



# Keeping Kids in School and Out of Court

## A School-Justice Partnership

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Mayor Bloomberg with the inaugural class of Staten Island Youth Court members.

**T**oday, too many school-aged children are spending critical time in court, on school suspensions or expulsions, or in juvenile justice facilities. This hinders their educational, social and personal development, which is so essential to their becoming self-reliant and productive adults. Our advancing technology increasingly relies on human capital – the knowledge, information, ideas, skills and health of individuals. Now, more than ever, education – *quality* education – is an essential key to opportunities.

Not only are schools across the country being called upon to re-think their education systems to help produce better outcomes for students – including higher test scores and increased graduation rates – but the justice

system also is becoming involved to help promote these outcomes and reduce the flow of students entering the courts. The education and justice systems do not simply refer to schools and courts as they reflect the political, economic and social forces that help define the school environment and disciplinary policies and practices. The links between these systems have often had detrimental consequences for our children's educational trajectories. The current discourse is bringing these forces together to find and initiate alternative disciplinary policies and practices that will keep kids in school and out of court.

A symposium was convened last fall by former Chief Judge Judith Kaye, chair of the New York State Permanent Judicial Commission on Justice for Children,

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in collaboration with the Commission, Skadden Arps and Advocates for Children, regarding innovative practices to ameliorate punitive school discipline policies. Judge Kaye envisioned a collaborative school-justice focus to improve outcomes for children by finding creative solutions to decrease the number of our youth dropping out of school and entering the revolving door of the criminal justice system. Representatives from the Mayor’s Office, city agencies, the New York City Family Court, the Department of Education, the Police Department and advocates came together to hear presentations regarding positive behavioral interventions and supports, school-police arrest protocols and youth courts in schools.

This article continues that vital discussion, beginning with the now-established fact that the current punitive model is not working, and addresses the next step: How can a partnership among school administration, law enforcement, the court system and the community help to increase graduation rates while decreasing school suspensions, expulsions and arrests?

### Zero Tolerance

School policies and disciplinary practices that discourage students from remaining in the classroom often lead to schools directly and indirectly “pushing” students out of school. “Pushout” policies and practices include zero tolerance and ineffective misbehavior prevention and intervention policies, as well as the lack of student-school engagement. Growing out of the now discarded drug interdiction policies of the late 1980s, zero-tolerance policies – meaning mandatory consequences applied to school rules violations without regard to individual circumstances – became widespread in schools with the passage of federal laws such as the Gun-Free Schools Act of 1994 (GFSA), itself a response to several of widely publicized, tragic school shootings.<sup>1</sup> The GFSA required one-year school expulsion for any student caught bringing a gun to school. Gun cases are now the smallest category of school discipline cases and students are being expelled, suspended and arrested for a variety of behaviors including minor student behaviors and rule infractions.<sup>2</sup>

Instituting a ban on hats, immediate suspension for any school disruption and increased use of law enforcement, in 1989 Yonkers, New York, became one of the first school districts in the country to adopt a zero-tolerance approach to students who caused school disruption.<sup>3</sup> With greater use of school resource and safety officers, criminal charges are more easily and more frequently

brought against youth for things such as fighting, writing on desks and other actions that in an earlier day would have resulted in only a trip to the principal’s office. The criminalization of school behaviors – also known as the School-to-Prison Pipeline – has in some cases flooded the juvenile and criminal courts with cases that originated in school incidents.

Not surprisingly, research shows that first arrests can have unintended negative consequences for school-age youth: a first arrest during high school almost doubles the odds of the youth dropping out of school. For youth who have a court appearance following the first arrest, the odds of dropping out are nearly quadrupled.<sup>4</sup>

### Suspensions and Expulsions

Out-of-school suspensions and expulsions – the form of punishment longest relied on by schools – are almost equally as harmful as arrest in their longer-term effect on students. Suspension and expulsion are known to increase the propensity for school disconnectedness, academic problems, delinquency, criminal activity and substance abuse – the opposite of the desired effect. Out-of-school suspensions are linked to falling behind in school, failing a grade, dropping out of school, committing a crime and becoming incarcerated as an adult.<sup>5</sup> If students receive multiple suspensions the effects are exacerbated. Students who are suspended three or more times by the 10th grade are five times more likely to drop out than students who have never been suspended.<sup>6</sup> The long-term consequences of suspensions and expulsions indicate higher rates of future antisocial behaviors and involvement in the justice system.<sup>7</sup>

**Having long-term consequences, suspensions and expulsions are actually related to higher rates of future antisocial behaviors and involvement in the justice system.**

Out-of-school suspension can also make the community less safe, leaving youth unsupervised in the community. A recent statement by Fight Crime: Invest in Kids, a non-profit organization of 5,000 police chiefs, sheriffs, prosecutors and other law enforcement leaders, acknowledged the need to maintain school safety and remove truly dangerous students from the school environment but noted “suspension and expulsion often provide troubled kids exactly what they do not need: an extended, unsupervised hiatus from school that increases their risk of engaging in substance abuse and violent crime.”<sup>8</sup>

Studies have shown that suspension is often used for less serious offenses. Although school-time fights and aggressive acts by students are the leading causes for suspension, the next ranking causes include abusive language, attendance issues such as cutting class, tardiness and truancy, followed by disobedience and disrespect and general classroom disruption.<sup>9</sup> Suspension has been used as a vehicle to push out students who are frequently disruptive or are bringing down test scores. Research has confirmed that academic skill can be a strong predictor of school exclusion.<sup>10</sup>

**School-justice partnerships springing up across the country are demonstrating benefits that are not only child-related but also school- and community-related.**

Perhaps more disturbing, studies have consistently demonstrated that children of color, in particular Black children, are referred for discipline more frequently and for less serious offenses, tend to be suspended for longer periods of time, and are more often subject to suspension and expulsion compared to their White peers.<sup>11</sup> Regardless of whether poverty and other demographic factors are considered in the analysis, racial and ethnic disproportionality in disciplinary practices has consistently been observed.<sup>12</sup>

School administrators, parents and communities struggle with the need to balance the safety of students and staff with the appropriate effective interventions to create a safe and productive learning environment. If the goal is to reduce bullying, violence and disruptive behavior in schools, it would appear that the strategies used most often today are at best ineffective and at worst exacerbate a student's disengagement with the school community, eventually leading to the student's dropping out. Clearly there must be a shift from over-reliance on out-of-school suspension, which has so many unwanted consequences. Researchers have concluded that what is needed is a "strong but caring discipline that works to inculcate good behavior, while resorting to out-of-school suspension only rarely."<sup>13</sup>

### **A School-Justice Approach**

So how can a partnership among school administration, law enforcement, the court system and the community help to increase graduation rates while decreasing school suspensions, expulsions and arrests? As a community, we are charged with seeking the best outcomes for our children to enable them to become successful, productive

adults. Together, we need to examine our school discipline policies and practices and develop strategies that lead to a school climate that fosters youth development and learning, increases student engagement and provides positive child-centered strategies for remediation of individual student misbehavior.

Our course of action can benefit from the national, state and community organizations that are now challenging the systemic problem of pushout. For example, the Dignity in Schools Campaign – a national and community-based campaign – brings together educators, students, parents, advocates and others to reframe the school discipline discourse around a framework of human rights that respects every child's right to an education and advocates for child-centered reform to keep children in school instead of school discipline that favors and relies on the punishment and pushout of children.

There are also school-based frameworks and practices that can help inform this discussion. For example, the school-wide Positive Behavioral Intervention and Supports (PBIS) is a decision-making framework which brings in the entire school culture. It is premised on using data collection to guide decisions and identify issues, continuous monitoring of student progress and achievement to evaluate outcomes, development of evidence-based academic and behavioral interventions and supports, and changing the school teaching and learning environment to address current, and to prevent future occurrence of, problem behavior. PBIS is grounded in a system that teaches and encourages pro-social skills and behaviors for both students and staff. When intervention for behavior issues is warranted, there is a three-tiered approach in which all children receive supports at the primary tier. When students do not respond, more intensive behavioral supports are provided at the intermediate tier, with the third tier of individualized intensive plans reserved for those students whose behavior warrants that approach. Throughout this school-wide system, the emphasis is to maximize academic engagement and achievement for all students.<sup>14</sup>

School-justice partnerships springing up across the country are demonstrating benefits that are not only child-related but also school- and community-related. For example, in Clayton County (Atlanta), Georgia, the school-justice community developed a model protocol to address student school-based offenses. The protocol provides that arrest is reserved for only the most serious offenses and an array of options for discipline for lower level offenses is provided. Following these changes, Clayton County graduation rates rose 21% while juvenile felony rates decreased 51%. By reducing school referrals to the juvenile justice system, there was a 38% decrease in the number of youth of color referred to the juvenile justice system.<sup>15</sup>

There is an alternative. The education and justice systems can work together outside of the courthouse to

## Recent New York City School Suspension Findings\*

Between the 2002/03 and 2007/08 school years, the number of suspensions in New York City schools more than doubled – jumping from 31,880 to 72,518, respectively.

More than one in five (22%) of the students suspended during the 2007/08 school year in New York City had a superintendent's suspension, which can last for up to one year. Principal's suspensions can last from one to five days.

Suspensions disproportionately affect Black students. During the 2006/07 school year in New York City, Black students accounted for 53% of the suspensions, but made up only 32% of the student population.

Suspensions disproportionately affect students receiving special education services. During the 2006/07 school year in New York City, students receiving special education services accounted for 28% of the suspensions, but only made up 9% of the student population.

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

hold youth accountable for their actions while promoting civic responsibility. Youth and student courts, like other efforts mentioned earlier, are based on restorative justice practices and can be ideal in the learning environment of schools. Student courts offer the opportunity to demonstrate to offenders the harm their behavior has caused while also giving young offenders the chance to explain their particular and, perhaps, extenuating circumstances that led to the infraction. Penalties and sanctions are designed so the offender can repair the harm caused by the offense or otherwise contribute to the school community through service opportunities. Sanctions often include a requirement to return and participate as a jury member in future youth court proceedings. Through civics education – the training provided to student court volunteers and active participation in the process of the trial and sentencing – students, including offenders, have the opportunity to learn about the law or rules that were broken and how our court procedures protect an individual's right to due process.

It's time to overhaul a counterproductive approach to discipline in the schools that is related to higher rates of poor academic performance, school dropout, future misbehavior, and juvenile and criminal justice involvement, and less satisfactory ratings of school climate<sup>16</sup> and seize this emerging strategy – a collaborative school and justice

partnership – that allows the full development of each student, protects students from discrimination, uses discipline opportunities to teach students about their rights and the rights of others and provides a quality education that prepares them to thrive in today's challenging world. ■

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