) is a community program that started in 2003 under the umbrella of the District Attorney in Mobile County. 32,34 HFI seeks to address unmet needs of students by addressing root causes of student misbehavior, building trust between students and staff members, reducing incidences of behavioral problems, and preventing students from coming into contact with the justice system. HFI connects students and families with resources, including mental health evaluations, counseling, driver's license recovery, volunteer lawyers, school uniforms/clothing, furniture/household items, summer programs, food/utility assistance, housing, parenting classes, academic support, among others. HFI currently serves families in Montgomery, Mobile, Autauga, Elmore, Chilton, Calhoun, Cleburne, Jefferson, and Shelby counties. In its decade of operation in Montgomery, the program has served over 4,200 students through 4,770 connections to community resources. 22

Benefits

The following are the benefits for implementing the HFI program:

- *Contributes to Reduction in School Suspensions:* HFI has positively impacted the number of suspensions in schools it serves.³⁴ In Mobile County, the largest county school system in Alabama, 80% of HFI participants were not suspended within the next year for any particular reason.¹⁸ In the 2012-2013 school year, the Montgomery County School system experienced a 30% decrease in suspensions upon implementing HFI.²⁰ Finally, of HFI students that were suspended before participating in the program, 93% were not suspended within the following year.¹⁹
- *Contributes to Reduction in Absences:* In the 2012-2013 school year, the implementation of HFI resulted in a 24.5% decrease of unexcused absences in the Montgomery County School System.²⁰ In Tarrant in 2017-2018, students that received attendance alerts completed their year with fewer than 7 unexcused absences and 28% had no additional unexcused absences for the remainder of the year, preventing a deluge of court referrals among students.²⁷
- *Prevents Students Being in Contact with the Justice System:* In one study, only 18% of HFI graduates were arrested within the following year. According to a study of 218 students who successfully completed the HFI program in the years 2008-2013, 75% of these students did not come in contact with the justice system after their cases were closed. When implemented, HFI leaders seek to address a child's behavior instead of prosecuting them. John Tyson, the former Mobile County District Attorney, said HFI "can respond in days rather than months" and can "identify students and families in trouble, or heading for trouble, and respectfully [offer] help". 29

• *Has Positive Impact on Graduation Rates:* HFI also has a positive impact on the number of students that graduate from high school. For example, Alabaster City Schools experienced an increase of high school graduates from 90% to 97% over a two year period.²⁵

Considerations

The following are considerations for implementing the HFI program:

- *Gaining Trust*: Any interaction with those who work for the government may alarm students and their parents. Gaining the trust of the families is crucial in implementing HFI.³² Parents especially must understand the HFI, so that when they are contacted with a notice indicating that HFI has been notified of their child's behavior or suspension that they are not alarmed.
- *Need for Funding:* HFI requires state and local funding to implement. In Mobile, the HFI program has faltered in recent years due to the lack of funding needed to sustain.³² Grant funding should be considered for implementation.
- *Need for Collaboration:* The success of HFI is contingent upon the cooperation and support it receives from multiple agencies, including social workers and counselors, local police department, local housing authority, and the local school system.³²

POLICY RECOMMENDATIONS

The following are recommendations for successful implementation of restorative justice and the Helping Families Initiative (HFI):

- Obtain Funding to Sustain Program: Funding will be necessary for initial training and ongoing training and support. For a restorative justice program, teachers must have adequate training, opportunities to host discussion circles within their classrooms, and access to ongoing professional development and coaching. Schools with sufficient staff and training and consistent funding are more likely to achieve success. Applying for grants should also be considered. The following resources can be used to find available grant opportunities: Grants.gov, The Foundation Center, Grant Station, Fundraising and Grants Directory, GrantsNet, Community of Science, Altum Proposal Central Application system, The Catalog of Federal Domestic Assistance, Sponsored Programs Information Network (SPIN), Federal Business Opportunities, NIH Guide, Federal Grants and Contracts Weekly, and the Federal Register.
- **Hire a Restorative Justice Coordinator to Ensure Staff Buy-In.** Buy-in from staff involves a significant investment of time, training, and support but it is an essential foundation for effective implementation of restorative justice. ²⁸ The considerable shift from traditional exclusionary discipline to restorative justice can affect teacher

investment because they may view restorative justice initiatives as too lenient on students.²⁸ A restorative justice coordinator is recommended to be able to build relationships with teachers, students, and parents and learn how to best fit a model to the needs of their school.²⁸ A restorative justice coordinator should have the influence and communication skills necessary to facilitate communication between the teachers and school administrators to maintain consistent goals and messaging.²⁸

- Implement Rigorous Training for Teachers and School Leaders to Implement Restorative Justice. According to practitioners of restorative justice initiatives, it is necessary to provide consistent trainings periodically rather than one-day training workshops to be able to provide time for contemplation and application. Also, if the schools are unable to commit to periodic trainings, then it is recommended to designate a restorative justice coordinator on staff.
- Constant Support for Those Involved to Gain Trust: Initially, there may be some resistance either from teachers, parents, students, or staff members to restorative justice initiatives or in implementing the Helping Families Initiative. For teachers and staff members, this can be addressed during training meetings and an ongoing honest dialogue. For parents, periodic meetings may reinforce the idea that they have support from the school and maintain communication channels. Providing navigation of restorative justice initiatives or HFI can help parents understand how these programs may help their own children. Lastly, teachers and/or staff members can address student concerns or needs in the classrooms. Communicating to students about their needs may even result in changing the way restorative justice initiatives or HFI is implemented to be able to produce better outcomes for the programs.

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APPENDIX

This appendix lists resources for information on restorative justice. This list should not be seen as an endorsement of any agency, program, service, or individual.

Statewide Resources

Alabama Appleseed Center for Law & Justice, *Fair Schools, Safe Communities* Campaign, http://www.alabamaappleseed.org/

Other Resources

The Council of State Governments Justice Center, <u>The School Discipline Consensus Report</u>, <u>https://csgjusticecenter.org/</u>.

Dignity in Schools Campaign, www.dignityinschools.org.

Georgia Appleseed Center for Law & Justice, *Dismantling the School to Prison Pipeline* Initiative, https://gaappleseed.org/.

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