

The Role of Schools in Sustaining Juvenile Justice System Inequality

Paul J. Hirschfield

Summary

Children's school experiences may contribute in many ways to disproportionate minority contact with the juvenile justice system, writes Paul Hirschfield. For example, research shows that black students who violate school rules are more often subject to out-of-school suspensions, which heighten their risk of arrest and increase the odds that once accused of delinquency, they'll be detained, formally processed, and institutionalized for probation violations.

Hirschfield examines two types of processes through which schools may contribute to disproportionate minority contact with the justice system. *Micro-level* processes affect delinquents at the individual level, either because they're distributed unevenly by race/ethnicity or because they affect youth of color more adversely. For example, suspensions can be a micro-level factor if biased principals suspend more black youth than white youth. *Macro-level* processes, by contrast, operate at the classroom, school, or district level. For example, if predominantly black school districts are more likely than predominantly white districts to discipline students by suspending them, black students overall will be adversely affected, even if each district applies suspensions equitably within its own schools.

Some policies and interventions, if properly targeted and implemented, show promise for helping schools reduce their role in justice system inequality, Hirschfield writes. One is school-based restorative justice practices like conferencing and peacemaking circles, which aim to reduce misbehaviors by resolving conflicts, improving students' sense of connection to the school community, and reinforcing the legitimacy of school authorities. Another is Positive Behavioral Interventions and Supports, a multi-tiered, team-based intervention framework that has proven to be effective in reducing disciplinary referrals and suspensions, particularly in elementary and middle schools. However, he notes, if successful programs like these are more accessible to well-off schools or to white students, they may actually exacerbate inequality, even as they reduce suspension for blacks.

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Juvenile delinquency, in its most common forms, is an equal opportunity endeavor. White, black, Latino, Asian, and Native American youth all commit delinquent acts, albeit with varying frequency. But delinquents face very different risks of legal consequences depending on their racial or ethnic backgrounds. For example, in the late 1980s and early 1990s, a self-reported offense committed by a black juvenile in Rochester, NY, was about 3.6 times more likely to result in police contact than an offense reported by a white juvenile. Offenses by Latino youth were nearly twice as likely to do so.¹ Around the same time, offenses in Seattle's high-crime neighborhoods were twice as likely to lead to juvenile court referrals when the offender was a black juvenile rather than a white juvenile (and if they were drug offenses, 8.5 times as likely). Offenses committed by Asian Americans were three times as likely to lead to juvenile court.²

Studies of Pittsburgh and Chicago later in the 1990s also found that black juvenile offenders are more likely to be arrested than whites (and Latinos in Chicago), even after taking into account frequency of offending and other risk factors.³ The disparate juvenile justice outcomes facing otherwise similar youth of varying ethnic backgrounds are the central problem in the field of research and advocacy that focuses on disproportionate minority contact (DMC).

Decades of research on DMC have documented its scope and resilience. Researchers have found that compared to whites, black delinquents face an elevated risk of formal court processing (as opposed to release or diversion), transfer to criminal court, juvenile detention, and out-of-home

placement. Native American and Latino delinquents are also overrepresented at various stages of juvenile justice processing, but less consistently and less severely than African Americans are. Explanations for these disparities include biased assessments of need, threat, and blame; differential access to private treatment; geographic variation; legal factors (such as prior record) that disadvantage minorities; and extralegal factors (such as poverty, family stability, and perceived family supervision) that do the same.⁴ School experiences also vary markedly by race and ethnicity, and some school-related factors demonstrably affect the risk and intensity of juvenile justice involvement. The first purpose of this article is to review the evidence regarding how disparate school experiences contribute to DMC. Second, based on that review, along with evidence from evaluations of alternative school disciplinary and policing approaches, I will discuss school and juvenile justice reforms that could diminish the influence of schools on DMC.

Like DMC research more generally, this article focuses not on ethnic differences in behavior but on differential responses to misbehavior, and how schools deliver and facilitate such responses. Accordingly, the ways that schools likely increase racial/ethnic differences in offending fall outside the scope of this review. In brief, schools likely contribute to differences in offending by providing less engaging, therapeutic, and supportive environments to students of color, thus leading to differences in school achievement, engagement, and bonding.⁵ Because of racial and economic segregation, minorities are also more likely to attend schools that are large, disadvantaged, and/or overcrowded, with less cohesive social climates.⁶ Although these dimensions of

racial inequality are important, I'll touch on them only to the extent that they contribute to racially disparate *responses* to delinquency, and to the discussion of the impact of particular reforms—for example, reductions in DMC can conceivably be undermined by declines in school achievement and safety.

Out-of-School suspensions are prevalent, vary markedly by race and ethnicity, and demonstrably influence some forms of juvenile justice processing.

The mechanisms through which schools contribute to DMC can be divided into two main types. *Micro-level processes* elevate individual delinquents' risk of an adverse juvenile justice outcome and contribute to DMC, either because they're distributed unevenly by race/ethnicity or because they affect youth of color more adversely. For example, suspensions can be a micro-level factor if biased principals suspend more black youth or if suspensions differentially worsen juvenile justice outcomes for black youth.

Macro-level processes, by contrast, don't depend on discriminatory treatment at the individual level. Instead, they operate at the classroom, school, or community level. For example, let's say schools in County A apply punishments evenly by race, while those in County B do not. However, school principals in County A, which is predominantly black, are more punitive than principals in County B, which is predominantly white. Under this scenario, County A's racially equitable school practices may contribute more to overall

DMC than County B's racially inequitable practices.

The distinction between micro- and macro-level processes is an important one. Micro-level factors direct our attention to individual circumstances that disadvantage racial and ethnic minorities, and to organizational decisions that weigh such circumstances. Macro-level factors call for broader policy interventions, such as equalizing practices and resources or distributing white and black students more evenly across schools and communities.

Micro-Level Mechanisms Linking Schools and DMC

The race-linked school factor that has received the most attention from researchers and policymakers concerned about DMC is punishment. Out-of-school suspensions (hereafter simply referred to as *suspensions*) are particularly important because they're prevalent, they vary markedly by race and ethnicity, and they demonstrably influence some forms of juvenile justice processing. During the 2013–14 school year, 18 percent of black male and 10 percent of black female public school students in the United States received at least one suspension, rates that were 3.6 and 5 times higher, respectively, than those of white boys and girls.⁷ Native American and Latino boys (but not girls) were also suspended at higher rates, although these disparities from white boys (6 percent and 2 percent, respectively) were substantially lower than among black boys.⁸

Several studies suggest that differences in student behavior and academic performance can explain only some of the black-white gap in office disciplinary referrals and suspensions. Perhaps the most important antecedent is the frequency of behaviors

that commonly invoke school punishment, such as physical aggression and defiance. Studies have found that after controlling for teacher reports of the frequency of such behaviors, along with other predictors, substantial racial gaps in disciplinary referrals remain.⁹ A recent national study of 10th-grade suspensions reported similar residual gaps after controlling for students' self-reported school fighting, frequency of substance use, and tolerance toward various school misbehaviors.¹⁰ Statistical controls for school effects preclude that this large race effect was due to the concentration of African Americans in disorderly or punitive schools (although their concentration in such classrooms may have played a role).

A second national study found that blacks faced a higher risk of suspensions in eighth grade, after controlling for parental reports of cheating, stealing, and fighting, as well as school characteristics. However, unlike in most studies, the racial gap vanished after controlling for the average of teacher reports of misbehavior in kindergarten through third grade. Early teacher reports may capture not only behavioral trajectories but also racially conditioned reputations earned from past disciplinary experiences and carried into the middle school years. But reputations developed in third grade or earlier could plausibly influence disciplinary decisions in eighth grade only if those reputations were sustained by continued deviant involvement.

Although statistical findings about how race affects suspensions may leave some room for doubt, racial impacts also emerge in ethnographic accounts of teachers' culturally biased perceptions of threatening behavior. This was supported by a recent study showing that students with darker skin tones, especially African American girls,

are more likely to be suspended.¹¹ It bears remembering that studies limited to public schools or to single urban school districts are likely to understate the racial/ethnic gaps in suspensions, because white students disproportionately attend private and suburban schools.

In contrast to studies of the black-white suspension gap, most studies that examine the Latino-white suspension gap suggest either that the gap isn't statistically significant or that it's explained by differences in misbehavior and other risk factors.¹² At least two studies have found an Asian-white gap that remains even after controlling for factors such as teacher and school characteristics, suggesting discrimination favoring Asian Americans.¹³

The association between suspension and race merits extra scrutiny, because this particular school-related explanation for DMC is the most prominent one in descriptions of a school-to-prison pipeline. First and foremost, barring students from school gives them more unsupervised time in the community, thus leaving them more vulnerable to police targeting. A study of an urban school district—one that echoed the results of an earlier, less rigorous study of two major metropolitan areas—compared the differences between suspended and non-suspended students on school days versus on weekends and holidays, and estimated that suspensions double the risk of arrest (and increase felony arrests).¹⁴ Suspension effects were especially pronounced for African American students and were not statistically significant for Latino and Asian American students. This pattern suggests that suspensions compound the elevated police scrutiny already faced by African American youth, and/or that suspended nonblack

students experience more restraints (such as tighter supervision) on delinquency. The links between race and suspensions and between suspensions and arrest are so strong that, in a national study of teen behavior during the late 1990s, they accounted for the marginal effects on arrest of being black, net of delinquency, socioeconomic status, and dropping out.¹⁵

Suspensions are far from the only school reaction to misbehavior that can reinforce DMC. Severe or chronic misbehavior (whether it's on or off campus) often triggers disciplinary transfers to alternative schools. Following the institutionalization of zero-tolerance policies and high-stakes testing, alternative schools for at-risk youth grew nationally to as many as 20,000 by 2002.¹⁶ Not surprisingly, African American students face a higher risk of disciplinary transfer to an alternative school. A recent study of one Kentucky school district found that black students were nearly 3.5 times more likely to be placed in alternative schools than either whites or other minority groups.¹⁷

Attending a such a disciplinary school likely boosts young people's involvement with the juvenile justice system. First, police may identify alternative schools as high-risk zones and give young people in the vicinity extra scrutiny, especially if their ethnicity makes them stand out.¹⁸ Moreover, officially designated alternative schools aren't the only schools that can become hyper-criminalized. My research on Chicago high schools demonstrates that court-involved youth tend to concentrate in particular mainstream schools, and that the prevalence of such youth in many high schools far exceeds the arrest prevalence rates in the neighborhoods feeding those schools. Two processes likely produce these sites of hyper-concentrated

juvenile justice contact, which serve African American students almost exclusively. First, exclusionary policies permit Chicago schools to transfer students to other schools for disciplinary reasons and to exclude youth who are arrested off campus or who are released from secure facilities.¹⁹ Second, expanded school choice makes it harder for unsafe or underperforming schools to attract students in their own neighborhoods, leading to declining enrollments. To stem the decline, these underperforming schools become default options or dumping grounds for students who are unwelcome in other schools. Police may see students of both official and de facto alternative schools as attractive targets for stops, because those students are statistically more likely to have active warrants or probation/parole status (which subjects them to warrantless searches).

The second way alternative schools may contribute to DMC is through interagency partnerships. In 2000–01, 84 percent of public school districts with alternative schools and programs reported that they had partnered with the juvenile justice system to provide services, while 70 percent partnered with the police or sheriff's departments. Presumably, working relationships with police, and with juvenile justice workers such as probation and parole officers, make these schools relatively likely to summon these agents and relay incriminating information to them.

A strong working relationship with police isn't unusual. According to estimates stated on the website for the National Association of School Resource Officers, between 14,000 and 20,000 police officers are stationed at least part-time in nearly 30,000 US schools. When schools have police on the premises,

misbehavior is more likely to come to police attention, to be defined as a crime, and to precipitate arrest and school exclusion.²⁰ During the 2011–12 school year, public schools referred 260,000 incidents to law enforcement and police made 92,000 school-related arrests.²¹ The proportion of black students among school arrestees was 31 percent, nearly double their 16 percent share of the enrollment population.²² Latino students were proportionately represented among school arrestees, whereas white and Asian American students were underrepresented.²³

The degree to which racial disparities in school arrests help explain DMC as a micro-level factor depends largely on two things. The first is the extent to which these racial disparities reflect differential responses as opposed to legitimate behavioral explanations. The second is what happens to young people in the juvenile justice system following school-related arrests, and any racial disparities therein.

How closely do racial differences in school arrests reflect racial differences in misbehavior? Unfortunately, the research on school arrests and court referrals doesn't offer a definitive answer to this question. Nonetheless, behavioral explanations seem insufficient. Analyses of school arrests and referrals in various jurisdictions have found that the most common offenses triggering school arrests are fighting and disorderly conduct (including disruptive or disrespectful behavior).²⁴ National self-report data suggest that black 10th-graders fight in school about 35 percent more often than white, Latino, or Asian students.²⁵ But the observed racial gaps in the risk of school arrests are typically at least 100 percent, suggesting that police are more inclined to

arrest black students who fight than white ones.

Indeed, analyses of disciplinary incidents that were reported to the police in West Hartford, CT, in 2005–07 revealed that among students involved in fights, blacks were markedly more likely than whites and Latinos to be arrested: 23 percent of the black fighters were arrested, compared to 11 percent of whites and 14 percent of Latinos.²⁶ The fact that white students were more likely than black students to use illicit substances and “had higher levels of attitudes supporting deviant behavior compared with black students” also casts doubt on behavioral explanations for huge racial disparities observed in school arrests for public order offenses in Boston and in drug arrests in East Hartford, CT.²⁷ In East Hartford schools in 2005–07, “incidents involving drugs, alcohol, or tobacco” were more than 10 times as likely to precipitate an arrest when the suspected students were black or Latino rather than white.²⁸

The role of school arrests in DMC also depends on the legal consequences of those arrests. If the vast majority of school arrests lead only to release without charges or to a juvenile court case that's diverted or dismissed, then school arrests have a limited direct impact on DMC. Unfortunately, we don't know the share of total US school arrests that are referred to court, nor do we know the eventual outcomes of such cases. We do know that in Connecticut, 52 percent of the 3,183 school arrests in 2011 were referred to juvenile courts.²⁹ We also know that US schools directly referred about 31,000 truancy cases to juvenile courts in 2013 (among about 55,600 total truancy cases).³⁰ But referral practices appear to vary widely by jurisdiction. In some places, such as Texas, Arizona, and Hawaii, school

referrals represent such a small share of juvenile court or probation caseloads (less than 6 percent) that they likely explain only a small portion of overall DMC.³¹ On the other hand, school referrals elsewhere constitute a substantial share of referrals. For example, in Texas in 2009–10, only 5,349 referrals to juvenile probation (6 percent of the state’s caseload) originated from schools. But Florida schools referred 26,990 cases (an estimated 22.5 percent of all delinquency cases) to juvenile courts during the 2004–05 school year. And for a time, schools in Clayton County, GA, referred so many students to courts (90 percent for offenses formerly handled by school officials) that they constituted nearly 25 percent of the total juvenile court caseload at their peak of 1,262 in 2003.³²

Thus, in some jurisdictions, racial disparities in school-based court referrals likely contribute directly and significantly to racial disparities in court participation. But even in these places, school-based referrals may contribute little to the disproportionate confinement of minorities. In a 2012 online survey, 40 percent of juvenile court judges reported that school officials encouraged placing status offenders in juvenile detention, but that says little about how often school offenders were actually detained.³³ Out-of-home placement (including youth prisons, group homes, residential treatment centers, boot camps, etc.) is even less likely to result from a school arrest. A study of 25,580 Missouri juvenile court cases processed in 2000 found that only 8.2 percent of cases originated from schools, and 10.7 percent of those cases resulted in out-of-home placement.³⁴ Overall, school-based referrals accounted for only 2.8 percent of the juveniles receiving out-of-home placement. But even school offenses that don’t lead to substantive court sanctions may influence the court processing that follows later arrests, because

they mean that juveniles have acquired a prior record or are on probation, as I discuss below.

Several of the race-linked micro-factors I’ve mentioned may contribute to DMC by increasing the likelihood that students will drop out of school. One study found that suspensions increase the risk of dropping out even after controlling for prior delinquency and a broad set of other risk factors.³⁵ This finding accords with qualitative research documenting the way disciplinary sanctions and transfers to alternative schools often push students, especially black students, out of school entirely.³⁶ Although no known studies have examined whether school arrests independently increase school dropout, rigorous evidence supports a causal connection between juvenile justice involvement and dropping out of school.³⁷ Dropping out, in turn, consistently predicts arrest and incarceration but not self-reported offending—which suggests that, like school suspensions, dropping out makes police encounters more likely.³⁸

How School Factors Affect Juvenile Justice Decision-Making

Inequality in juvenile justice outcomes often results when African Americans and ethnic minorities are judged (rightly or wrongly) by various juvenile justice decision-makers as relatively needy, at risk, or blameworthy. The school experiences I’ve discussed are among many factors that affect such judgments and, because of their skewed racial distribution, likely disadvantage African Americans. Unfortunately, among the many studies on juvenile justice decision-making, only a handful attempt to estimate the independent effect of school factors, and even fewer assess racial variation therein.

One of the first and most consequential decisions that juvenile justice authorities must make following an arrest is whether to release or to detain pending further proceedings. Racial disparities in juvenile detention were so stark that they led to DMC provisions in federal juvenile justice legislation in 1988 and 2002. Besides those provisions, a major foundation-funded reform initiative, the Juvenile Detention Alternatives Initiative (JDAI), has been implemented in almost 300 counties across the United States.³⁹ To curb secure detention, JDAI helps juvenile courts shift from subjective judgments to certain decision criteria that are demonstrably linked to recidivism. However, some of JDAI's objective risk indicators disadvantage youth who've had certain school experiences. For example, the use of prior record, pending court cases, and active probation status makes it more likely that youth with court cases stemming from school offenses will be detained. In addition, JDAI's risk assessments generally treat current school attendance as a mitigating factor. Thus, youth who are in the midst of a long-term suspension or who have been pushed out of school face a slightly greater detention risk.

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Some jurisdictions still rely heavily on subjective judgments of risk. Interestingly,

research fails to show that detention decisions consider school factors. A study of detention screenings in Maricopa County, AZ, in 2000–02 found that overall, out-of-school arrestees were more likely to be detained than arrestees who were enrolled in school.⁴⁰ But once the demographic, legalistic (such as type of offense, offense history, etc.), and community-level factors were taken into account, out-of-school youth were actually less likely to be detained.⁴¹ Similarly, an analysis of one Iowa county's cases from 2003–04 found that youth who weren't enrolled in school or who had school disciplinary problems faced a lower risk of detention before adjudication—an effect that was significantly more pronounced for African Americans.

Another critical decision in the juvenile justice process is whether to handle a case informally (for example, through diversion) or to recommend it for further court processing. Most cases recommended by intake staff for further court processing are subject to a formal petition at the discretion of a prosecutor. Thus the decision to *formally process* alleged delinquency generally entails affirmative decisions on the part of both intake staff and a prosecutor. Two studies of such formal processing decisions permit us to estimate the separate effects of having disciplinary problems in school and not attending school at all. One study involved delinquency cases from three Iowa jurisdictions in 1980–91; the other involved the same Iowa county mentioned in the previous paragraph, covering 1980–2000.⁴³ Both studies found that both disciplinary problems and dropping out made intake officers more likely to recommend formal processing, although in the multi-jurisdiction study, disciplinary problems had this effect in only one of the jurisdictions.⁴⁴ The single-

jurisdiction study also examined prosecutors' decision-making, and found that it was only among African Americans that disciplinary problems significantly increased the odds that prosecutors would file a formal petition; dropping out had no effect.⁴⁵

The next major processing outcomes are generally joint products of plea bargaining and judges' decision-making. Research on adjudication tends to find minimal or even reverse racial bias at this stage.⁴⁶ The one known study that examined the independent effects of disciplinary problems and dropping out on adjudication found that neither had any effect.⁴⁷

Racial disparities are often seen at the disposition stage, however, possibly because decision-makers at this stage are explicitly authorized to consider extra-legal factors. The majority of juvenile justice professionals in two of three courts interviewed for a 1996 study said that school records should influence dispositions; also, 35 percent of the overall sample said that attending a bad school or not attending school factored into harsh dispositions.⁴⁸ Researchers have found that African American and Latino delinquents are markedly more likely than whites to be sentenced to traditional out-of-home placements such as "training schools," after controlling for a plethora of outcome-related factors.⁴⁹ Some of these studies don't control for school experiences, allowing the possibility that school factors explain some of the racial gaps. But the four known studies on dispositional decision-making that include controls for school factors largely suggest otherwise. Three studies measured the impact of school enrollment, and only one of them—the one that covered the single Iowa court from 1980 to 2000—found that school factors increased the likelihood of out-of-

home placement versus juvenile probation.⁵⁰ That study, the only one that isolates the impact of school disciplinary problems, found that those problems had no effect.⁵¹ The 2003–04 study from the same county found that a measure combining non-enrollment and disciplinary problems actually lowered the risk of out-of-home placement for African Americans.⁵²

By far the most common disposition in juvenile courts is probation. Although school factors seem to wield little influence over whether juveniles are sentenced to probation versus out-of-home placement, they often help determine the fate of juveniles on probation. Probationers must comply with specific terms of supervision or face short-term confinement in a juvenile detention center, and possibly longer-term detention or out-of-home placement if probation is revoked.⁵³ Like curfews and drug tests, school attendance is a standard condition of juvenile probation (as well as juvenile aftercare/parole).⁵⁴ Being suspended from school may also violate the terms of probation.⁵⁵ Thus differences between whites and African Americans in school enrollment and discipline may mean varying rates of noncompliance with probation terms—which, in turn, could help account for racial gaps in detention and incarceration.

No known studies have directly assessed that notion, unfortunately, but several studies collectively build a strong indirect case. First, some but not all studies have found higher rates of technical violations or revocation among African American and Latino juvenile probationers.⁵⁶ Second, because school enrollment and attendance are standard conditions of probation, not attending school is a frequent probation violation. A study in three Iowa counties in 2005–06 found

that “school issues” (which weren’t defined) were the most common probation violations noted at detention hearings.⁵⁷ Similarly, a mid-2000s study of 120 probationers in an urban Mid-Atlantic county found that noncompliance with school requirements was the third most common violation preceding a decision to revoke probation (the first two being failed drug tests and missed court hearings).⁵⁸ Third, these studies suggest not just that school issues represent frequent probation violations, but also that some judges take these violations especially seriously. For example, although the Iowa study found that a probationer’s violation of school conditions wasn’t generally an aggravating factor in detention decision-making, in the jurisdiction with the largest minority presence (a fairly even mix of African American, Latino, and Native American youth), probationers with school issues were four times as likely to be placed in secure detention at the 24-hour detention hearing, after controlling for a variety of psycho-social, legalistic, and demographic risk factors.⁵⁹ The Mid-Atlantic study above found that at revocation hearings, probation was 11.3 times as likely to be revoked when the violation was not attending school—an odds ratio that was even higher than that estimated for re-arrest (8.1).⁶⁰

Macro-Level Mechanisms Linking Schools and DMC

So far I’ve focused on processes that operate at the individual level, especially the race-linked school factors that influence decisions to discipline, arrest, and impose legal sanctions on youth. But DMC doesn’t require biased decision-making on the part of individual principals, police officers, or juvenile justice officials. Even without biased decision-making, DMC would still

result from the policies and practices of the schools, police, and juvenile courts that some racial and ethnic groups are more likely to encounter because of racial segregation.

School Disciplinary and Policing Practices

Among school policies and practices, disciplinary codes and their enforcement may exert the greatest impact on DMC. Research has shown that black students, on average, attend schools where certain behaviors are more likely to earn suspensions than the same behaviors would in other schools, and where suspensions last longer.⁶¹ Although inter-school racial variation isn’t always evident within individual school districts, which may operate under uniform disciplinary codes, vast differences prevail from district to district.⁶² Analyzing data from 2009–10, one study found that the percentage of black students strongly predicts higher suspension/expulsion rates at both the district and school level. By contrast, the percentage of Latino students was associated with lower suspension and expulsion rates.⁶³

Black students, on average, attend schools where certain behaviors are more likely to earn suspensions than the same behaviors would in other schools.

Studies have also found that schools’ racial composition often boosts individuals’ risk of disciplinary referral and suspension beyond the effect of individual risk factors (including race) and other school characteristics.⁶⁴ For

example, black students in a Midwestern state were more likely to be suspended largely because of differences in their schools' racial composition and failure rates on state math and English exams.⁶⁵ Some see such patterns as signs of fear and hostility directed toward black students (also called *racial threat*), buttressed by a recent study suggesting that an increased black or Latino presence fails to increase schools' suspension rates for white students, and actually seems to decrease it.⁶⁶ But this pattern may also result from the concentration of acutely disadvantaged, disengaged, and disruptive students (as indicated by lower test scores and grades) in districts and schools that lack the resources to cope with those students through non-exclusionary means.

Whether the cause lies in racialized perceptions of "threat" or concentrations of acute disadvantage and disengagement, African Americans more often attend schools that practice harsh discipline. Such schools increase the risk of juvenile justice involvement through other means as well. First, these schools are more likely to arrest students and refer them to court. An analysis of national data in 2009–10 shows that schools' percentage of black students (but not of Latino students) predicted their rates of court referrals and arrests, after controlling for contextual factors.⁶⁷ The analysis didn't control for student misconduct, but a previous national study found that a school's percentage of black students was positively associated with principals' self-reported use of an "extreme punitive disciplinary response" (for example, police involvement and court referrals) after controlling for perceptions of safety, as well as student delinquency and drug use.⁶⁸ Second, schools that practice harsh discipline seemingly pursue fewer

alternatives to exclusion and arrest. Using the same data and methods, another study found that higher proportions of either black or Latino students predicted that a school would use fewer restorative practices such as restitution and peer mediation.⁶⁹ However, the expansion of such practices in the years since the study data were collected (1997–98) may have altered that dynamic.

Another alternative to exclusionary practices is to secure special services and protections, by screening more troubled students for learning disabilities or behavioral disorders. Such diagnoses are more likely to lead to an alternative to exclusion and arrest in affluent school districts, which find it easier to hire and retain special education teachers. These districts also have the resources to provide required services—such as those specified under Section 504 of the Rehabilitation Act of 1973—without federal help. Accordingly, even though districts and schools with more African Americans tend to have more youth with learning and behavioral problems, those districts and schools offered fewer students services under Section 504. Schools with a higher proportion of Latino students are also less likely to offer Section 504 services.⁷⁰ The most prominent special education alternative to exclusion and criminalization is individualized services under the framework of Positive Behavioral Interventions and Supports (PBIS), which can help troubled youth build new skills and change their milieu to avoid reinforcing negative behavior.⁷¹ Lack of resources (such as sufficient counseling staff) is widely recognized as a major obstacle to successfully implementing PBIS, especially in large districts like Chicago where "the scope of students' needs broadly exceeded the resources available."⁷²

A student's school doesn't just affect the odds of suspension, arrest, or treatment following a legal or rule infraction; it also predicts the odds that an offense will come to the attention of the authorities in the first place, thanks to different surveillance and policing practices. As I mentioned earlier, disciplinary alternative schools draw extra police attention. But even students attending mainstream schools can be subjected to greater security and police scrutiny, especially students who are African American. First, inner-city public schools with predominantly African American enrollment tend to have the heaviest police and security presence. A typical rural or suburban high school student attends a school patrolled by a single officer, who may even be shared with other schools in the district. But typical inner-city high schoolers fall under police gaze many times during the school day, whether at the entrance gates, at the metal detector, on closed-circuit TV screens, or after school.⁷³ Though a heavy police presence may help such schools keep disorder and crime in check, it also means that more students are escorted out in handcuffs for such noncriminal rule violations as failing to present ID when asked, cussing out a security guard, or refusing to remove clothing that violates a dress code.⁷⁴

Research on Chicago high school students suggests that students at some predominantly African American schools may also face more police scrutiny en route to and from school, because they're more likely to have to walk or take public transportation. Furthermore, thanks to racially imbalanced neighborhood school closures, these students must often endure longer commutes that may require traversing hostile or high-crime neighborhoods.⁷⁵ Thus overall racial differences in suspensions can be partially

explained by differences between black and white students in the likelihood of attending schools that draw more intensive surveillance, coupled with more pronounced racial differences in suspensions within such schools.⁷⁶

Given that school exclusion is thought to affect DMC through numerous micro-level processes, and that differences in school and court practices can also affect DMC in multiple ways, tests of these individual links tell us little about schools' overall or cumulative effects on DMC. But a couple of studies do offer rough estimates of such overall contributions. The first of these studies, undertaken in Texas, found that in a given year, schools with higher rates of suspensions and expulsions than their demographics and achievement test scores would predict also have more students that year with juvenile court referrals. Interestingly, the study also found that among urban schools, leniency (that is, less punishment than demographics and achievement scores would predict) was also associated with more juvenile justice referrals; the same was not true of rural and suburban schools. Unfortunately, the lack of behavioral measures and a longitudinal design precludes discerning whether leniency and strictness affect delinquency or reactions to delinquency, or vice versa.

The second study was more sensitive to variation in district-level processes, because it examined the effects of variation between counties rather than between schools. It found that in Missouri, county-level racial disparities in suspensions strongly predicted counties' racial disparities in juvenile court referrals, after controlling for racial disparities in poverty and rates of black employment.⁷⁷ Unfortunately, this study also

couldn't rule out the possibility that racial disparities in the frequency of offending explain racial differences in both suspensions and court referrals (although it did demonstrate that blacks have a higher risk of suspension following a disciplinary referral).

Implications for Policies to Reduce DMC

Research evidence suggests that a host of school-related individual experiences and contextual factors help explain DMC. Reformers seeking to reduce DMC could target any number of these factors. Since I don't have space in this article to thoroughly discuss policies that could ameliorate each one, I focus on policy interventions that fit three criteria:

1. They target the school-related factors that are most clearly and strongly linked to DMC;
2. They seem well suited to reducing DMC without undermining outcomes of equal or greater social value, like school safety and performance; and
3. They are politically plausible.

The second criterion is important because policies that do otherwise are self-undermining. The third criterion means I won't be discussing policies that attack the structural roots of some of the school-related contributors to DMC. For example, if schools received funding based on the needs of the student population, schools would presumably opt for effective services over cheaper alternatives like suspensions and arrest. Likewise, if systemic residential and/or school segregation ceased, differences in racial composition and commuting conditions across disparate schools and school districts

would hardly factor into DMC. But until massive redistribution and desegregation become politically viable, discussing such policies seems premature.

School-based restorative justice practices aim to reduce misbehaviors by resolving conflicts, improving students' sense of connection to the school, and reinforcing the legitimacy of school authorities.

Based on the available research and some logical conclusions we can draw from it, the school-related factors most likely to contribute to DMC are suspensions and school-based arrests and court referrals. Suspensions appear to directly increase the risk that a student will be arrested or drop out of school; these things, in turn, directly influence juvenile justice experiences like probation. Prior evidence doesn't support such a definitive statement about the impact of school-based arrests. However, the observed impact of arrests more generally, along with the fact that school-based arrests often trigger or accompany the school disciplinary process and generate a record, justify the commonsense assumption that school-based arrests have similar effects. Policies designed to reduce suspensions and arrests should also cut enrollment in officially designated and de facto alternative schools.

Fortunately, at least two common disciplinary alternatives, when implemented properly, have been shown to reduce suspensions

without discernibly harming school safety or overall performance. School-based restorative justice practices like conferencing and peace-making circles aim to reduce misbehaviors by resolving conflicts, improving students' sense of connection to the school community, and reinforcing the legitimacy of school authorities. The Denver school district is widely heralded for its restorative justice practices. Between 2005 and 2015, as restorative justice expanded from six Denver schools to citywide, school suspensions fell 64 percent even as enrollment grew steadily.⁷⁸ At the same time, Denver schools reported impressive growth in standardized academic achievement—bucking statewide trends—and a marked reduction in the dropout rate.⁷⁹ Some Denver educators have complained of worsening disciplinary problems, which may erode support for the reforms.⁸⁰ That said, this perceived disciplinary downturn hasn't translated into increased juvenile justice involvement. Law enforcement and school-based court referrals also steadily declined in Denver, thanks in part to an agreement signed by the Denver police in 2013 to “differentiate between disciplinary issues and crime problems” and to “de-escalate school-based incidents whenever possible.”⁸¹

The multi-tiered, team-based PBIS intervention framework has proven to be even more effective in reducing disciplinary referrals and suspensions, particularly in elementary and middle schools.⁸² The first tier of interventions accomplishes this by training staff in non-punitive methods of behavior management, such as teaching behavioral expectations, rewarding positive behavior, and redirecting misbehavior. Rather than suspending students who don't respond to tier one interventions, PBIS encourages structured monitoring and intensive, individualized supports, especially for

students with chronic behavioral needs. PBIS has proliferated nationally since the early 1990s; 16,000 school teams had reportedly been trained by 2012.⁸³ Though there are formidable challenges to fully implementing PBIS, such as staff resistance and insufficient resources, once they're overcome this program can keep troubled students in the classroom and the school without endangering school safety and academic performance.⁸⁴

Restorative justice practices and PBIS can dramatically curtail school suspensions, but they reduce DMC only when they're carefully targeted to particular students and schools. If successful programs are more accessible to well-off schools or white students, they may actually exacerbate DMC, even as they dramatically reduce suspension for blacks. For example, the suspension rate for black students in Denver fell from 17.6 percent in 2006–07 to 10.4 percent in 2012–13, a 41 percent decrease.⁸⁵ But during the same period, the suspension rate for white students fell 61 percent, from 5.9 percent to 2.3 percent. As a result, blacks were three times as likely to be suspended as whites in 2006–07 and 4.6 times as likely in 2012–13. The Latino to white suspension rate ratio also grew, but only slightly.

Similar patterns have followed PBIS implementation. In 2004, Maryland mandated that schools with high suspension rates implement PBIS, or another state-approved behavioral modification program, and provided statewide PBIS training. The state became a national leader in PBIS implementation, bringing the program to 1,040 schools by 2014.⁸⁶ But universal accessibility produced a sharper drop in suspensions for whites than for blacks, so that Maryland's racial gap in suspensions

actually increased between 2009–10 and 2011–12.⁸⁷ Racial gaps have also been resilient in California, despite dramatic drops in suspensions after various large jurisdictions banned suspensions for willful defiance and expanded alternative strategies like restorative justice and PBIS.⁸⁸

Although such findings are troubling, the observed drops in suspensions still benefit a higher portion of black students and may reduce DMC. Because suspension rates are much higher for blacks, a disproportionate share of students who are spared suspension (and the negative consequences like arrest) because of reforms are black. For example, 26,411 fewer black students were suspended in California in 2015 than in 2013, a number that constituted 7.1 percent of the black public school population. The 26,685 white students who were similarly spared suspension made up only 1.8 percent of the white student population. Moreover, given that marked suspension effects on arrests are evident only among blacks, comparable declines in suspensions by race should produce greater declines in arrests and juvenile court involvement for blacks—although this hypothesis needs to be confirmed empirically.

Two central factors may explain the limited success of restorative justice and PBIS in closing discipline gaps. First, in practice, these approaches reduce punishments largely by altering how teachers and administrators respond to less serious offenses like disruption, disobedience, and fights. Students who commit more serious offenses, or whose chronic misbehavior has already designated them as unredeemable, are more likely to be considered unsuitable candidates for suspension alternatives. Thus, how much each ethnic group in a school

benefits from interventions targeting lower-risk troublemakers depends on the portion of known “offenders” in each group who qualify as lower-risk. Owing to the objectively (as well as subjectively imputed) higher levels of risk factors among black students, the risk distribution of troubled black students relative to that of their white counterparts is skewed in a manner that often ensures that a smaller portion of troubled black students (versus troubled white students) benefits from suspension alternatives.⁸⁹ The same pattern holds for any other non-exclusionary intervention that selects participants by marginally lowering thresholds for inclusion on the basis of the frequency or severity of misbehavior.

The second reason for the lingering or worsening racial gaps in suspension is that the accessibility and success of disciplinary alternatives depend on school and district resources. Individualized PBIS targets the most needy (such as high-risk) students and therefore could achieve relatively steep reductions in suspension among black students. But the schools and districts where black youth with chronic behavioral problems are concentrated are often not equipped to provide intensive, diversionary services to all needy students.⁹⁰ Those services usually require more money, personnel, time, and space than are available. They also require staff with the skills and motivation to help youth from divergent cultural backgrounds and those who are receptive to receiving this help.⁹¹ White youth with chronic behavioral needs are therefore more likely to get the culturally responsive help and support they need.

Responsibly reducing racial gaps in suspensions and school-based arrests requires districts to allocate limited resources and

culturally responsive interventions in ways that largely benefit the racial and ethnic groups that suffer most from exclusion and criminalization. There are several ways to effectively target resources and policies without selecting individual students by race. The first method, mentioned above, is to direct more resources to students with chronic behavioral problems. These students are at the greatest risk of school punishment, arrest, and intensive juvenile justice system involvement.⁹² Hiring more counselors and social workers to assist youth with behavioral problems can help schools rely less on the police. For example, after the East Side Union High School District (94 percent minority) in San Jose, CA, placed social workers in each school and doubled its counseling staff, referrals to the police fell 88 percent (from 1,745 to 214) between 2011–12 and 2013–14.⁹³

A number of strategies could help equalize access to quality services. First, states can directly expand treatment access for poor students and poor school districts using federal and state resources made available by the Medicaid expansion (and overall expanded coverage) under the Affordable Care Act. Under this law, an estimated 62 million Americans were due to acquire coverage for mental health, substance use, and other behavioral health care.⁹⁴ Connecticut exemplifies this approach. In 2016, on the heels of a statewide policy of rejecting court cases arising from “normal adolescent behavior” in schools, the Connecticut legislature mandated that state education, mental health, and juvenile justice agencies devise a plan to expand behavioral health services (available through the Medicaid expansion) to “schools and school districts with high rates of school-based arrests, disproportionate minority contact, and court referrals.”⁹⁵

Of course, some states haven’t participated in the Medicaid expansion or are disinclined to try to equalize access to treatment. But county authorities can still expand use of services and reduce school-based court referrals even without a marked increase in external funding and policy support. This approach is best exemplified by Clayton County, GA, which is 70 percent black. It essentially involves reallocating resources from back-end responses to delinquency (such as court processing, probation, and detention) to front-end responses that occur before referral to juvenile court. The chief judge of Clayton County’s juvenile court, Steven Teske, recognized that the large number of juvenile court referrals from schools reflected the fact that schools lacked capacity to address behavioral problems. In response, he spearheaded a two-pronged approach. First, he and other county officials co-sponsored the Clayton County Collaborative Child Study Team (Quad C-ST), to which schools and other agencies could refer youths who needed intensive psycho-social services. Second, in exchange, the school district and the county police chief agreed to pursue diversionary options before referring students to juvenile court for misdemeanor offenses.⁹⁶ School-based referrals to juvenile court dropped precipitously immediately after implementation, and fell more than 73 percent from 2003 to 2011.⁹⁷ The felony referral rate also declined, by 51 percent from its 2004 high, while the graduation rate had increased 24 percent by 2010.⁹⁸ Although this reform didn’t necessarily reduce DMC within the county, it plausibly reduced overall DMC in Georgia, assuming that predominantly white counties achieved much smaller reductions.

Connecticut's advocacy of targeting particular schools and school districts is in keeping with the approach pursued by the US Department of Education's Office for Civil Rights (OCR) from 2011 to 2016. In accordance with stepped-up civil rights enforcement, the Obama administration defined racial disparities in suspensions and arrests within schools (and even between schools in the same districts) as actionable claims, even without evidence of intentional discrimination. The OCR conducted 204 compliance reviews and compelled many school districts to implement reforms with the goal of closing racial gaps in suspensions and/or arrests. Typically, districts were required to target the schools deemed most responsible for racial gaps. In California, for example, the Oakland Unified School District's agreement required them to "focus immediate attention and resources on those schools with the highest disproportionality in the overall use of suspensions and in suspensions by race."⁹⁹ A report prepared for the OCR tentatively claims that whole-school restorative justice was more beneficial for black students than for white students after controlling for factors such as the type of school and students' socioeconomic status.¹⁰⁰ Among schools where restorative practices were in full swing, the black-white suspension rate ratio reportedly grew between 2011–12 and 2013–14, from 1.81 to 4.64, because white students' rates fell more steeply than those of black students. But these gaps grew even more in schools that didn't implement the reforms, from 1.19 to 6.5.¹⁰¹

Although OCR priorities have shifted under the Trump administration, policy makers (especially state and local DMC coordinators) may still pursue targeted reforms to try to reduce DMC. For example, an analysis

of DMC in Peoria County, IL, led to the discovery that arrests of African Americans for fighting at a single high school accounted for an outsize portion of arrests and school-based referrals to detention. In response, restorative practices were introduced at that school and school policies were modified to accommodate them. School-based arrests for African American students then fell 43 percent, and school-based referrals to detention dropped 35 percent.¹⁰

Such analyses may reveal not only which schools generate excess court referrals, but also which ones contribute to DMC via other outcomes like probation or parole revocations. For example, a district might discover that black youth whose probation or parole is revoked due to suspension (or dropping out following suspension or school arrest) typically attend schools that pursue more frequent and longer suspensions and arrests in response to the same offenses. Rather than continuing to unfairly penalize some students for attending more-punitive schools, county officials could consider helping those schools reduce suspensions and arrests (as in Peoria) or treating attendance in a high-suspension/arrest (or high-dropout) school as a mitigating factor when considering suspensions, school arrests, and dropping out during court decision-making.

Summary and Conclusions

Discussions of DMC tend to downplay the role of schools in favor of other explanations, such as biased decision-making, family structure, and differential access to treatment. But research suggests that schools can not only augment these processes but also independently reinforce DMC—both through differential treatment and through differential policies with respect

to suspensions, arrest and court referrals, disciplinary transfers, school choice, school closures, commuting conditions, and concentrations of court-involved youth. In addition, some juvenile court decisions—such as those regarding detention, court intake, or revocation—weigh school status in a manner that may disadvantage black youth (although opposing patterns have been observed with respect to detention and disposition).

School suspensions, the most definitive school-related contributor to DMC, appear to be the most amenable to policy intervention. Policy makers can reduce DMC without undermining school safety

and performance by offering schools that contribute most to DMC the tools needed to effectively confront behavioral problems, both minor and chronic, without resorting immediately to suspensions and arrests. Restorative justice practices and PBIS seem to be among the most promising tools. Of course, allocating more resources to keep troubled students in the classroom might be a hard sell for policy makers, especially in states that haven't expanded Medicaid, and especially if doing so imposes a greater burden on overtaxed teachers and rule-abiding students. We urgently need more research to assess the benefits of such reforms relative to the costs for schools, for communities, and for taxpayers.

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