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## Eliminating Zero Tolerance Policies in Schools: Miami-Dade County Public School's approach

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## ELIMINATING ZERO TOLERANCE POLICIES IN SCHOOLS: MIAMI-DADE COUNTY PUBLIC SCHOOLS' APPROACH

*The United States has the highest prison population rate in the world. As a result, taxpayers spend over several billion dollars a year on prison costs. At a time where the United States has the highest incarceration rate and the highest amount of debt in history, saving money by reducing the prison population should be one of the highest priorities of U.S. citizens. More importantly, despite the fact that the U.S. Criminal Justice System is “race neutral,” racial minorities represent a disproportionately higher rate of the United States prison population despite the fact that they represent only a small fraction of the U.S.*

*Many prison systems as well as schools use zero-tolerance policies. Zero-tolerance policies are a popular feature of the United States Criminal Justice System and school discipline. Zero-tolerance policies in schools result in high suspension rates and expulsion rates among students in general, but disproportionately affect minority students, especially African-Americans because students who have been suspended or expelled are more likely than not to end up in the Criminal Justice System. As a result, zero-tolerance policies have created a pipeline from school to prison. To save money by decreasing the prison population and to stop the disparate impact of minorities, school systems should eliminate zero-tolerance policies from school discipline.*

*Adopting Critical Race Theory, this Article offers insight into the causes of racial inequality in America in general and in schools specifically. Adopting Restorative Justice Theory, this Article also argues that alternatives to zero-tolerance policies are more sufficient disciplinary policies than zero-tolerance policies. In this Article, I will examine the alternative disciplinary policies that the Miami-Dade County Public School District (MDCPS) has adopted as a potential model for other school districts. After adopting alternatives to school discipline, Miami-Dade County reduced school-related arrests, expulsions,*

*and suspensions. Schools can not only play their part in reducing discrimination, but schools can also play their part in reducing U.S. debt by eliminating zero-tolerance policies, which will shut off the School-to-Prison Pipeline.*

## I. INTRODUCTION

The youth of today are not the enemy, but our future. Our commitment to them, their safety and their success is evident by the way we treat, nurture, and respect each child. [W]e need to close the pathway that takes students from schools today, and places them in jails tomorrow.

—Eric S. Hall and Zorka Karanxha

“Get tough” policies (or zero-tolerance policies) are a popular feature of the United States Criminal Justice System and school discipline procedures. Zero-tolerance policies in schools result in high suspension and expulsion rates among all students, but disproportionately affect minorities, especially African-Americans. Students who have been suspended or expelled are more likely to end up in the prison system.

As a result, “get tough” policies have created a pipeline from school to prison. Based on Critical Race Theory, Section II offers insight into the causes of racial inequality in America and in schools specifically, and how it relates to higher discipline rates for minorities. Specifically, Section II discusses how discrimination against African-Americans operates at the inter-institutional level, the intra-institutional level, and the interpersonal level. By examining the cost of incarceration in the United States, Section III argues that zero-tolerance policies in schools burden society as a whole. Based on Restorative Justice Theory and positive reinforcement, Section IV argues that alternatives to “get tough” policies are better disciplinary policies than zero-tolerance policies. Lastly, Section V argues that Restorative Justice models such as those adopted by Miami-Dade County Public School District provide better outcomes for all students, especially African-American students.

## II. HISTORY OF RACIAL DISCRIMINATION

### A. *The Disproportionate Effect of Zero-Tolerance Policies*

Zero-tolerance policies that disproportionately discriminate against African-Americans operate at three levels: the inter-institutional, the intra-institutional, and interpersonal.<sup>1</sup> These three levels influence each other in perpetuating disparities for discipline between minorities and poor students.<sup>2</sup> The first level, inter-institutional, operates between federal and state housing institutions, city governments' relationships with neighboring communities, and education systems.<sup>3</sup> These institutions operate in such a way that contributes to segregation in schools, segregation in neighborhoods, and disciplinary disparities among races.<sup>4</sup> The second level is the intra-institutional level, which level incentivizes institutions to discriminate against poor people and minorities.<sup>5</sup> The third level is the interpersonal level, which explains how implicit biases affect day-to-day interactions among people—for example, how a teacher might perceive African-American students to be “bad students” because the teacher normally sees African-Americans on the news committing violent crimes.<sup>6</sup>

#### 1. *Inter-institutional level*

Dr. Martin Luther King, Jr. and other civil rights leaders protested to change laws that legalized explicit racism. Laws that reflected and protected modern biases came in the form of racial segregation—for example, Jim Crow laws. Racist laws such as Jim Crow, discriminatory zoning regulations, and racial covenants prevented African-Americans from buying homes in white neighborhoods, which had a long-lasting negative effect on black communities: residential segregation.<sup>7</sup>

<sup>1</sup> India Geronimo, *Systemic Failure: The School-to-Prison Pipeline and Discrimination Against Poor Minority Students*, 13 J. L. SOCIETY 281, 282 (2011).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 282–83.

<sup>6</sup> *Id.* at 283.

<sup>7</sup> William D. Henderson, *Demography and Desegregation in the Cleveland Public Schools: Toward a Comprehensive of Educational Failure and Success*, 26 N.Y.U. REV. L. & SOC. CHANGE 457, 465–69 (2001).

Understanding racial segregation is very important to understand the concentration of predominately African-American school districts.<sup>8</sup> Historically, students attend schools in their neighborhoods.<sup>9</sup> In the 1970s, white Americans began to leave urban areas in vast numbers to form all-white suburbs.<sup>10</sup> As white Americans relocated to the suburbs, African-Americans remained in urban areas where property values decreased and blue-collar jobs disappeared due to outsourcing.<sup>11</sup> Since highly concentrated school districts are a reflection of the schools' surrounding neighborhoods, segregated urban areas resulted in all-African-American school districts.

Dr. William Julius Wilson, in his book *The Ghetto Underclass*, labeled the remnants of the people who remained in some of these segregated urban areas as the "underclass."<sup>12</sup> According to Dr. Wilson, the underclass is poor and will remain poor because it suffers from lower socioeconomic status, lack of job training, lack of education, and a lack of opportunities.<sup>13</sup> Dr. Wilson concluded that social isolation, not African-American values or attitudes, led the underclass to live in a culture of poverty; therefore, this culture was the result of the social structure.<sup>14</sup>

The urban class problems are rooted in structural racism (racial segregation) and economic inequality.<sup>15</sup> Instead of recognizing the effects of inter-institutional racism, school officials and police officers often expect the underclass to "pull themselves up by their bootstraps." When the underclass does not conform to the norms, school officials, and police officers institute zero-tolerance policies.

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<sup>8</sup> Geronimo, *supra* note 1.

<sup>9</sup> *Id.*

<sup>10</sup> Henderson, *supra* note 7, at 468.

<sup>11</sup> See Deborah M. Weissman, *The Personal is Political and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 388 (2007).

<sup>12</sup> William Julius Wilson, *The Ghetto Underclass: Social Science Perspectives* 27 (William J. Wilson ed., 1993).

<sup>13</sup> *Id.* at 27.

<sup>14</sup> William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* 61 (William J. Wilson ed., 1990).

<sup>15</sup> *Id.*

## 2. *Intra-institutional level*

Between 1945–2009, to keep their jobs and receive extra funding, school administrators were pressured to meet federal benchmarks for higher test scores.<sup>16</sup> An unintended consequence of this pressure was a change in focus away from educating students to teaching students how to pass standardized tests.<sup>17</sup> Instead of promoting progress in reading and writing, these policies promote the marginalization of minorities at the intra-institutional level by only focusing on teaching students how to pass a test and finding reasons to expel those who do not test well.<sup>18</sup>

For example, the eleven educators in Atlanta who fraudulently changed students test scores to receive monetary bonuses for their schools and themselves and are an example of one the negative consequences of these types of policies. These Atlanta educators were promised that they would keep their jobs or receive bonuses for inflating test scores in an attempt to improve “poor” test scores.<sup>19</sup> In one instance, to insure higher scores in a standardized test, a principal went so far as to wear gloves to erase incorrect answers and write correct answers himself.<sup>20</sup> Unfortunately, this Atlanta school is not alone. Since 2001, Georgia authorities have found evidence of cheating in over forty schools.<sup>21</sup>

Another example of incentives at the intra-institutional level that promotes the marginalization of African-Americans, who historically score lower on standardized test than white students, is when administrators suspend or expel low-performing test-taking students from schools to guarantee higher test scores for the school.<sup>22</sup> Once administrators expel the students with poor test-taking skills, students with good

<sup>16</sup> See *Federal Education Policy and the States, 1945-2009* THE U.S. DEPT OF EDUC., [http://nysa32.nysed.gov/edpolicy/research/res\\_essay\\_reagan\\_fedaid\\_testscores.shtml](http://nysa32.nysed.gov/edpolicy/research/res_essay_reagan_fedaid_testscores.shtml) (last visited Apr. 2, 2016).

<sup>17</sup> *Id.*

<sup>18</sup> See Belinda Robinson, *Atlanta Cheating Scandal Teachers Go to Cells in Hand-cuffs: Eleven Educators Face Up to 20 Years in Prison for Inflating Their Students' Test Scores to Get Bonus Money for Their Schools . . . and for Themselves*, DAILYMAIL, (Apr. 1, 2015, 2:22 PM), <http://www.dailymail.co.uk/news/article-3021915/11-Atlanta-educators-convicted-test-cheating-scandal.html>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Geronimo, *supra* note 1, at 294–95.

test-taking skills remain. As a result, teachers are in a better position to keep their jobs and receive bonuses for the remaining students' higher test scores.<sup>23</sup>

### 3. *Interpersonal level*

Implicit bias operates at the interpersonal level. Implicit bias is the unconscious nature of our racially discriminatory beliefs.<sup>24</sup> The Freudian theory and cognitive psychology both help explain implicit racism.<sup>25</sup> Freudian theory states “that the human mind defends itself against the discomfort of guilt by denying or refusing to recognize those ideas, wishes, and beliefs that conflict with what the individual has learned.”<sup>26</sup> Cognitive psychology states that social structure transmits beliefs.<sup>27</sup> These beliefs are part of our culture: “Because these beliefs are so much a part of the culture, they are not experienced as explicit lessons.”<sup>28</sup> As a result, individuals' beliefs are part of how we perceive the world.<sup>29</sup> Therefore, individuals are not aware “that the ubiquitous presence of a cultural stereotype has influenced their perception that blacks are lazy or unintelligent.”<sup>30</sup> Another example of implicit bias is when a child, who is never told that African-Americans are inferior, perceives on his or her own that minorities are inferior by observing how society treats them.<sup>31</sup>

Interpersonal relationships reflect the way people interact with each other.<sup>32</sup> Interpersonal relationships explain why minorities experience more discrimination than non-minorities.<sup>33</sup> William Julius Wilson's underclass hypothesis helps illustrate why implicit biases are applied towards minorities.<sup>34</sup> Because of racial segregation, the underclass

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<sup>23</sup> *Id.*; Robinson, *supra* note 18.

<sup>24</sup> Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 322 (1987).

<sup>25</sup> *Id.* at 322–23.

<sup>26</sup> *Id.* at 322.

<sup>27</sup> *Id.* at 323.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Geronimo, *supra* note 1, at 295.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

consists disproportionately of racial minorities.<sup>35</sup> As a result, many authority figures, such as teachers and school security, stereotype all racial minorities as being dangerous, uneducated, and inferior in all aspects of life with the exception of sports and sex.<sup>36</sup> Mr. Wilson’s underclass theory predicts that when African-Americans threaten white Americans’ interests, white Americans implement social measures to control minorities.<sup>37</sup> Examples of such social measures include the implementation of zero-tolerance policies<sup>38</sup> and the building of more prisons.

### III. THE SCHOOL-TO-PRISON PIPELINE

#### A. *Zero-Tolerance Policies in Schools*

The School-to-Prison Pipeline is “a collection of punitive laws, policies, and practices that push young people—particularly African-American students, male students, students with disabilities, and students from [lower socioeconomic statuses]—out of school” and into the criminal justice systems.<sup>39</sup> Despite the decrease in youth crime rates over the last three decades, school districts continue to adopt punitive approaches towards school discipline.<sup>40</sup> The adoption of these policies have been influenced by the political climate: the media-driven fear of the juvenile super predator; the “War on Drugs”; mandatory minimum sentencing policies; “three strikes” laws; the Columbine shooting; and the Broken Windows policing theory.<sup>41</sup> More specifically, the federal government’s Gun-Free Schools Act of 1994 (“Gun-Free Act”), which required school administrators to expel for a minimum of one year all students who brought a gun to school,<sup>42</sup> influenced the adoption of similar zero-tolerance policies in schools. The

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<sup>35</sup> *Id.* at 296.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 296–297.

<sup>38</sup> *Id.* at 298.

<sup>39</sup> Jason B. Langberg & Barbara A. Fedders, *How Juvenile Defenders Can Help Dismantle the School-to-Prison Pipeline: A Primer on Educational Advocacy and Incorporating Clients’ Education Histories and Records into Delinquency Representation*, 42 J.L. & EDUC. 653 (2013).

<sup>40</sup> *Id.* at 654.

<sup>41</sup> *Id.*

<sup>42</sup> See 20 U.S.C. §§ 8921–23 (repealed 2002).

popularity of the Gun-Free Act influenced state lawmakers to enact similar zero-tolerance disciplinary policies.<sup>43</sup> The purpose of zero-tolerance disciplinary policies is to deter disruptive behavior and increase school safety.<sup>44</sup> But despite this honorable intent, zero-tolerance policies have neither deterred disruptive behavior nor created safer schools.<sup>45</sup> In fact, once enacted, zero-tolerance policies actually increased out-of-school suspensions and expulsions.<sup>46</sup> In addition to zero-tolerance policies, armed police officers are another popular feature that state policy-makers and local school districts have adopted.<sup>47</sup>

Instead of school officials applying zero-tolerance policies for the most heinous acts, educators are incentivized to apply those measures to minor student misconduct such as students' tardiness and absence from class, disrespectfulness to teachers, and non compliance with classroom rules.<sup>48</sup> Since educators are pressured to procure higher test scores from standardized tests, they use zero-tolerance policies to further that goal.<sup>49</sup> The rationale behind this approach is that with less "disruptive students" in a classroom, educators can effectively teach the remaining students how to excel on yearly standardized tests.

Zero-tolerance disciplinary policies are facially race-neutral; however, these have been applied disproportionately against minority children, poor children, and children with disabilities.<sup>50</sup> Because of implicit biases, minority students are suspended or expelled for the same offenses that white students commit, but are not expelled or suspended for committing.<sup>51</sup> For example, recent studies have shown that

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<sup>43</sup> Langberg & Fedders, *supra* note 39, at 654.

<sup>44</sup> *Id.* at 656.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See Johanna Wald & Lisa Thureau, *First, Do No Harm: How Educators and Police Can Work Together More Effectively to Preserve School Safety and Protect Vulnerable Students*, CHARLES HAMILTON HOUSE INSTITUTE FOR RACE AND JUSTICE POLICY BRIEF 1 (2010), [http://www.modelsforchange.net/publications/261/First\\_Do\\_No\\_Harm\\_How\\_Educators\\_and\\_Police\\_Can\\_Work\\_Together\\_More\\_Effectively\\_to\\_Preserve\\_School\\_Safety\\_and\\_Protect\\_Vulnerable\\_Students.pdf](http://www.modelsforchange.net/publications/261/First_Do_No_Harm_How_Educators_and_Police_Can_Work_Together_More_Effectively_to_Preserve_School_Safety_and_Protect_Vulnerable_Students.pdf).

<sup>48</sup> Heather A. Cole & Julian Vasquez Heilig, *Develop A School-Based Youth Court: A Potential Alternative to the School to Prison Pipeline*, 40 J.L. & EDUC. 305, 308 (2011).

<sup>49</sup> *Id.* at 320–21.

<sup>50</sup> *Id.*

<sup>51</sup> See Russell J. Skiba, Mariella I. Arredondo, and M. Karega Rausch, *New and Developing Research on Disparities in Discipline*, THE EQUITY PROJECT AT INDIANA UNIVERSITY 2 (2014), [http://www.issuelab.org/resource/new\\_and\\_developing\\_research\\_](http://www.issuelab.org/resource/new_and_developing_research_)

African-American students are 1.78 times more likely to be suspended than white students,<sup>52</sup> while Hispanic or Latino students were 2.23 times more likely to be suspended than white students.<sup>53</sup> Along similar lines, a study in Florida found that for the very same offense, “39% of African-American students were suspended, compared to 22% of White students, and 26% of Hispanic/ Latino students.”<sup>54</sup> Even between African-Americans and white students of the same socioeconomic status, the former served longer periods of suspension.<sup>55</sup> Despite that African-Americans and Latinos reported similar or lower drug use, alcohol use, and possession of weapons at schools compared to other students, African-American students were significantly more likely to be suspended compared to white students for the same behavior or offense.<sup>56</sup>

At the grade-school level, academic disengagement for African-Americans is a strong predictor of truancy.<sup>57</sup> Suspension is often the first step in a chain of events leading to short- and long-term consequences, including academic disengagement, academic failure, dropout, and delinquency.<sup>58</sup> A study of ninth graders in Florida showed that 73% of students suspended failed subsequent courses compared to 36% of students who were not suspended.<sup>59</sup> As a result, minority students are disproportionately sent to alternative schools, schools designed to educate students who have not been successful in traditional schools.<sup>60</sup> Instead of functioning as a solution for disciplinary issues, alternative schools only make matters worse.<sup>61</sup> For example, a study conducted on a Kentucky school district concluded that 50% of the students placed in alternative elementary schools experienced subsequent juvenile detention within four years, while 43% of students

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 3.

<sup>61</sup> *Id.*

placed in alternative middle schools were detained within less than two years.<sup>62</sup>

### B. *United States Prison Population*

School-level bias in discipline and the criminal justice system are interrelated.<sup>63</sup> A Missouri study on school discipline and juvenile justice for African-American and white students aged 10–17 reported racial biases in school suspensions to be a strong indicator of similar levels of racial disparity in juvenile court referrals.<sup>64</sup> Detention is harmful to youth for several reasons.<sup>65</sup> First, incarcerated youth suffer a high risk of becoming victims of sexual assaults.<sup>66</sup> Around 12% of youth incarcerated in facilities across the country reported experiencing “one or more incidents of sexual victimization by another youth or facility staff in the past” since being admitted into the facility.<sup>67</sup> Second, incarcerated youth suffer a high risk of committing suicide.<sup>68</sup> A national survey reports that of “110 juvenile suicides, 70% of youth who committed suicide were confined for non-violent offenses.”<sup>69</sup> Lastly, placing youth in correctional facilities increases recidivism rates among youth.<sup>70</sup> Youths in correctional facilities will most likely relapse: “Incarcerated youth were found to have a 70–80% recidivism rate within two to three years of release, and youth placed in correctional facilities reported higher rates of reoffending compared to youth who remained under community supervision.”<sup>71</sup>

### C. *Incentives for Reform: Financial Burden on Society*

While there are plenty of incentives to reform the zero-tolerance disciplinary policies that schools have adopted, perhaps the most pressing is the societal costs of incarcerating youth. A Texas study reported school discipline and retention’s

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<sup>62</sup> *Id.*

<sup>63</sup> See Skiba, Arredondo & Rausch, *supra* note 51, at 3.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 3–4.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 4.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

significant economic impact.<sup>72</sup> School discipline associated with 4,700 grade-retentions cost Texas nearly \$41 million each year of additional training.<sup>73</sup> Delays in entering the workforce related to grade-retention cost Texas over \$68 million.<sup>74</sup> Additionally, instead of spending money on social programs that can help improve the lives of youths, significant financial resources are allocated to maintain prisons and jails, which cost taxpayers almost \$6 billion in 2010.<sup>75</sup> Between the years of 1991 and 2010, the Federal Bureau of Prison's operation costs increased from \$1.3 billion to over \$6 billion.<sup>76</sup>

In 2007, “one in every twenty-eight children ha[d] an incarcerated parent.”<sup>77</sup> Incarceration does not only affect taxpayers—it also affects communities and families.<sup>78</sup> Most parents in federal prisons were the primary source of income for their family at the time of their arrest.<sup>79</sup> Therefore, the cost of raising those children is diverted to the federal and state governments and/or other sources.<sup>80</sup> Saving taxpayer money, preserving families, and preserving communities are long-term incentives for society to break the School-to-Prison Pipeline.

#### IV. ALTERNATIVE DISCIPLINARY POLICIES

##### A. *Restorative Justice*

Restorative Justice Discipline (“Restorative Justice”) is an alternative method of discipline used instead of retribution or rehabilitation.<sup>81</sup> Retribution focuses on revenge or an eye-for-an-eye punitive approach.<sup>82</sup> Rehabilitation focuses solely on

<sup>72</sup> *Id.* at 3.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Whitley Zachary, *Prison, Money, and Drugs: The Federal Sentencing System Must Be More Critical in Balancing Priorities Before It Is Too Late*, 2 TEX. A&M L. REV. 323, 333–34 (2014).

<sup>76</sup> *Id.* at 334.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 335.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> David Simson, *Exclusion, Punishment, Racism and Our Schools: A Critical Race Theory Perspective on School Discipline*, 61 UCLA L. REV. 506, 553 (2014).

<sup>82</sup> *Definition Of Retribution In Criminal Justice*, THE LAW DICTIONARY, <http://thelawdictionary.org/article/definition-of-retribution-in-criminal-justice/> (last visited Mar. 4, 2016).

rehabilitating an offender.<sup>83</sup> Restorative Justice focuses on correcting the harm that has resulted and rehabilitating the offender.<sup>84</sup> It focuses on “healing rather than hurting, moral learning, community participation and community caring, respectful dialogue, forgiveness, responsibility, apology, and making amends” to restore victims, perpetrators, and the community as a whole.<sup>85</sup> One form of Restorative Justice occurs when a judge or disciplinary board sentences an offender to community service.<sup>86</sup> Community service is a positive sanction that reduces the negative consequences of exclusion. Community service can improve an offender’s self-worth if the offender realizes the effects of his act.<sup>87</sup> Unlike most disciplinary procedures, which include excessive punishment and do not allow victims to have a say in the offenders’ punishment, Restorative Justice policies prevent offenders from being overly punished.<sup>88</sup> As a result, a sense of community is restored.

### *B. Positive Behavior Support*

Positive Behavior Support (“PBS”) is “the application of behavior analysis to achieve socially important behavior change.”<sup>89</sup> It was first created as an alternative to aversive interventions that were used to help students with severe disabilities who engaged in extreme forms of aggression.<sup>90</sup> It has also been successfully used as an intervention method for entire schools to help change student behavior.<sup>91</sup>

Positive Behavior Support is a behaviorally based intervention approach used to improve schools, families, and communities “to design effective environments that improve

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<sup>83</sup> *What is Rehabilitation?*, THE LAW DICTIONARY, <http://thelawdictionary.org/rehabilitation/> (last visited Mar. 4, 2016).

<sup>84</sup> Simson, *supra* note 81, at 553.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> RESTORATIVE JUSTICE, <http://www.restorativejustice.org/university-classroom/01introduction/tutorial-introduction-to-restorative-justice/outcomes/communityserv> (last visited Mar. 4, 2016).

<sup>88</sup> *Id.*

<sup>89</sup> FLORIDA’S POSITIVE BEHAVIOR SUPPORT PROJECT: A MULTI-TIERED SUPPORT SYSTEM 1, <http://flpbs.fmhi.usf.edu/pdfs/FAQs%20final%20revision%2011%2018%2005.pdf> (last visited Mar. 4, 2016).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

the fit or link between research-validated practices and the environments in which teaching and learning occurs.”<sup>92</sup> PBS has been effective in helping improve student behavior because of the following reasons: (1) the interventions take into account the context in which behavior occurs; (2) the intervention addresses the reason for the behavioral problem; (3) the inventions can be justified by the outcomes; and (4) the offender and the community typically support the outcomes.<sup>93</sup>

What makes PBS effective is that it is a school-wide system that consists of a team of administrators, faculty, and staff members.<sup>94</sup> Teams meet at least once a month to track discipline data, identify new intervention areas, and communicate those ideas to the rest of the school.<sup>95</sup> Disciplinary procedures are applied consistently throughout the entire school to discourage misconduct.<sup>96</sup> Schools also use a reward system to encourage appropriate conduct.<sup>97</sup>

### C. *Positive Behavior Support Systems*

Positive behavior support systems are also effective alternatives to zero-tolerance policies. Like Restorative Justice Discipline, positive behavior support systems emphasize prevention and positive responses to misconduct.<sup>98</sup> Positive behavior support systems utilize a three-tiered positive behavioral system: Tier One consists of primary intervention; Tier Two consists of secondary prevention; and Tier Three consists of tertiary prevention.<sup>99</sup> Restorative Justice Discipline can be implemented in positive behavior support’s tertiary tier of prevention.<sup>100</sup> For example, “a class meeting may be held to discuss how all students are affected” by one student stealing property, and what everyone can do to prevent the theft from

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 5.

<sup>95</sup> *Id.* at 3.

<sup>96</sup> *Id.* at 9.

<sup>97</sup> *Id.*

<sup>98</sup> Jeffrey Sprague & Michael Nelson, *School-Wide Positive Behavior Interventions and Supports and Restorative Discipline in Schools* 9, <http://pages.uoregon.edu/ivdb/documents/RJ%20and%20PBIS%20Monograph%20for%20OSEP%2010.11.12.pdf> (last visited Mar. 4, 2016).

<sup>99</sup> *Id.* at 5–6.

<sup>100</sup> *Id.* at 10.

occurring.<sup>101</sup> The focus of both systems is to build relationships, a sense of community, and to repair harm after a conflict arises.

Positive behavior support systems and Restorative Justice Discipline are alternatives that can complement each other.<sup>102</sup> There is more research supporting PBS and its effects than Restorative Justice Discipline.<sup>103</sup> Researchers are encouraged to conduct research to measure the effectiveness of Restorative Justice practices in reducing suspensions and expulsions, decreasing referrals, and improving academic achievement.<sup>104</sup> Additionally, several studies support replacing zero-tolerance policies in schools with Restorative Justice policies.<sup>105</sup> Several programs, such as Cole Middle School in West Oakland, California, the Denver Public Schools, several schools in Pennsylvania, and four Minnesota school districts had significant positive results when they replaced zero-tolerance policies with Restorative Justice programs.<sup>106</sup>

Also, the Thelton E. Henderson Center for Social Justice at the University of California conducted a study on Cole Middle School's Restorative Justice program.<sup>107</sup> The study found that the average suspension rates dropped from 50% to 6 % after the implementation of a Restorative Justice program.<sup>108</sup> Additionally, Cole Middle School's Restorative Justice program decreased fights and built positive relationships among its students.<sup>109</sup> Like Cole Middle School, the Denver Public Schools reduced out-of-school suspensions from 2006 to 2009.<sup>110</sup> The International Institute for Restorative Practices also found positive results when six Pennsylvania schools and international schools implemented Restorative Justice programs.<sup>111</sup> Denver's North High School reduced suspensions by 34% in the first four years it implemented Restorative

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 4.

<sup>103</sup> *Id.* at 10; *See* Skiba, Arredondo & Rausch, *supra* note 51, at 3.

<sup>104</sup> *Id.*

<sup>105</sup> Simson, *supra* note 81, at 554–55.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 555.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

Justice programs.<sup>112</sup>

*D. District Level Positive Behavior Support Systems*

An effective positive behavior support system at the district level requires multiple schools to adopt “a common vision, language, and experience.”<sup>113</sup> Sharing a common vision, language, and experience improves resource implementation efforts and organizational management.<sup>114</sup> PBS at the district level consists of several components.<sup>115</sup>

First, there must be a leadership team.<sup>116</sup> Examples of leadership team members include the following: district administrators, school administrators, district PBS trainers, special education programmers, school psychologists and counselors, students, student and family members.<sup>117</sup> The leadership team must develop school-wide discipline, a dropout prevention plan, and a student health plan.<sup>118</sup> The role of the leadership team is to actively coordinate implementation efforts.<sup>119</sup> Second, an effective public behavior support system at the district level needs an organizational umbrella composed of adequate funding, broad visibility, and political support.<sup>120</sup> Third, an effective positive behavior support system at the district level needs “a foundation for sustained and broad-scale implementation established through a cadre of individuals who can provide coaching support for local implementation, a small group of individuals who can train teams on the practices and processes of school-wide [Public Behavior Support], and a system of on-going evaluation.”<sup>121</sup> Lastly, an effective system needs “a small group of demonstration schools that documents the viability of the approach within the local fiscal, political and social climate of the district.”<sup>122</sup>

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<sup>112</sup> *Id.* at 556.

<sup>113</sup> *District Level PBIS, POSITIVE BEHAVIORAL INTERVENTIONS & SUPPORTS*, <https://www.pbis.org/school/district-level> (last visited Mar. 4, 2016).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

## V. FLORIDA'S APPROACH

A. *Florida's Disciplinary Policies*

From January 7, 2003 to December 31, 2006, Florida Statute §1006.13 required all Florida school districts to adopt a policy of zero tolerance for (a) crime and substance abuse and (b) victimization of students.<sup>123</sup> The statute gave schools the option of assigning students to a disciplinary program “for the purpose of continuing educational services during the period of expulsion.”<sup>124</sup> Furthermore, the statute required each school district to enter into agreements with local law enforcement, which require reporting of all crimes committed to local law enforcement.<sup>125</sup> The statute did not specify whether zero-tolerance should be rigorously applied to petty acts of misconduct<sup>126</sup>; therefore, school administrators interpreted the statute broadly. As a result of this broad interpretation, Florida school administrators disproportionately applied zero-tolerance policies to African-American students.<sup>127</sup> For example, in 2007, African-Americans in Florida accounted for “47% of all school-related referrals to the juvenile justice system.†.†. while only representing 22% of the overall student population of the state.”<sup>128</sup> Florida Department of Juvenile Justice’s 2008 study reported that in 91% of Florida counties, African-Americans were “disproportionately overrepresented at the referral stage of the juvenile justice system.”<sup>129</sup> The study concluded that African-American students received stiffer punishments than white students received for committing the same or similar offenses that white students committed.<sup>130</sup> As a result of school-related arrests being disproportionately applied to African-American students, African-American students were more

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<sup>123</sup> FLA. STAT. § 1006.13 (amended 2009). FLA. STAT. § 1006.13 (2006) [http://archive.flsenate.gov/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=Ch1006/SEC13.HTM&Title=-%3E2006-%3ECh1006-%3ESection%2013#1006.13](http://archive.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch1006/SEC13.HTM&Title=-%3E2006-%3ECh1006-%3ESection%2013#1006.13) (last visited Mar. 4, 2016).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> See Barbara Melendez, *Zero Tolerance: A Pathway from School to Prison?* <http://news.usf.edu/article/templates/?z=0&a=4553> (last visited Mar. 6, 2016).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

likely to be funneled to the criminal justice system than were white students.

In response to the School-to-Prison Pipeline and its disproportionate effects on African-Americans, local groups worked along with Florida's 2009 Governor, Charlie Crist, and Florida's legislature to eliminate zero-tolerance policies for minor offenses.<sup>131</sup> As a result, in 2009, Florida amended its zero-tolerance statute.<sup>132</sup> The amendment added the following language:

(1) It is the intent of the Legislature to promote a safe and supportive learning environment in schools, to protect students and staff from conduct that poses a serious threat to school safety, and to encourage schools to use alternatives to expulsion or referral law enforcement agencies by addressing disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs. The Legislature finds that zero-tolerance policies are not intended to be rigorously applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances. The Legislature finds that zero-tolerance policies must apply equally to all students regardless of their economic status, race, or disability.

(2) Each district school board shall adopt a policy of zero tolerance that:

(a) Defines criteria for reporting a law enforcement agency any acts that occurs whenever or wherever students are within the jurisdiction of the school board.

(b) Defines acts that pose a serious threat to school safety.

(c) Defines petty acts of misconduct.

(d) Minimizes the victimization of students, staff, or volunteers, including taking all steps necessary to protect the victim of any violent crime from any further victimization.

(e) Establishes a procedure that provides each student with the opportunity for a review of the disciplinary action imposed to s. 1006.07.

(3) Zero-tolerance policies do not require the reporting of petty acts of misconduct and misdemeanors to a law enforcement agency, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or battery, affray,

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<sup>131</sup> *Id.*

<sup>132</sup> See FLA. STAT. §1006.13 (2015).

theft of less than \$300, trespassing, and vandalism of less than \$1,000.

. . .

(7) Any disciplinary or prosecutorial action taken against a student who violates a zero-tolerance policy must be based on particular circumstances of the student's misconduct.

(8) School districts are encouraged to use alternatives to expulsion or referral to law enforcement agencies unless the use of such alternatives will pose a threat to school safety.<sup>133</sup>

### *B. Potential Model: Miami-Dade Public School's Approach*

In 2014, the School Superintendents Association named MDCPS's Superintendent Alberto Carvalho the 2014 National Superintendent of the Year.<sup>134</sup> Also, in 2012, MDCPS won the Broad Prize for Urban Education.<sup>135</sup> The Broad Foundation provided MDCPS with a \$550,000 scholarship because it determined that MDCPS was the nation's most improved urban school system.<sup>136</sup> MDCPS was praised for its "high and increasing percentages of Miami's Hispanic and black students scores advanced on state exams"; increasing the participation in and performance on the SAT; and for increasing African American and Hispanic students graduation rates, especially between 2006–2009, when graduation rates increased by 14%.<sup>137</sup> MDCPS's change in its disciplinary procedures was not mentioned as one of the reasons for MDCPS's success<sup>138</sup>; however, MDCPS's improvements occurred around the same time Florida changed its zero-tolerance policies in 2009.<sup>139</sup> Pursuant to Florida Statute §1006.13, each Florida school district may maintain its own discipline model for managing student misconduct.<sup>140</sup> Law enforcement agencies may also

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<sup>133</sup> *Id.*

<sup>134</sup> David Smiley, *Miami-Dade Schools Chief Carvalho Named Superintendent of the Year*, MIAMI HERALD, <http://www.miamiherald.com/news/local/education/article1960318.html> (last visited Mar. 6, 2016).

<sup>135</sup> Jaclyn Zubrzycki, EDUCATION WEEK BLOG, Oct. 23, 2012 [http://blogs.edweek.org/edweek/District\\_Dossier/2012/10/miami-dade\\_wins\\_broad\\_prize.html](http://blogs.edweek.org/edweek/District_Dossier/2012/10/miami-dade_wins_broad_prize.html) (last visited Mar. 6, 2016).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> FLA. STAT. § 1006.13 (2015).

<sup>140</sup> *Id.*

have their own model agreements for how to respond to crimes committed in schools.<sup>141</sup>

Since 2003, MDCPS began to implement School-Wide Positive Behavior Support (“School-Wide”).<sup>142</sup> School-Wide is a program model used to promote “principles of positive reinforcement, instruction of appropriate social behaviors, and modification on a macro-system wide level encompassing all students and staff.”<sup>143</sup> MDCPS uses the system to analyze behavior.<sup>144</sup> The purpose of the system is to help schools “improve school climate, overall student behavior, increase test scores, and reduce referrals and suspension rates.”<sup>145</sup> Every year, MDCPS updates its School-Wide system to respond to students and administrators’ needs.<sup>146</sup>

School-Wide is included in MDCPS’s Student Code of Conduct.<sup>147</sup> First, MDCPS’s Student Code of Conduct lists a synopsis of model behavior for each of its five behavior levels, separated by two sections.<sup>148</sup> The first section describes model student behavior.<sup>149</sup> The second section describes behaviors that model students avoid.<sup>150</sup> Level I Behavior comprises of the lowest level behavioral misconduct.<sup>151</sup> Each level increases to describe more serious behavioral misconduct than the level below it. Level II Behavior lists behaviors that “are more serious than Level I because they significantly interfere with learning and/or the well-being of others.”<sup>152</sup> Levels IV and V involve crimes in which the police must be involved.<sup>153</sup>

<sup>141</sup> *Id.*

<sup>142</sup> *Positive Behavior Support Project*, MIAMI DADE COUNTY. SCH., <http://pbs.dadeschools.net/default.asp> (last visited Mar. 7, 2016).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *See PBS Implementation Checklist for Schools*, FLORIDA’S POSITIVE BEHAVIOR SUPPORT PROJECT, <http://flpbs.fmhi.usf.edu/childs/PIC%20-%20revised%2007%2030%2013.pdf> (last visited Apr. 11, 2016).

<sup>147</sup> MIAMI-DADE COUNTY PUBLIC SCHOOLS, CODE OF STUDENT CONDUCT, SCHOOL OPERATIONS AND SCHOOL BOARD POLICY 5500 2014–2015, 5–10, [http://ehandbooks.dadeschools.net/policies/90/CSC\\_elem\\_14-15.pdf](http://ehandbooks.dadeschools.net/policies/90/CSC_elem_14-15.pdf) (last visited Mar. 6, 2016).

<sup>148</sup> *Id.* at 6.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 7.

<sup>153</sup> *Id.* at 9–10.

After contemplating these behavioral levels, chapter two of the Student Code of Conduct pairs the behaviors with the appropriate range of disciplinary measures that can be used to reprimand students.<sup>154</sup> Level I strategies include rehabilitative measures such as contacting parents, peer mediation, revocation of the right to participate in social and extracurricular activities, creation of a student contract, restitution, participation in a counseling session related to the infraction, referral to outside counselors, a behavior plan, or the teacher(s) ignoring objectionable behavior.<sup>155</sup> Level II corrective measures include the same corrective measures as Level I with the addition of suspension and enrollment in a diversion center.<sup>156</sup> Additionally, corrective measures from the Response to Intervention for Behavior model may also be applied.<sup>157</sup> Levels III and IV's corrective measures include suspension from school for one to ten days, any of the corrective strategies from Levels I & II, permanent removal from class (placement review committee decision required), recommendation for placement in an alternative educational setting, recommendation for expulsion, participation in a counseling session related to the infraction, or referral to an outside agency.<sup>158</sup> Level V's consequences require the following actions: contacting a parent or guardian, suspension from school for ten days, participation in a counseling session related to the disruptive behavior, referral to an outside agency, and recommendation for expulsion.<sup>159</sup>

Part of MDCPS's novel and unique approach to corrective measures includes their newly implemented Multi-Tiered Systems of Support (MTSS), called the Response to Intervention for Behavior ("RtIB") Guide.<sup>160</sup> RtIB "is the practice of providing high-quality instruction and interventions to address behavior problems."<sup>161</sup> RtIB uses data collection to

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<sup>154</sup> *Id.* at 11.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 43.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 43.

<sup>161</sup> Barbara Cecilia, *RtIB and PBS: The Winning Combination*, MIAMI DADE PUBLIC SCHOOLS SWPBS, Spring 2009 Edition 3, [http://pbs.dadeschools.net/pdfs/news\\_spring\\_09.pdf](http://pbs.dadeschools.net/pdfs/news_spring_09.pdf). (last visited Mar. 6, 2016).

identify students' needs and monitors students' progress.<sup>162</sup> The MTSS Guide was created to assist educators "in integrating academic and behavior supports and services into a fluid and seamless system of multi-tiered service delivery for all students."<sup>163</sup> Tier I is the "core or universal level to effectively address the needs of all students in a school." This includes the following parts: preferential seating, a parent-teacher communication system, using personally greeting students upon arrival to class, ignoring undesirable behaviors, using positive referrals, and calling home to share news of student success and efforts.<sup>164</sup> Students with identified needs will receive "targeted instruction" at Tier II, which includes the following actions: teaching the student appropriate social skills, showing personal interest to motivate the student, creating a contract for grades, arranging weekly progress reports, monitoring the student in 10 minute intervals, rewarding competing behaviors, and developing a written behavior contract.<sup>165</sup> Students with the most severe needs will receive individualized behavior support at Tier III.<sup>166</sup> Tier III includes teachers allowing students to take some degree of control of the student's school activities, encouraging participation in extracurricular activities, following up to ensure the student fully understands the task, adjusting the student's daily schedule or changing the teacher, allowing the student to serve as a peer mentor or tutor, providing the student with quiet time, identifying appropriate settings for behavior, charting and reviewing daily student successes, and recognizing small steps towards desired behavior.<sup>167</sup>

Despite MDCPS not specifically stating that it uses restorative disciplinary measures in its Student Code of Conduct, the corrective measures used are restorative in nature because the disciplinary measures emphasize repairing the harm caused by students' errant acts. MDCPS uses a combination of Public Behavior Support, Response to Intervention for Behavior, and Restorative Justice Discipline. Tiers I, II, and III promote corrective measures that center on

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<sup>162</sup> *Id.*

<sup>163</sup> MIAMI-DADE COUNTY PUBLIC SCHOOLS, *supra* note 147, at 43.

<sup>164</sup> *Id.* at 43–45.

<sup>165</sup> *Id.* at 43, 45–48.

<sup>166</sup> *Id.* at 48.

<sup>167</sup> *Id.* at 48–49.

rehabilitating the offending student and repairing harm. For example, requiring students to perform community service hours, pay restitution for damages, attend counseling, and attend parent-teacher conferences are all ways of rehabilitating the offending student and restoring harmony. This is infinitely preferable to the more commonplace punitive, retributive system. With this rehabilitative system in place, teachers and administrators, who may have implicit biases and are incentivized to suspend students after the most minimal provocation, are required to resort to a tier system filled with restorative corrective measures. This implementation has helped MDCPS improve the classroom environment.

### 1. Arrests rates

Comprised of 392 schools, MDCPS is the largest school district in Florida and the fourth-largest school district in the United States.<sup>168</sup> According to Florida's Juvenile Justice Report, MDCPS aggressively uses alternatives to arresting its students.<sup>169</sup> As a result of MDCPS's efforts, it had a much lower school arrest rate than an overwhelming majority of other school districts across Florida.<sup>170</sup> During the 2013–14 school year, MDCPS had the third lowest rate of school-related arrest in Florida, trailing only Liberty County and Gilchrist County.<sup>171</sup>

MDCPS decreased its school-related arrests rates by 69% since 2009, when it implemented its three-tiered system.<sup>172</sup> In the 2009–10 school year, MDCPS had 1,548 school-related arrests.<sup>173</sup> In the 2010–11 school year, MDCPS had 1,253 school-related arrests.<sup>174</sup> In the 2011–12 school year, MDCPS had 529 school-related arrests.<sup>175</sup> In the 2012–13 school year,

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<sup>168</sup> Miami-Dade County. Pub. Sch., *Welcome To Miami-Dade Public County Schools*, DADESCHOOLS.NET, <http://dadeschools.net> (last visited Mar. 6, 2016).

<sup>169</sup> Florida Department of Juvenile Justice *Report on Delinquency in Schools*, <http://www.djj.state.fl.us/research/reports/research-reports/delinquency-in-schools/school-delinquency-profile> (under "Introduction" tab) (last visited Mar. 6, 2016).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* (under "County" tab) Liberty County and Gilchrist County both have populations of less than 1,300 students.

<sup>172</sup> *Id.* (under "5-year Trend" tab)

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

MDCPS had 616 school-related arrests.<sup>176</sup> In the 2013–14 school year, MDCPS had 485 school-related arrests.<sup>177</sup> As a result of the implementation of the three-tiered system, as of the 2013–14 school year, MDCPS had a rate of 2.5 arrests per 1,000 students.<sup>178</sup>

## 2. Suspension rates

For the 2013–14 school year, MDCPS had 25,819 duplicated outdoor suspensions and 32,503 duplicated indoor suspensions.<sup>179</sup> For the same year, MDCPS saw 16,274 unduplicated outdoor suspensions and 19,593 unduplicated indoor suspensions.<sup>180</sup> For the 2012–13 school year, MDCPS had 25,506 duplicated outdoor suspensions and 35,315 duplicated indoor suspensions.<sup>181</sup> For the same year, MDCPS saw 16,370 unduplicated outdoor suspensions and 20,886 unduplicated indoor suspensions.<sup>182</sup> For the 2010–11 school year, MDCPS had 37,512 duplicated outdoor suspensions and 41,050 duplicated indoor suspensions.<sup>183</sup> For the same year, MDCPS saw 22,891 unduplicated outdoor suspensions and 23,765 unduplicated indoor suspensions.<sup>184</sup> For the 2009–10 school year, MDCPS had 39,333 duplicated outdoor suspensions and 55,304 duplicated indoor suspensions.<sup>185</sup> For the same year, MDCPS had 24,061 unduplicated outdoor

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> Miami-Dade County Pub. Sch., *School Performance: 2013–2014 Attendance, Movement, Mobility and Suspensions*, DADESCHOOLS.NET, at 11, <http://oada.dadeschools.net/SchoolPerformanceData/1314AttendanceMovementMobilitySuspension.pdf> (last visited April 2, 2016).

<sup>180</sup> *Id.*

<sup>181</sup> Miami-Dade County Pub. Sch., *School Performance: 2012–2013 Attendance, Movement, Mobility and Suspensions*, DADESCHOOLS.NET, at 9, <http://oada.dadeschools.net/SchoolPerformanceData/1213AttendanceMovementMobilitySuspension.pdf> (last visited April 2, 2016).

<sup>182</sup> *Id.*

<sup>183</sup> Miami-Dade County Pub. Sch., *School Performance: 2010–2011 Attendance, Movement, Mobility and Suspensions*, DADESCHOOLS.NET, at 10, <http://oada.dadeschools.net/SchoolPerformanceData/1112Attendance,Movement,MobilityandSuspensions.pdf> (last visited April 2 2016).

<sup>184</sup> *Id.*

<sup>185</sup> Miami-Dade County Pub. Sch., *School Performance: 2009–2010 Attendance, Movement, Mobility and Suspensions*, DADESCHOOLS.NET, at 10, <http://oada.dadeschools.net/SchoolPerformanceData/0910Attendance,Movement,MobilityandSuspensions.pdf> (last visited Mar. 6, 2016).

suspensions and 30,419 unduplicated indoor suspensions.<sup>186</sup> From the 2005–06 school year to the 2013–14 school year, MDCPS decreased duplicated outdoor suspensions by 44%, duplicated indoor suspensions by 51%, unduplicated outdoor suspensions by 41% and unduplicated indoor suspensions by 48%.<sup>187</sup>

### 3. *Disparate impact*

Despite the fact that Florida has decreased school-related suspensions and arrests rates across the state since it changed its zero-tolerance statute, African-Americans and Hispanics are still disproportionately arrested at higher rates than white students.<sup>188</sup> In 2013–14, African-American students made up of 53% of the school-related arrests, Hispanics made up 15% of school-related arrests, and whites made up 32% of school-related arrests.<sup>189</sup> Florida’s racial makeup of students is (a) 22.9% African-American, (b) 30.0% Hispanic, (c) 40.9% white and (d) 3.2% other.<sup>190</sup>

## VI. CONCLUSION

Miami-Dade County Public School District is making strides in reducing school-related arrests, expulsions, and suspensions. The school board’s use of its three-tiered positive behavior support system reduced school-related arrests and suspensions as soon as it was implemented. Though additional research remains to determine the program’s long-term effectiveness, MDCPS’s novel approach has unquestionably yielded results. The dramatic decrease in school-related arrests speaks volumes of how MDCPS is busting the School-to-Prison Pipeline. Other Florida school districts and districts around the country would do well to learn from MDCPS’ alternatives to zero-tolerance for misconduct. Eliminating discriminatory and

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<sup>186</sup> *Id.*

<sup>187</sup> See Miami-Dade County Pub. Sch., *School Performance*, <http://oada.dadeschools.net/SchoolPerformanceData/SchoolPerformanceData.asp> (last visited April 2, 2016).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> ED DATA EXPRESS: DATA ABOUT ELEMENTARY & SECONDARY SCHOOLS IN THE U.S., *Florida State Snapshot*, <http://eddataexpress.ed.gov/state-report.cfm/state/FL/> (last visited Mar. 6, 2016).

punitive practices should be every school board's priority. For those policy-makers who need further assistance justifying such changes, helping taxpayers save money is sufficient justification.

*Jeremy Thompson\**

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