

Zero Tolerance vs Restorative Justice in the United States

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As schools across the United States begin to move away from the harsh Zero Tolerance policies that characterised the better part of the previous three decades, there is an opportunity to change the focus of school discipline. Frequently, school discipline policies are centred on punitive approaches that separate students from their peers. Rather than meeting the needs of these students, schools alienate them from their peers, teachers, and school communities. The goal of the education system is to provide children and adolescents with a quality education that will allow them to grow into productive and participating members of society. Zero Tolerance and school discipline policies were created to protect students, but, in practice, these policies have proven to be harmful and have unintended consequences. Too often, punitive disciplinary action in the school setting puts students on a pathway that leads into the juvenile or criminal justice system. Although the Zero Tolerance policy is a federal initiative, many states are beginning to realise the harmful impacts this policy has on students, especially marginalised students. As a result, states are beginning to pass legislation that veers away from Zero Tolerance, focusing more on alternatives like restorative practices. This article will explore these issues and share information on policies current states are using and the implications of these policies on students, as well as the school-to-prison pipeline.

Keywords: restorative practices, school discipline, zero tolerance policies, school-to-prison pipeline

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Ničelna toleranca proti restorativni pravičnosti v Združenih državah Amerike

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≈ Ko se šole po Združenih državah Amerike začnejo odmikati od ostre politike ničelne tolerance, ki je bila značilna za večji del prejšnjih treh desetletij, vznikata priložnost, da se spremeni goriščna točka šolske discipline. Njene politike so pogosto osredinjene na kaznovalne pristope, ki delujejo ločevalno, s tem ko jih namesto zadovoljevanja potreb teh učencev šole odtujijo od vrstnikov, učiteljev in od šolskih skupnosti. Cilj izobraževalnega sistema je otrokom in mladostnikom zagotoviti kakovostno izobrazbo, ki jim bo omogočila, da odrastejo v produktivne in participativne člane družbe. Politike ničelne tolerance in šolske discipline so bile oblikovane za zaščito učencev, vendar so se v praksi izkazale za škodljive in imajo neželene posledice. Kazenski disciplinski ukrepi v šolskem okolju prepogosto postavijo učence na pot, ki vodi v kazenskopравни sistem za mladoletnike ali kazensko pravosodje. Čeprav je politika ničelne tolerance zvezna pobuda, se številne države začenjajo zavedati škodljivih vplivov, ki jih ima ta politika na učence, zlasti marginalizirane učence. Posledično države začenjajo sprejemati zakonodajo, ki se odmika od ničelne tolerance in se bolj osredinja na alternative, kot so restorativne prakse. Ta članek raziskuje tovrstna vprašanja in predstavi informacije o politikah, ki jih trenutno uporabljajo zvezne države, in posledicah teh politik za učence pa tudi o neposredni poti od šole do zapora.

Ključne besede: restorativne prakse, šolska disciplina, politika ničelne tolerance, pot od šole do zapora

Origin and Evolution of Zero Tolerance

In the early 1990s, when crime rates were at an all-time high, the Congress of the United States adopted a punitive mindset centred around 'tough-on-crime' approaches in educational settings. The criminalisation of juveniles during this time created a school discipline climate characterised by harsh punishment (Kang-Brown et al., 2013). The Gun-Free Schools Act, passed by Congress in 1994, marked the beginning of Zero Tolerance policies throughout the United States. (Gun-Free School Act, 1994) This federal mandate specifically stated that schools are required to expel, for at least one year, any student who brings a firearm to school for the school to qualify for federal funds (Gun-Free Schools Act, 1994). This punitive mandate of the federal government set the stage for states to implement their own Zero Tolerance policies, expanding on the federal requirement.

As school shootings became more frequent and fear was instilled in the minds of Americans across the country, states began to take matters into their own hands. Zero Tolerance policies were expanded to include violent offences beyond the federal firearm requirement. Federal and state funding increased to support security guards, law enforcement and, eventually, metal detectors in schools. These new measures aimed to keep students safe but, in practice, contributed to creating an atmosphere like the criminal justice system (Kang-Brown et al., 2013). Furthermore, creating a self-fulfilling prophecy, the more students are treated like criminals, the more they act like criminals.

Throughout the late 1990s and into the 21st century, schools continued to embrace an exclusionary approach to discipline, bolstering their Zero Tolerance policies to include non-violent behavioural and misconduct offences. The federal government's requirement was intended to keep schools safe. However, as schools expanded their policies beyond the scope of the act, this intention was lost. Policies were created that required removal for actions that would often be considered typical behaviour for adolescents. For example, some schools established Zero Tolerance policies for drug and alcohol use, vandalism, non-traditional lipstick and hair colours, and dress code violations (Mitchell, 2014). These Zero Tolerance policies did not allow for consideration of individual circumstances or situations but instead took a one size fits all approach. This approach ignored the fact that every student has different social, emotional, and academic needs. It was thought that removing students who engage in disruptive behaviours would deter them and others from exhibiting the same behaviours in the future. Although some school administrators and teachers might argue that suspension and expulsions are necessary to keep order and teach

students not to engage in certain behaviours, these practices have the opposite results. Contrary to this belief, suspension is a risk factor for future misconduct and suspension (Reynolds et al., 2008). Recent research has shown that exclusionary discipline results in higher rates of arrest and increased offending (Hemez et al., 2019).

These policies have had unintended negative consequences for students that many states have yet to address. Students who are removed from schools typically fall behind their peers and are more likely to drop out of school. Often, they are not receiving an education while they are out of school because no policies require alternative education for students disciplined under Zero Tolerance. Removals also impact school climate because teachers and administrators focus on the punishment rather than understanding the underlying causes of the behaviour or the individual needs of the student. (Jones, 2013). As states begin to realise the harm that is caused by these policies and move away from them, there is room for new disciplinary approaches that are rooted in restorative practices and trauma-informed care.

Implications

Even though many studies have proven there are negative repercussions of exclusionary discipline, the 2018 Department of Education reports that ‘approximately 2.7 million students experienced at least one out-of-school suspension during the 2015–2016 academic year’ (Hemez et al., 2019, p. 235). This means that approximately ‘one third of all students in the United States will receive at least one suspension by the time they graduate from high school’ (Hemez et al., 2019, p. 235). That is just one small snapshot of the number of students affected by exclusionary disciplinary policies.

It is important to go a bit deeper into understanding some of the unintended consequences to which suspensions and expulsions may contribute. Research indicates that students who are suspended or expelled have a lower chance of graduating from high school, finding employment, or engaging in their communities in a positive way (Wadhwa, 2017, p. 4). In fact, students who are repeatedly suspended or expelled have a much higher chance of being sent to prison. This phenomenon, known as the ‘school-to-prison pipeline’, refers to the disproportionate likelihood of incarceration for students who are repeatedly suspended or expelled (Wadhwa, 2017, p. 4). ‘The pipeline is the result of an array of policies and practices, fed by institutional racism’ (Martin, 2020, para. 4).

One question that people often have when discussing the school-to-prison pipeline is, how do suspensions relate to this phenomenon? According

to a meta-analysis on this topic, Welsh and Little (2018) found ‘[...] that school exclusion is not an efficacious response to student misbehavior given the short and long term correlates with negative student educational and life outcomes.’ Their analysis found numerous studies indicating that suspended students were much more likely to be involved in the juvenile justice system and, later, the criminal system. As mentioned previously, harsh school policies misuse suspension and expulsion; policies criminalise minor rule infractions; increased policing in schools creates prison-like environments and overuse referrals to law enforcement authorities (Martin, 2020). Hemez et al. (2019) examined this issue through a ‘life-course perspective’ and found that ‘suspensions may serve as important antisocial turning points that reshape trajectories and usher youth toward incarceration later in life’ (p. 250). Furthermore, this study provides empirical evidence ‘that suspensions serve as a significant disciplinary conduit within schools through which the school-to-prison pipeline operates’ (Hemez et al., 2019, p. 250). Therefore, it is no surprise that Black students are even more likely to be suspended and to be involved with the court systems as youths and as adults.

Studies have shown that nationwide, the students most impacted by the school-to-prison pipeline are students with a disability and Black students. In fact, Black, Latino, and Native American students were much more likely to be suspended or expelled for the same behaviours that their white counterparts (Wadhwa, 2017, p. 5). This racial gap was discovered in 1975 when the Children’s Defense Fund found that ‘suspension rates for Black students were two to three times those of white students’ (Wadhwa, 2017, p. 5). Using data from the Houston Independent School District (HISD), Duffy (2018) found that ‘Black students are 3.85 times more likely to receive either an in-school suspension or out-of-school suspension compared to white students. Although Latino students make up a majority of HISD, they are about 70% more likely to be disciplined compared to white students’ (p. 6). It is important to reiterate that this data focuses on behaviour exhibited by all students but has shown that students of colour receive harsher disciplinary actions than their white counterparts.

According to data collected by the Office of Civil Rights, Black students are disproportionately suspended compared to white students. From 2017 to 2018, the total percentage of Black students enrolled in K-12 in the United States comprised 15% of the total population, but the data shows that 41.7% of the students who received a suspension were Black. The total percentage of white students in the US is 47.3%, but only 30% of white students received a suspension. (Figures 1 and 2) Black students miss over 4.6 million days of school per year. (OCR site)

Students who are vulnerable also face unfair disciplinary actions. Those who have experienced trauma, homelessness, are economically disadvantaged, or qualify for special education services are at higher risk of being suspended or expelled. For example, economically disadvantaged students are about 11% more likely to be suspended, and students who have experienced homelessness are 14% more likely to be suspended. Compared to their housed peers, homeless youth experience trauma at disproportionately high rates (Bende et al. 2010).

Research has shown that there is a relationship between children who have experienced trauma and problematic behaviour in school. Loomis (2020) suggests that younger children who are exposed to family violence are more likely to exhibit 'acting out' behaviours, which puts them at higher risk for suspension and expulsion. Responses to traumatic experiences vary from person to person, but the links between students who have experienced trauma and behavioural and emotional challenges are important for schools to understand and consider before suspending or expelling a student from school.

Despite laws protecting students in special education, Duffy found that students receiving special education services were about 10% more likely to be suspended than peers not receiving such support. These are students protected under the Individuals with Disabilities Act (IDEA), which requires schools to consider if the offending behaviour is related to their disability. According to an analysis of data found through the Office of Civil Rights (OCR), the total percentage of students protected under IDEA in the US is 13.2% of the total population, but 24.4% of the students who received a suspension were students receiving Special Education services (Figure 3). (OCR site) Similar to students of colour, students with a disability who are supposed to be protected under IDEA are disproportionately receiving school suspensions. Figure 4 is a visual representation of the student population disaggregated by race and disability status and, looking at the same categories, the percentage of students suspended for one or more days. Ideally, the percentage of total students would be similar to that of students suspended. This graph clearly depicts the inequities that exist within the school discipline system.

Figure 1
Black student suspension to population

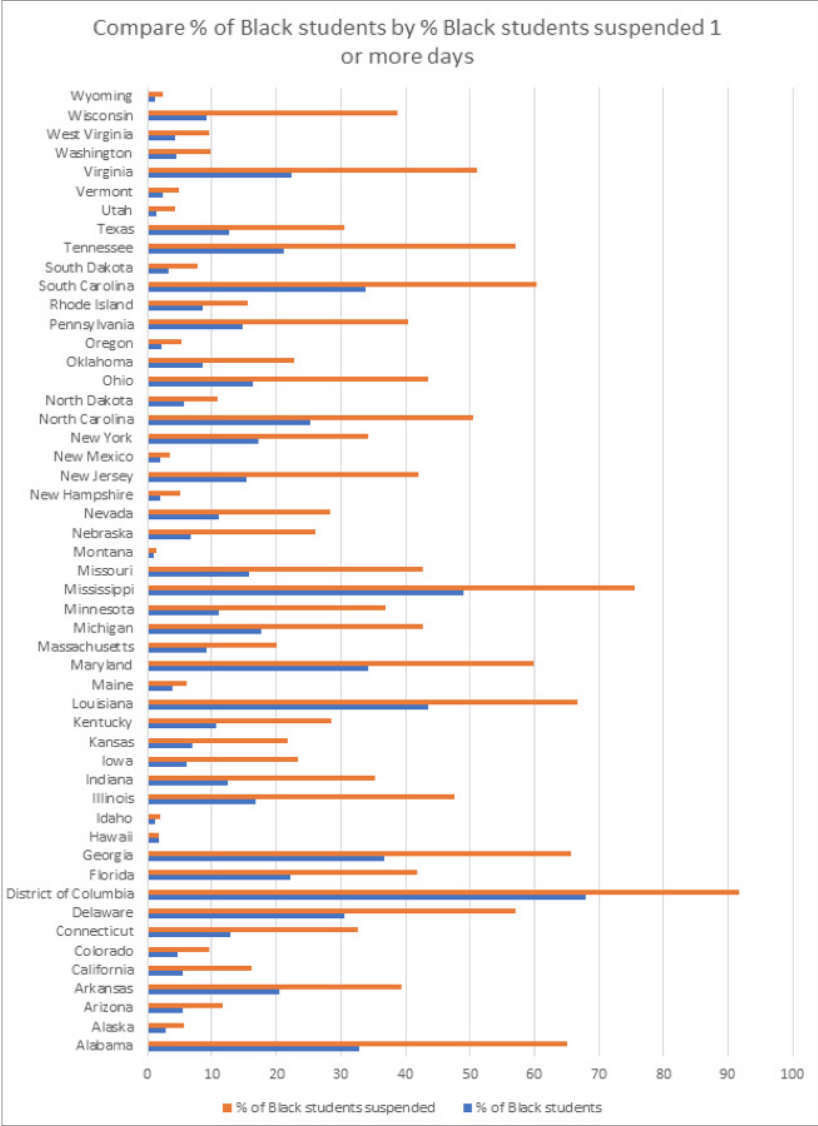


Figure 2
White student suspension to population

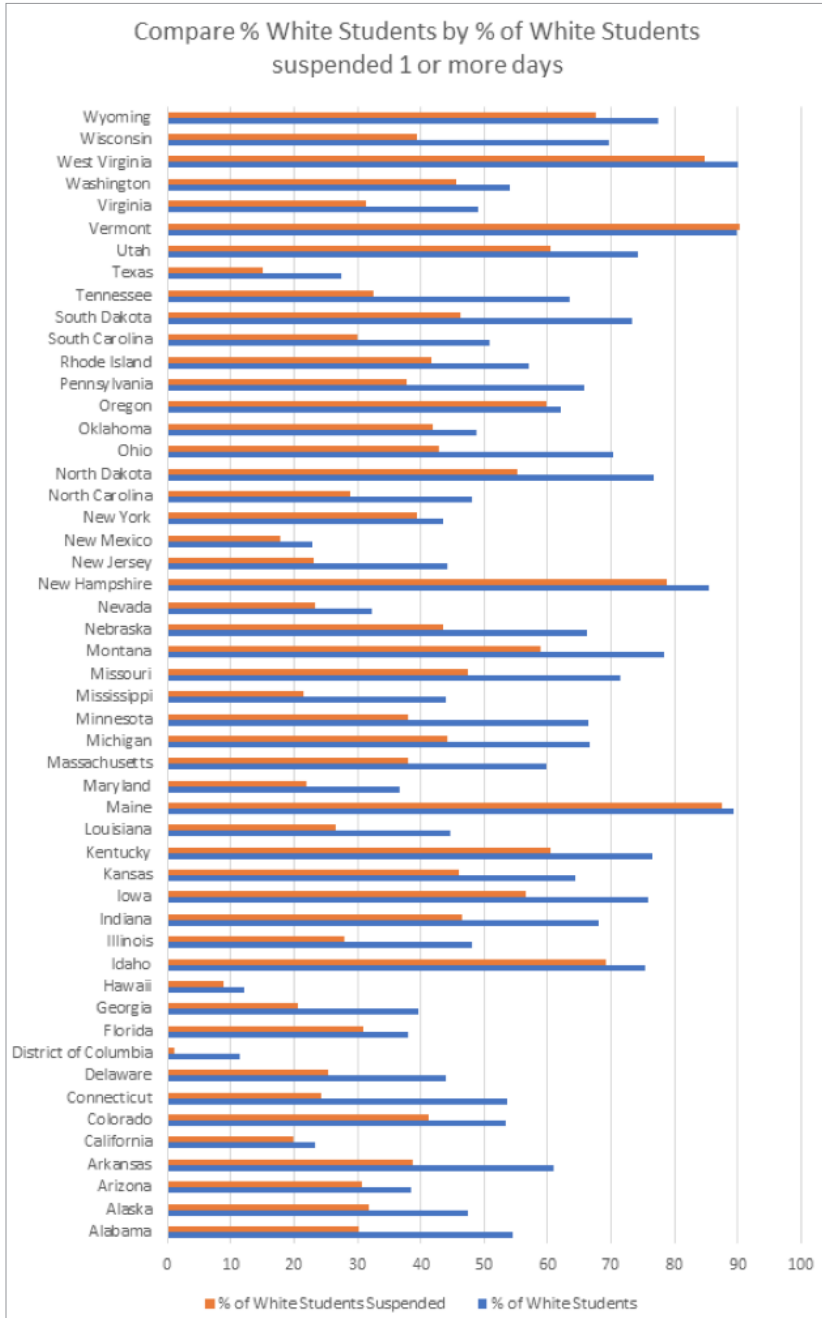


Figure 3

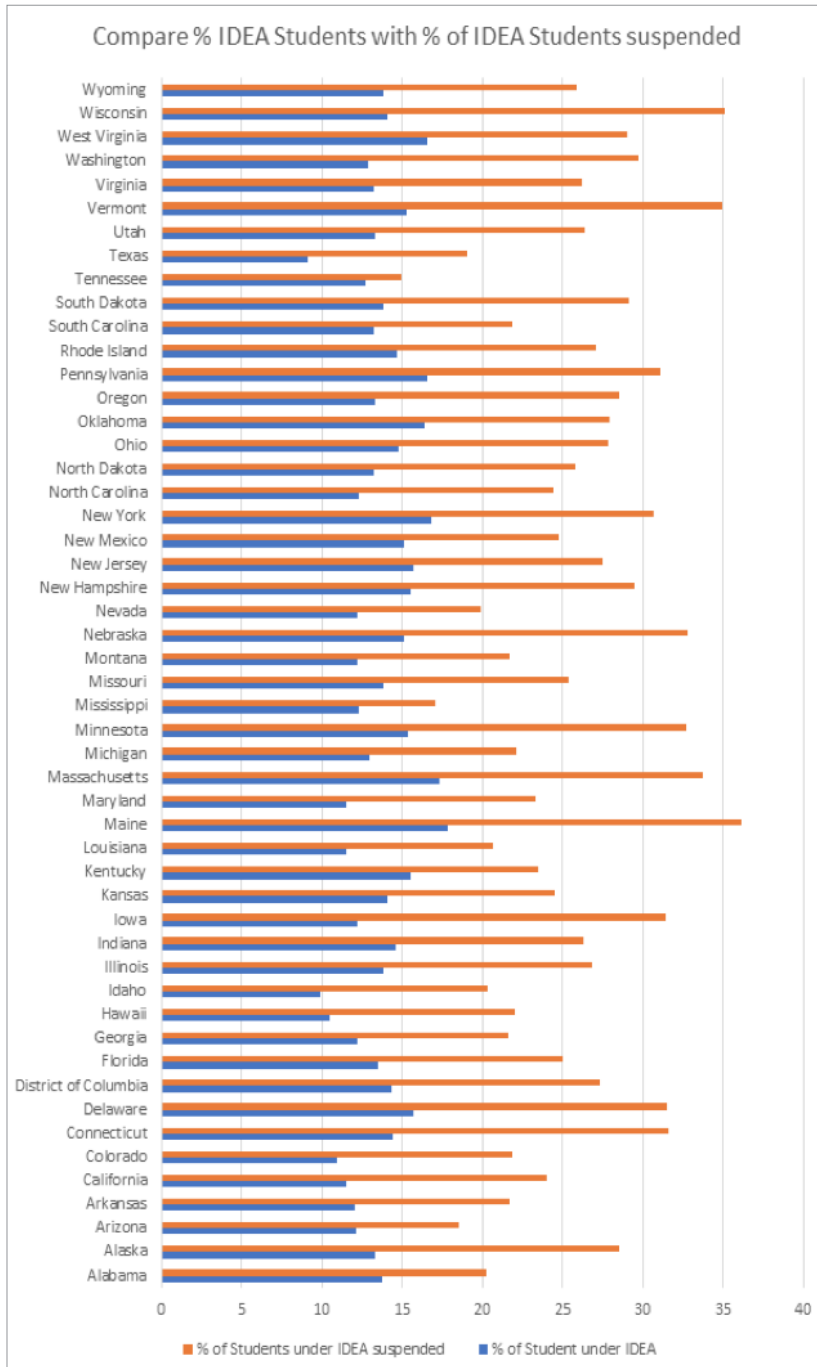
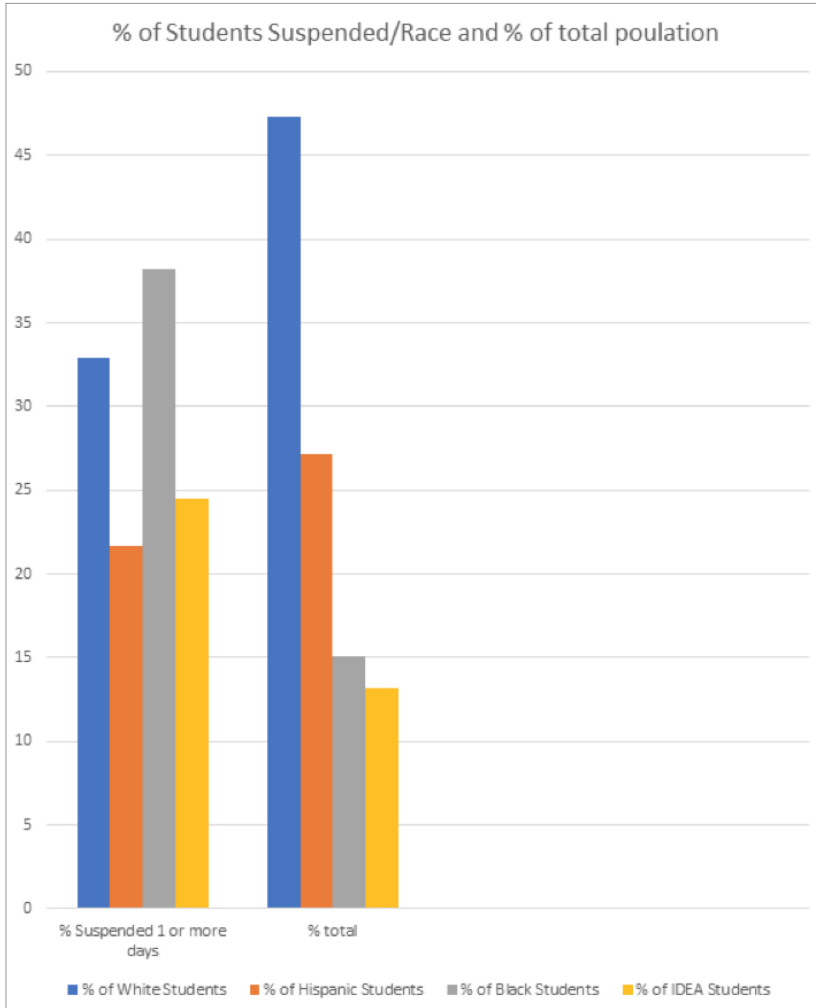


Figure 4



Students with a disability suspension to population and comparison by race

Current Practices

There is little evidence suggesting that Zero Tolerance policies, defined as strict policies that require an exclusionary disciplinary response to specific behaviours and actions, are effective, and yet, two thirds of the United States have state-wide policies requiring suspension or expulsion for certain offences.

These policies do not consider individual situations and circumstances, even though both can influence behaviour. This creates a system of equality rather than an equitable system that would approach each situation by looking at the individuals involved and their needs. Through a comprehensive review of the school discipline laws in each state as of January 31, 2020, there are 33 states (Figure 5) with Zero Tolerance policies for offences beyond the federal requirement of expulsion for firearm possession and use. Depending on the state, offenses range from incidents involving the use or possession of a weapon to non-violent offenses such as drug use or possession (White & Young, 2020). In addition, four states explicitly state in their school codes that it is the responsibility of the school boards/districts to determine their own regulations regarding school discipline, which includes mandatory suspensions/expulsions.

According to data from the Pew Research Center looking at political ideology by state, 60% of the states with Zero Tolerance policies are conservative-leaning (2014). Many education bills that are introduced in Congress are bipartisan, but there are key differences in the conservative and liberal approaches to school discipline. The conservative viewpoint on crime has consistently supported punitive approaches and emphasised the use of punishment as a deterrent. Conservative school policies take a similar approach by supporting policing in schools and the use of strategies that punish delinquent behaviour (Guo, 2020). These policies tend not to focus on equity and overlook the racial gaps that need to be addressed in school discipline policies. The liberal approach is often focused on reform efforts that are aimed at dismantling the school-to-prison pipeline. Policies based on a liberal viewpoint usually address racial disparities in school discipline with the goal of shaping an equitable school system (Guo, 2020).

During our review of school policies across the country, we searched for mention or required use of restorative practices and other alternative approaches. Twelve states recommend restorative practices as a form of alternative discipline or as an optional training topic for staff and resource officers in their school discipline laws and regulations, but very few have specific requirements on the use of alternative discipline. Only ten states have made policy changes establishing training and/or implementation requirements for restorative practices. (See Figure 6)

Restorative Justice is not a new concept or practice. In fact, restorative practices have existed for centuries, commonly used by Native Americans and other indigenous societies across the globe (Brown, 2020). For example, indigenous communities would often settle conflicts and disputes using 'restitution negotiations'. Conflicts between people were resolved by repairing the

harm done through agreed-upon compensation or resolution. The goal of these meetings was to prevent revenge and restore peace in the community (Kohli, 2019).

It can be challenging to define Restorative Justice because it is a concept. However, there are some common themes and main concepts. According to Zehr (2015), the three main concepts include: a) focusing on the harm done, b) understanding these harms result in obligations, and c) promoting engagement and participation. Correspondingly, Song and Swearer (2016) found that restorative justice consists of three principles: a) relationships and their harms, b) empowerment of all persons, and c) collaboration. From these concepts, one can conclude that the inclusion of students and relationships between those harmed and those who have been harmed are important (Kohli, 2019).

More recently, schools have adopted Restorative Justice to respond to the growing rates of suspension and expulsion. Since it is a concept, effectively integrating it into schools can be challenging. Some schools tend only to want to use Restorative Justice practices for disciplinary actions, not incorporating the change of mindset and preventative interventions that Restorative Justice interventions in schools encompass. Restorative practices can include prevention, teaching students social and emotional skills, and being an environment where all are valued, heard, and understood. Merely focusing on using Restorative Justice practices, such as a restorative circle when a child has misbehaved, is unlikely to make the kind of impact needed to reduce suspension and expulsion (Song & Swearer, 2016). Restorative practices aim to improve the school climate in totality.

Of these 12 states, five take a seemingly contradictory approach to school discipline by having Zero Tolerance policies and requirements for restorative practices. For example, in Louisiana, a state with Zero Tolerance policies, school staff are provided with training on restorative practices as part of their plan for improving student behaviour. While the staff is trained on restorative practices, there is no obligation for them to implement practices in their classrooms or school discipline policies. California, another Zero Tolerance state, requires the use of other means of correction, which may include restorative justice programmes. Suspension would only be imposed if the other means of correction fail to correct the behaviour ('School Discipline Laws & Regulations by State', 2020). The presence of Zero Tolerance policies means there are students who do not have protections.

Zero Tolerance policies continue to define school discipline in New Jersey; however, at the beginning of 2020, they began to shift toward alternative approaches. A bill was signed into law creating the 'Restorative Justice in

Education Pilot Program'. This three-year pilot programme will implement trauma-informed restorative practices in 15 schools throughout the New Jersey school system. The goal is to reduce racial disparities in school discipline, improve the socio-emotional and behavioural development of students and reduce recidivism rates. Using the pilot programme method will allow the state to track and document successes and areas for improvement with the implementation and use of restorative justice. Following the pilot programme period, the Commissioner of Education will provide a recommendation on whether to expand restorative practices to schools throughout the state (School Discipline Laws & Regulations by State, 2020). If New Jersey sees promising results from this programme, it will create an opportunity for policy change and push the state government to rethink its punitive Zero Tolerance approach.

In Vermont and Colorado, where they have opted for alternatives to Zero Tolerance policies, their approach to restorative practices involved implementation research, reports, and recommendations. The Vermont Agency of Education was required by legislation passed in 2016 to explore the use of restorative practices. They compiled a comprehensive resource guide containing research on the effectiveness of restorative practices and best practices for implementation. In addition, the guide provided recommendations for improving and increasing the use of restorative practices for schools already using the approach ('School Discipline Laws & Regulations by State', 2020). Colorado established the Restorative Justice Coordinating Council, whose role was to support the development and implementation of restorative justice programmes. In addition, the council assisted in the creation of state-wide guidelines, training recommendations, and standards of best practice for schools to utilise to guide their programmes ('School Discipline Laws & Regulations by State', 2020). Vermont and Colorado have established policies with requirements that are focused on research and education rather than implementation. While the Restorative Justice resources that these states have created are comprehensive and likely beneficial, schools are under no obligation to implement these practices.

In 2016, Michigan eliminated Zero Tolerance and revised its school code to include a section on restorative practices. This new section requires the school board to consider using restorative practices as an alternative or in addition to suspension or expulsion. This policy illustrates a clear shift away from punitive exclusionary practices and creates a space for alternative approaches to school discipline ('School Discipline Laws & Regulations by State', 2020). In addition, Michigan's legislation contributed to a change in the mindset of the state education system by putting the focus on meeting student needs.

Minnesota, a state with no Zero Tolerance policy, created the Restorative

Figure 6*Zero tolerance-restorative justice requirements by state*

State	Zero Tolerance + mandatory suspension or expulsion for offences beyond the Federal firearm requirement.	Zero Tolerance determined by district per school code	Restorative Justice Requirements	Restorative Justice Mentioned or Recommended
Alabama	X			
Alaska	X			
Arizona	X			
Arkansas		X		
California	x		x	
Colorado			x	
Connecticut	x			
Delaware	x			
Florida	x	x		x
Georgia	x			
Hawaii				
Idaho	x			x
Illinois	x			x
Indiana	x			
Iowa	x			
Kansas	x			
Kentucky	x			
Louisiana	x		x	
Maine	x			x
Maryland		x	x	
Massachusetts				x
Michigan			x	
Minnesota			x	
Mississippi	x			
Missouri	x			
Montana				
Nebraska				x
Nevada	x		x	
New Hampshire				
New Jersey	x		x	
New Mexico	x			x
New York	x			
North Carolina	x			
North Dakota	x			
Ohio				
Oklahoma	x			
Oregon				
Pennsylvania	x			x
Rhode Island	x			
South Carolina				x

State	Zero Tolerance + mandatory suspension or expulsion for offences beyond the Federal firearm requirement.	Zero Tolerance determined by district per school code	Restorative Justice Requirements	Restorative Justice Mentioned or Recommended
South Dakota		x		
Tennessee	x			x
Texas	x		x	
Utah	x			x
Vermont			x	
Virginia	x			
Washington				x
West Virginia	x			
Wisconsin				
Wyoming	x			

Conclusion

As Maya Angelou once said, ‘You can’t really know where you’re going until you know where you have been’ (Maya Angelou quotes to live by, 2022). It is crucial to know the history of Zero Tolerance policies, their intended purpose, and the damage these policies had and continue to have on vulnerable students. Numerous studies and personal stories detail the negative impact of these policies. It is apparent from the most current data that Black students, students with a disability and students who are economically disadvantaged are more likely to be suspended from school. These students are being suspended for offences for which their white or more affluent counterparts are not.

As mentioned in this article, even with the overwhelming evidence of the harm Zero Tolerance policies cause, restorative practice requirements have only recently been included in state policy, which means that many states do not yet have data supporting their new policy requirements. However, if prior research is any indication, then the implementation of requirements for training on and the use of restorative practices should reduce the number of suspensions and expulsions as well as reduce the disproportionality for students of colour and students with a disability in the school discipline system. Through bipartisan efforts, states must work to eliminate Zero Tolerance policies and implement new policies that include restorative approaches and alternative forms of intervention aimed at supporting and benefitting the student population. That is not to say that schools should not ever use expulsions; however, expelling a student for 180 days should only be used as a last resort, and there should be clear guidelines and processes in place to ensure that students have access to free and appropriate public education.

Creating an equitable school discipline system begins with eliminating

Zero Tolerance, but there must be new policies that include strategies and interventions focused on restorative approaches. There is more work to be done in this area, but system-wide change is challenging and slow. Common sense tells us that if there is more investment in children, it will save money and effort in the future. If students are provided more support in school, then it makes sense that fewer will find themselves without prospects and end up incarcerated. Unfortunately, until these changes are implemented with fidelity, the students who are vulnerable will continue to be suspended and find themselves trapped within the school-to-prison pipeline.

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