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## LAW AND ORDER IN SCHOOL AND SOCIETY

HOW DISCIPLINE AND POLICING POLICIES HARM STUDENTS  
OF COLOR, AND WHAT WE CAN DO ABOUT IT

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# LAW AND ORDER IN SCHOOL AND SOCIETY: HOW DISCIPLINE AND POLICING POLICIES HARM STUDENTS OF COLOR, AND WHAT WE CAN DO ABOUT IT

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## Executive Summary

Systemic violence and disparate school discipline policies hinder equitable, just, and safe schooling. They also restrict access to social opportunities and civil liberties. Research demonstrates that Black and Latinx<sup>1</sup> students experience police violence and school discipline unequally.<sup>2</sup> Punitive educational and criminal justice policies disproportionately affect students, families, and communities of color, as well as the teachers and schools that serve them.

Federal policies have often shaped the state and local experience with school discipline and systemic violence. The Gun-Free School Zones Act,<sup>3</sup> for example, mandates automatic expulsion for students who bring firearms to school, requires states to develop zero-tolerance policies, and expands the criteria for disciplinary action beyond weapons to a variety of behaviors.<sup>4</sup> These zero-tolerance policies — intended by many educators and policymakers to keep students safe — have particularly led to students of color being suspended and expelled at disparate rates. Federal testing and accountability policies have also affected curriculum and overall school quality. Spurred by President Reagan’s calls for accountability policies focused on excellence and achievement, policymakers have steadily expanded high-stakes approaches, despite large bodies of research showing that they function more to punish communities of color than to support them.

In their communities and elsewhere, students of color also face criminal justice profiling, causing them to be more frequently stopped, searched, and arrested by the police. As a series of tragic shootings has demonstrated, Black, Latinx, and Native American young people are more likely to be stopped, detained, and killed or injured as a result of routine interactions with police. Just this spring, on April 29, Officer Roy Oliver, a Texas police officer, shot and killed Black high school student Jordan Edwards as he was leaving a house party. Police also detained Edwards’ brothers, also in the car with him when he was shot and killed, though they had done nothing wrong. These dual, and all too frequent interactions in school and in society result in trauma for children and families.

Research shows that schooling contexts and social policies set up the conditions for young people of color to experience violence in regularized, systematic, and destructive ways. This policy report thus centers on questions of race and disparate racial impacts. We draw from critical race theory (CRT) to redirect how educators might talk more productively about students’ social contexts, violence, and school discipline. We also explore how CRT might help educators consider how attempts to achieve “law and order” unfairly target students of color with a systemic form of violence that harms their ability to secure equitable, just schooling

and social opportunity. We end with recommendations for shifting state and local policy to better reflect research evidence on the best approaches to keeping all children safe as they make their way through schools and society. A focus on state and local action becomes critical under the current federal civil rights and education policy context.

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Recommendations include the following:

## Local

1. Develop systematic communication and planning between municipalities and school districts, including integrated city and school policies on policing, housing, transportation, and racial disparity. While this kind of municipal coordination can be challenging, cities with mayoral control of schools, such as Chicago and New York, are in a unique position to pilot such an effort.
2. Redirect funds currently spent on school resource officers to expenditures shown to improve student engagement and social connectivity, including increasing the number of guidance counselors, advanced-level and enrichment courses, socio-emotional learning curricula, and high-quality extracurricular activities.
3. Invest in the creation or support of racially and socioeconomically integrated schools.
4. Integrate community-based policing programs with school restorative and transformative justice initiatives to shift the emphasis from discipline and punishment toward capacity building, relationship building, and positive behavioral interventions and supports.

## State

5. Require teachers, school leaders, and all police/security staff to receive intensive preparation, trauma-informed professional development, and ongoing training on the causes of, and remedies for, racial inequality within and outside of school.
6. Require reporting of in-school and out-of-school suspensions and expulsions for charter schools and traditional public schools, disaggregated by race and gender.

Develop interventions for schools with racially identifiable, disproportionate rates of these disciplinary actions.

7. Develop multiple measures of schools' effectiveness in place of narrowly focused test-based measures. Use these data to develop more positive, supportive interventions aimed at decreasing suspension, expulsion, and referral rates.
8. Invest in "grow your own" teacher preparation and/or residency programs that help to develop, support, and retain teachers of color and teachers committed to equitable educational practices. Create teacher-police collaborative networks to develop positive supports for students of color within and outside of schools. An untapped resource, paraprofessionals in schools, who often come from the very communities in which they work, could be offered a career ladder.

# LAW AND ORDER IN SCHOOL AND SOCIETY: HOW DISCIPLINE AND POLICING POLICIES HARM STUDENTS OF COLOR, AND WHAT WE CAN DO ABOUT IT

## Introduction

Violence and disparate discipline measures against students of color can involve physical assaults, as well as sustained institutional and public policy discrimination. Such discrimination often stems from exclusionary or targeted policies that have unfair impacts on particular communities and students. Moreover, students of color experience violence—sometimes immediate and sometimes institutionalized and gnawing—in intersecting ways. In the context of unequal social structures, students’ multiple social statuses and identities -- as LGBTQ, poor, non-native English speakers, and immigrants, for example -- increase their vulnerability to state-sponsored, individual, and community violence.

In addition, students of color paradoxically experience violence within their communities, which are often racially, linguistically, and socioeconomically segregated. Perpetrators of violent acts are often themselves, in turn, victims of police, educational, or institutional discrimination and injustice.<sup>5</sup> Students of color are more likely to attend schools segregated by race, income, and language. They are more likely to have inexperienced teachers with higher turnover rates than do their more affluent or White peers. Their schools are often targeted for radical, disruptive reforms such as reconstitution, turnaround, or closure. And they are more likely to attend schools where discipline policies result in high rates of suspension and expulsion and the presence of police inside and outside of the school.

Although crime rates have decreased across the United States over the last 10 years, especially violent crime,<sup>6</sup> the perception of danger in cities persists. The stereotypical images of young men of color as perpetrators of violent crime, and therefore in need of policing, arrest, and incarceration, are reinforced by the concentration of gun-related violence in particular cities, such as Chicago. Yet the fact that young men of color are also more likely to be victims of violent crime is overlooked by such diagnoses.<sup>7</sup> The recent uprisings across the country against discriminatory policing policies such as “stop and frisk,” which target communities of color for arrests and, in many cases, police violence, have led groups like Black Lives Matter (BLM) to attempt to explicitly reframe who is being violent and to whom. In fact, overlapping and intersecting social policies in the context of housing, labor, policing, and education leave many communities of color in segregated cities and suburbs isolated from social and educational opportunity more broadly.

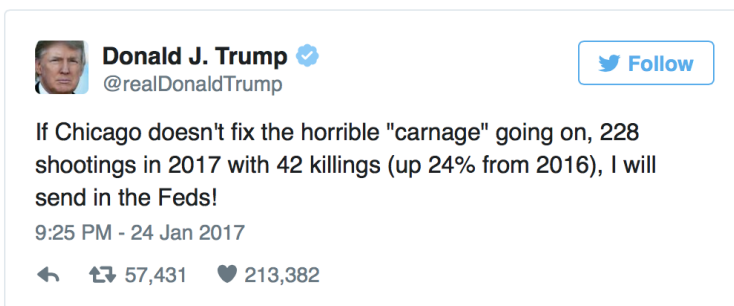
Many Americans may fixate on one negative image of communities experiencing spikes in violent crime through framing that emphasizes the racialized violence in our communities. In reality, neighborhoods that have faced economic distress, under-resourced schools, crime, high rates of poverty, health inequities, and low student performance have been constructed by public policies that determined who could live where, through de jure and de facto mechanisms.<sup>8</sup> For example, when asked by a television commentator how the city of Chicago could solve its “crime problem,” President Trump responded in a way that viewed violence as unidirectional and excused the role of the police in targeting people of color and

perpetuating discriminatory practices:

How? By being very much tougher than they are right now. They're right now not tough....when I was in Chicago, I got to meet a couple of very top police. I said, 'How do you stop this? How do you stop this? If you were put in charge — to a specific person — do you think you could stop it?' He said, 'Mr. Trump, I'd be able to stop it in one week.' And I believed him 100 percent.

When the commentator asked how, Trump responded: “he wants to use tough police tactics, which is OK when you have people being killed.”<sup>9</sup>

Similarly, the President recently referred to both African American and “Hispanic American” people as “stuck” in inner cities and “living in hell,”<sup>10</sup> while suggesting that he would send in the National Guard:



The National Guard has been deployed during other times of racial tension and caused civil disruptions because of the militarization of situations and the behavior of law enforcement.<sup>11</sup> The systematic forms of violence that impact schooling and life chances for so many children of color are minimized by President Trump’s conflation of race, urbanicity, and dangerousness in this exchange.

As Chicago City Council member Carlos Ramirez-Rosa pointed out, Trump’s language about what needs to happen in Chicago is steeped in uninformed perceptions about the root causes of violence and racial prejudice. It furthers racist stereotypes and the criminalization of people of color. “[By “send in the feds”] He didn’t mean the resources of the federal government coming in to create jobs on the South or West Side of Chicago, to create jobs for people of color, to take the guns out of people’s hands and put them to work,” said Ramirez-Rosa of Trump’s comments. “You know what he meant. He meant locking up more black and brown folks.”<sup>12</sup>

Activists and researchers have called attention to the use of disproportionate discipline in schools as a form of early policing and violence.<sup>13</sup> Education researchers studying the connections between educational and social opportunity have coined the phrase, “the school-to-prison pipeline,” which has come to signify the predictable relationship between the conditions and results of schooling for boys of color -- especially African American and Latino boys -- and their entanglement with juvenile justice systems or incarceration. Although much less explored in the research literature, Black girls also experience disproportionate rates of school discipline.

In this report, we examine the relationship between violence and education policy. More

specifically, we urge education policymakers to understand the nature of violence in schools and communities. Our analysis allows the research and policy community to move beyond the well-intentioned but incomplete rendering of this connection as primarily a “school-to-prison pipeline” existing in isolation. Instead, we consider the relationship between schools and society with regard to racial disproportionality in school discipline policies *and* in broader social policies. Informed by the research evidence, we offer an alternative set of policies that can create more just and safe environments in U.S. public schools for students of color, and ultimately for all students.

## Review of the Literature: The Relationship between Violence and Schools

In recent years, consistent police violence has shaped our social context and resulted in injury and death for people of color. Consider that Cleveland, Ohio, San Antonio, Texas, Ferguson, Missouri, and Chicago, Illinois have different demographics, histories, and public school systems. Yet they have in common violence against young people of color at the hands of city or school district police:

Tamir Rice, age 12.

Janissa Valdez, age 12.

Michael Brown, age 18.

Paul O’Neal, age 18.

Other names could be added to this list, with other cities, other genders, and other details, pointing to a crisis that needs policy attention not just from the criminal justice system, but also from education policy makers. Many of our existing policies are insufficient for addressing systemic violence, however, and often result in more harm than good for youth of color. Here we consider the ways that the violence within the system of public education is inextricably bound up with the broader elements of violence in the social contexts within which schools are embedded.<sup>14</sup> The depiction of students and people of color as being particularly prone to violence is not only empirically wrong, it has also served to mask the degree to which people of color are often the victims of violence and the targets of strict discipline or policing tactics, which are applied in ways that magnify this victimization and disproportionately disadvantage people of color.

The Southern Poverty Law Center has documented the recent rise in incidents of racist hate speech and violence, finding more than 700 incidents of “hateful harassment” in the ten days following the 2016 presidential election.<sup>15</sup> Although conservative education commentators<sup>16</sup> have criticized educators for discussing this uptick in classrooms, arguing that teachers are dramatically and unfairly lamenting the election of Donald Trump and unnecessarily scaring children, educators should not ignore the numerous public examples of people at the highest levels of public office committing and condoning acts of violence—against women, immigrants, Muslims, Jews, “inner city” communities, people of color, LGBTQ people.

Racist and discriminatory perspectives have always been present, but perpetrators seem to have been emboldened in the wake of the 2016 presidential election. Physical and symbolic violence against students is occurring within and outside of school, with students being



disciplined harshly, assaulted by school officials, battered or murdered by police, threatened with deportation, immigrant registries, or internment. In essence, students of color are punished for the unjust social contexts in which they find themselves, or simply denied resources and excluded from opportunities.<sup>17</sup>

Educators and some police departments are grappling with how to prevent and respond to peer-to-peer violence in schools and communities. They are seeking ways that restore justice rather than replicate harsh schooling policing tactics such as suspension, expulsion, racial profiling, and arrests. At the same time, some advocates contend that efforts to respond to students who commit acts of violence within school should limit students' due process rights, sometimes on the grounds that minors in school are not entitled to such rights.<sup>18</sup> For instance, in Missouri as of January 1, 2017, students caught fighting at school—regardless of age—can be charged with a Class E felony and sent to a juvenile detention center.<sup>19</sup> Children of color are already more likely to be suspended, steered toward special education or alternative education, or kicked out of school for minor infractions or situations that escalate when school police are called on to handle behavior issues.<sup>20</sup> These so-called “zero-tolerance” policies may be intended to keep children safe, but the evidence suggests that they do not improve student safety and are even counterproductive; they result in countless children of color becoming unnecessarily caught up in the criminal justice system due to being applied disproportionately in urban schools.<sup>21</sup>

## Critical Race Theory

As education policy researchers, we approach this brief with an assumption of the centrality of racism to the state and its embeddedness in state institutions like public schools. The idea that racism is a central and ordinary feature of U.S. society is grounded in Critical Race Theory (CRT), which describes how in educational settings with a predominance of students of color, violence functions to uphold status quo power arrangements.<sup>22</sup> Violent responses by law enforcement rarely occur in and around schools with a majority of White students, though research shows that illegal acts such as marijuana possession may be committed at the same or higher frequency by Whites.<sup>23</sup> Racism's “ordinariness” suggests that from slavery to contemporary times violence has been and will continue to be used by those in positions of official power to suppress and intimidate communities of color. Moreover, the U.S. public education system was established and developed within a sociopolitical context shaped by colonization and slavery. This legacy of race-based oppression can be seen in education policies old and new, such as racial and ethnic segregation, which prevent people of color from accessing the social networks and social capital that sociologists have found to be critical in economic and educational mobility; public school funding, which is tied to property taxes, state politics, and reflects racially and socioeconomic discriminatory housing policies; standards, measurement, and accountability regimes that penalize segregated schools for low scores on standardized tests despite the resource inequities they experience; school sanctions and closures that are targeted at much higher rates to schools serving students of color, thereby disrupting core institutions and neighborhoods; and “no excuses” charter schools with overly strict discipline and behavioral norms enforced by high rates of suspensions and expulsions, as discussed further below.

We rely on CRT, integrated with Moses's notion of the social context of choice – i.e., the environment or circumstances within which persons make choices about their lives – to

frame our examination of the existing research knowledge on how educational inequalities may exacerbate the unjust social contexts in which police regularly assault, shoot, and kill unarmed people of color and in which schools mete out discipline disproportionately to students of color.<sup>24</sup> We examine how schools are implicated in the creation of the social conditions, including policing and public policy, which lead to violence and tragedy. We analyze law enforcement and education, individually and in cooperation with each other, and how they are nested in a broader social context in which race and racial markers are central. We examine the ways in which policing, in all its forms, has served America, and we consider how the educational system implements its own form of policing through policies and practices that unfairly target students of color. When combined, disparate policing and modern educational policing traumatize historically marginalized communities. We argue that public education must change so that young people of color have educational opportunities and experiences that value who they are and the communities from which they come, and expand and enrich their social contexts of choice. To achieve this shift, we recommend that education policy refocus energies on providing equal educational opportunities for students of color with a deeper understanding of their social contexts. More specifically, our recommendations center on specific policies for which there exists evidence of their effectiveness, but which are not common enough across the U.S. to begin to alter these patterns in systemic ways. We suggest policies ranging from strengthening communication across local agencies such as police and schools, to investments in curricula and activities that are more grounded in socio-emotional development and the development of new pathways to teaching for students of color.

## Historical Perspectives on Policing People of Color

Policing, in the broad meaning of the word, is the process of maintaining control, order, and discipline to secure peaceful societies.<sup>25</sup> To understand the connections between the public education system and persistent police violence against people of color in the U.S., we must first analyze the role of the police and policing. American policing existed before public education. Policing existed even before the creation of constables, the predecessors to modern-day police.<sup>26</sup> In colonial America, the harshest form of policing was imposed upon enslaved people, as slave owners and their overseers policed the enslaved person's body, mind, and spirit to maintain obedience and control.<sup>27</sup> Policing the enslaved person's *body* kept what was considered a commodity in a physically controlled space and available for production at will. Policing the enslaved person's *mind* was considered mandatory for keeping them docile and unquestioning of authority. Policing the enslaved person's *spirit* was required to subdue hopes of freedom. Combined, these policing activities defined both who held the power and the boundaries of acceptable behavior by marginalized people.

Policing under slavery involved administering punishments that forced compliance. Whipping, beatings, lynching, dismemberment, and other corporal punishments were regularly administered to control enslaved people's behavior and attitudes. There existed public and private forms of policing practices in place, and there were important differences between forms of punishment required by the law. Some states required the execution of slaves who used violence against their enslavers, regardless of the wishes of slave owners. A peculiarity of slavery and the law shaping it was that for some infractions trials were required, not to protect the rights of the slave, but the property rights of their enslaver. Some disciplinary actions were merely authorized by the law, but not required by it. For example, whippings

by slave owners or their surrogates were allowed. “Lynching” was, by definition, a violation of law, and the willful killing of slaves was mostly illegal, although “accidentally” whipping a slave to death was permitted. Violence to enslaved bodies served as a form of punishment to the slave who acted unacceptably, as well as a deterrence to other slaves.

This form of policing continued after Emancipation as Jim Crow laws and lynching served as reminders to Black people about their second-class citizenship and how it relegated them vulnerable to private and state-sponsored violence and surveillance. Alexander has argued that the rise of mass incarceration, which she traces to the end of slavery, is a continuation of the slave-era control over the lives of Black people aimed at framing Black people as a permanent under-caste in American life.<sup>28</sup> In the contemporary context, criminal justice continues to operate under private and public oversight. For example, many of today’s prisons have transitioned from public to private institutions. The Bureau of Justice Statistics estimated in 2015 that for-profit prisons held 7% of state and 18% of federal prisoners.<sup>29</sup> A disproportionate number of Black, Native American, Latinx, and undocumented immigrant prisoners<sup>30</sup> are not only imprisoned, but also held in for-profit prisons.<sup>31</sup> The two largest for-profit prisons, Corrections Corporation of American and the GEO group, saw their stocks increase by 100% after Donald Trump was elected, and Trump endorsed the use of private prisons on the campaign trail.<sup>32</sup>

## Recent Developments

The last several years have seen police killings of largely unarmed Black, Latinx, and Native American people across the United States in the course of routine interactions. In response, the public began discussing the connections between policing strategies and racism more broadly and asking why people of color tend to be victims of more violent police interactions. For example, “stop and frisk” and “broken windows” policies introduced as “preventative,” “proactive” measures have resulted in the disproportionate stopping, searching, arrest, and incarceration of people of color. These interactions generate significant resources for police departments and municipal courts as accused offenders are ordered to pay fines that send them into deeper poverty or interfere with their ability to maintain employment. In Ferguson, Missouri, the site where Officer Darren Wilson killed Michael Brown, policing resulted in an average of three arrest warrants and 1.5 court cases per household, according to the legal advocacy organization Arch City Defenders.<sup>33</sup> Not only do these stops frequently result in higher arrest rates for people of color, some have resulted in injury and death. As a result, children in places like Ferguson come to school with significant trauma of which educators and policymakers are only beginning to be aware. While police shootings and the over-policing of communities of color are not new, advances in and the spread of smart phone technology and social media use have made these more visible.<sup>34</sup> The killing of Michael Brown in Missouri, Philando Castile in Minnesota, and Freddie Gray in Maryland, for example, triggered mass protests that were often met with more violence from police forces intent on restoring “law and order.” It has proven difficult to arrest, indict, and successfully prosecute police who mete out deadly violence, even with video evidence of the killings.<sup>35</sup>

Disturbing videos of these incidents within schools and involving children outside of school provide visual evidence of the forms of discipline and policing disproportionately experienced by Black children and children of color in schools that parents, communities, and researchers have documented for some time. For example, in 2016, a video was taken sur-

repeatedly by a staff member at a charter school run by Harlem Success Academies, a New York City charter school management organization known for running “no excuses” schools with strict discipline policies. The video depicted a White, female first grade teacher berating a Black girl for failing to grasp a mathematical concept, culminating in the teacher ripping the child’s paper into pieces and sending her out of the circle, screaming for the placid child to calm down.<sup>36</sup> In another video, which emerged from a Columbia, South Carolina school in 2015, a school resource officer, whom students of color had earlier identified as unfairly singling them out for discipline, body-slammed a Black high school student in her desk for failing to leave the classroom when told.<sup>37</sup> These and other high-profile incidents have drawn attention to the connection between social and educational policies that target students of color for police violence, school discipline, and race-based inequality.

At times, schools define acceptable behaviors, hierarchies, and attitudes by incorporating policing practices, consciously or otherwise. Black and brown children are placed at a disproportionately low rate in programs like Gifted and Talented or International Baccalaureate, which tend to lead toward academic advancement<sup>38</sup> and more likely to be suspended or expelled.<sup>39</sup> This trend reinforces historic hierarchies, forms of control, and disenfranchisement. Moreover, those in power often meet reforms to the discriminatory system with swift and vitriolic attacks.<sup>40</sup> For a child receiving the ultimate educational punishment, expulsion is a close relative to imprisonment. If today’s prison system is the “New Jim Crow,”<sup>41</sup> then many public education systems, by replicating the targeting of students of color, treating them as dangerous and in need of intervention, and punishing them at much higher rates than their White and Asian counterparts, provide a preparatory school that, from an early age, normalizes mass incarceration by race.

Data show that Black children’s differential experience with school discipline begins in preschool. According to the U.S. Department of Education’s Office for Civil Rights, for example:

Black children represent 18% of preschool enrollment, but 48% of preschool children receiving more than one out-of-school suspension; in comparison, White students represent 43% of preschool enrollment but 26% of preschool children receiving more than one out-of-school suspension.<sup>42</sup>

According to this report, Black children are suspended and expelled at three times the rate of White students. Black students are much more likely to be referred to law enforcement or to be arrested at school, and Black students with disabilities are more likely to be physically restrained. Both Black boys and girls receive harsher treatment for relatively minor infractions that are subjective in nature and historically laden with racist underpinnings. These include the perception of teachers that Black students are “loud,” “defiant,” or “dangerous.”<sup>43</sup> Importantly, research on the experiences of Black and Latina girls shows that those who experience school discipline interventions such as in- and out-of-school suspension or specialized classes for persistent infractions are themselves victims of emotional and sexual violence.<sup>44</sup> While it has been common to frame school violence as perpetrated by youth of color or meted out against youth of color in cities, high-profile examples demonstrate that unequal patterns of school discipline and state violence persist across geospatial settings and include cities, suburbs, and rural areas.<sup>45</sup> Under President Obama, the Office of Civil Rights within the Department of Education, concerned about these patterns, partnered with localities in collaboration with the Supportive School Discipline Initiative to encourage more just disciplinary approaches across the United States.<sup>46</sup>

## Law and Punishment

Once society accepts that policing is necessary, then it follows that society must also accept that punishment is required. Once punishment is acceptable, the only issue remaining is its degree. This, in part, helps legitimize zero tolerance and three strikes policies. The faster society accepts using tools like zero tolerance and three strikes, the easier implementation occurs at all levels, whether focused on children or adults.<sup>47</sup> It is far easier to define an act as acceptable if it can be portrayed as an improvement, as progress.<sup>48</sup> The escalation of punishments in public education becomes more visible when one considers that at one time, no law allowed for the expulsion of a student.<sup>49</sup> More revealing is that, for some states, the laws permitting expulsion were created during the time when public schools were adapting to the U.S. Supreme Court's decision in *Brown v. Board of Education* and Congress's negotiations over the Civil Rights Act. The *de jure* ability to expel and suspend students legitimized control over Black juvenile bodies at the very historical moment when the state was removing barriers to school integration, thereby maintaining the perception of Black children and other children of color as permanently dangerous and in need of state intervention, especially when proximal to white children.<sup>50</sup>

As policing schools increased, police became seen as experts and authorities. Many school systems talk and write as much about controlling their students as educating them.<sup>51</sup> With this concern foremost, school systems yield authority to the experts in controlling populations: the police, now often redesignated "school resource officers." For many jurisdictions, this means that police determine who is dangerous, who should be watched, and who should be separated while inside public schools. Once a child is so identified, such a label becomes inescapable, following them from middle school to high school to adulthood.

## From "In the School" to "In the Street"

There is no reason to expect the policing of Black and Brown children to look different in a school setting than it does outside -- except, perhaps, that in school there may be more witnesses.<sup>52</sup> Although the concept of checks and balances is fundamental to the distribution of power within the American government, it has been far less applicable for day-to-day policing, which is largely unchecked.

Recently, the Black Lives Matter (or #BLM) movement has attempted to become the "in the streets" check on police power. #BLM grounds itself in the history articulated above. From slavery to modernity, much of America has treated Black and Brown bodies as disposable. In the 20<sup>th</sup> century, the Civil Rights Movement led by Dr. Martin Luther King, Jr. and others fought, in part, to protect Black and Brown bodies from violence inflicted by the state. Just as that group stood on the shoulders of Frederick Douglass, Sojourner Truth, W.E.B. Du Bois, and many others, #BLM looks for ways to bring their work forward. And, as the 1960s Civil Rights Movement gained traction from media reports distributed throughout America by a relatively new technology, television, #BLM is using social media like Facebook, Twitter, and Instagram to convey the facts and images of racial inequities not only throughout America, but to the entire world.

The Black Lives Matter Movement has helped to focus attention on the crisis in state-sponsored violence against Black people. In its 2016 platform, the BLM collective identified a number of institutions and processes that could help to create more positive interactions

between Black people and police. These included securing economic justice through reparations, redistribution of resources and opportunity, eliminating for-profit prisons, and community control over education and local institutions. These activists focus on the interconnections between educational and other social policy, arguing that there is a symbiotic relationship between police violence and existing policies governing housing, labor, and civic participation.

This platform reflects what scholars have determined: the intimate connections between state-sponsored segregation and discrimination in housing, labor, transportation, and education policies, and how these connections manifest in the form of school discipline and policing that disproportionately fall on students and families of color. These dynamics are not new. Historians, sociologists, economists, and policy scholars have documented how racially codified policies contributed to contemporary patterns of racial exclusion that provoke/give rise to the uprisings that emerge to protest them. Uprisings emerged across the United States in the mid-1960s in response to frustration with persistent racialized police violence, prompting the Kerner Commission to investigate and report on the causes of urban unrest. For example, as explained by Rothstein:

When the Kerner Commission blamed “white society” and “white institutions,” it employed euphemisms to avoid naming the culprits everyone knew at the time. It was not a vague white society that created ghettos but government—federal, state, and local—that employed explicitly racial laws, policies, and regulations to ensure that black Americans would live impoverished, and separately from whites. Baltimore’s ghetto was not created by private discrimination, income differences, personal preferences, or demographic trends, but by purposeful action of government in violation of the Fifth, Thirteenth, and Fourteenth Amendments.<sup>53</sup>

## **Unjust Social Contexts and Current Education Policy: How Efforts to Increase School Choice and Accountability Miss the Mark**

We have provided much detail about how school discipline policies mirror larger issues around violence in our communities, but there are other important ways to think about violence as more closely linked to the unjust social contexts and current educational policy strategies that ignore these constrained contexts. The populations of schools in the U.S. are becoming/increasingly more diverse, with students of color now the majority in California, for example. Nevertheless, American students are deeply segregated and stratified by race, poverty, and language — and in some cases have become more segregated than at any point in recent history.<sup>54</sup> The average Black and Latinx student attends a school that has more than 75% students of color, and nearly half of these students attend schools with poverty rates over 80% (compared with fewer than five percent of White students).<sup>55</sup> In addition, White students remain the population most segregated from other racial groups.<sup>56</sup>

Because students are being taught in very segregated learning environments, both within and across district boundaries, district leaders and state or federal policymakers seeking to disrupt deepening inequities face unique challenges.<sup>57</sup> These segregated schooling contexts also mean that disciplinary and punishment policies are marked by race, for example in the use of metal detectors and police officers in schools primarily serving students of color but

not in predominantly White schools, though discrimination does occur in desegregated contexts as well in other forms.<sup>58</sup>

These trends are linked to broader demographic shifts and the policies that facilitated them. Since the 1920s, White people moved steadily out of cities and into new suburban communities with the help of both federal policy and private industry (including the real estate and banking industries), enabling them to separate themselves – physically and politically – from the city core.<sup>59</sup> State laws facilitated this movement by permitting the incorporation of new communities into independent municipalities and school districts.<sup>60</sup> These demographic patterns actively reproduced inequality through their effects on the distribution of opportunity and resources, separating people of color from political and social power.<sup>61</sup> For example, consider Ferguson, a suburb of St. Louis, which came into existence due to several key forces in St. Louis. These include, according to Gordon, disinvestment and decline in housing stock, problematic governance, racial wealth disparities, and redevelopment policies that negatively impacted Black neighborhoods. Black residents with lower wealth ended up in Ferguson, where the unjust dynamics of St. Louis were replicated.<sup>62</sup>

*Researchers, however, have consistently found that, overall, charter schools have not lived up to their promise in terms of providing students access to better schools.*

As Holme and Finnigan point out, local governmental boundaries perpetuate inequality by creating competition for scarce resources between communities in one metropolitan area.<sup>63</sup> As a result, affluent towns contain expensive property, strong tax bases, and few poor residents, while low-income suburbs and cities contain inexpensive properties, low tax bases, and large concentrations of families needing assistance.<sup>64</sup> These

divisions can therefore preserve segregation and inequality even after the explicit racist laws and policies of the past have been dismantled.<sup>65</sup> Affluent suburbs, using exclusionary zoning policies that allowed them to zone out more affordable housing and housing discrimination, were able to accrue and protect a fiscal advantage over time.<sup>66</sup>

Federal and state policies have largely ignored these deepening inequalities and their effect on school performance. Instead, as Finnigan, Holme, and Sanchez argue, reformers have misdiagnosed the academic crises facing segregated, high-poverty districts, instituting policies that place the blame for failure mostly on teachers, schools and school districts. This includes “accountability” policies that demand improvement and threaten punishment, and market-based reforms, such as charter schools, that seek to spur improvement through competition. For some, such reforms promise that the boundaries typically impeding school desegregation will be eradicated since charter schools can draw their student enrollments across district boundaries.

Researchers, however, have consistently found that, overall, charter schools have not lived up to their promise in terms of providing students access to better schools.<sup>67</sup> And with desegregation considerations other civil rights enforcement largely absent from market-oriented school choice policies, whether charter, voucher, or open-enrollment policies, they tend to exacerbate rather than reduce segregation. Moreover, The Civil Rights Project at UCLA found that hyper-segregated charter schools serving predominantly Black and Latinx students had out of school suspension rates at more than 25% of the student body, and that hundreds of charter schools suspended 50% of their special education populations.<sup>68</sup> In these ways, choice, discipline, and segregation intersect. The failure to recognize in formulating

educational policy how housing segregation (and consequent school segregation) contributes to limited social contexts, declining enrollment, fiscal distress, and low performance has meant that urban and inner-ring suburban school systems have faced serious challenges and had serious sanctions imposed on them, while affluent suburbs have remained protected, praised, and even financially rewarded. As Shedd found in her study of Chicago youth, students of color in desegregated environments developed a heightened awareness of racial injustice when they saw how unfairly they were treated, while students of color in segregated environments came to expect unjust policing and school discipline policies as normal. While neither of these experiences results in justice, students in desegregated schools were able to understand that what they experienced from police and school was not normal and not fair. Accountability and school choice policies similarly have a differentiated effect on students according to the race and socioeconomic makeup of the schools in which they are implemented.

### **Compounding Unjust Social Contexts through Educational Policy**

Layered on top of these pervasive patterns of violence, segregation, and inequality exists a system of education policies that has compounded these patterns by promoting practices and programs that further violate communities of color inside of schools. These policies place blame on families, students, communities, teachers, and schools—not on the broader societal structures that maintain racial and socioeconomic inequalities. As described below, the reforms premised on this narrow view of responsibility are ineffective and even counterproductive precisely because they do not address schools' powerful contextual conditions. Policymakers at federal, state, and district levels have steadily expanded high-stakes testing policies that research shows function more to punish communities of color than to support them.

Of course, these policies did not begin in the 1980s. Test-driven policies have been around since at least the 1800s, when eugenicists advanced the belief that racial groups of particular European descent were superior to those from Africa and other regions in terms of intellect and overall genetic composition.<sup>69</sup> After the decline of eugenics, efforts to measure, categorize, and confirm a racial hierarchy through purported scientific methods persisted.<sup>70</sup> By the early 1900s psychologists developed intelligence tests whose explicit purpose was to identify those considered to have low intelligence in order to differentiate their educational and career opportunities.<sup>71</sup> Eugenicists argued that disparities in test scores between racial groups reflect innate biological differences, not environmental factors or flaws in the tests themselves. These debates continue to the present day. Herrnstein and Murray's notorious 1994 book, *The Bell Curve*, represents one of the most influential contemporary arguments for racial differences in intelligence.<sup>72</sup>

Today, debates over the causes of the racial achievement gap and cures for it continue to produce policies that are centered on test-based notions of merit. This framing rejects policies designed to address the contextual and historical conditions that empirical research has proven are powerful predictors of the test performance of different racial groups.<sup>73</sup> In fact, over the past two decades policymakers at federal and local levels have built entire systems of standardized-test-driven reforms that are guided by unsupported, behaviorist theories of extrinsic motivation, and whose cornerstones are punishments and rewards. These theories, and the policies that stem from them, are reinforced by free-market ideologies



that ignore a large body of social science research addressing the causes and effects of educational inequality.<sup>74</sup> The policies have effectively reproduced the status quo in terms of test performance and in terms of beliefs about differences in innate ability that have been further normalized in discussions of racial disparities among schools and communities.

Emboldened by early experiments by states and districts with high-stakes testing and accountability policies,<sup>75</sup> federal lawmakers introduced a collection of standardized-test-driven reforms through the No Child Left Behind Act, the Race to the Top program, and most recently through the Every Student Succeeds Act. NCLB in particular sought to turn around consistently low-scoring schools' performance by "reconstituting" their staff, that is, by laying off their current teachers, para-professionals, and administrators, converting traditional public schools to charter schools, reassigning the management of schools to an outside authority such as the state or a private management company, and even closing entire schools. Undergirding these policies is an assumption that strong external threats motivate teachers, principals and students to improve, that standardized test results are reliable, valid measures of student learning, that meaningful, sustainable changes in instruction and staffing can be spurred by competition, and that test-based accountability reforms can effectively interrupt and reverse heavily entrenched patterns of low test performance. In other words, these reforms are based on the assumption that the primary barrier to success in the past was teachers', administrators', and staff members' lack of motivation and incentive, and that the best forms of motivation and incentive are external threats and money.<sup>76</sup> These school policies were never designed to address the insidious effects of contextual factors such as schools' socioeconomic and racial isolation and disparities in financial or other out-of-school resources. In essence, they exacerbate the forms of violence discussed earlier in this brief because they further subject communities of color to unwarranted punishments.

*These school policies further subject communities of color to unwarranted punishments*

Proponents of test-based and market-based policies contend that they offer the best mechanisms for improving teacher quality and student outcomes.<sup>77</sup> They claim that the reforms can effectively narrow test-score gaps along lines of race and class and efficiently improve overall student achievement. Dramatically altering a school's performance trajectory, they reason, requires policymakers and educational leaders to implement intense staffing and management changes.<sup>78</sup> The media often describes these reforms as bold new innovative approaches to changing the behaviors of unmotivated educators or students. Yet districts and states have been experimenting with most of these reforms since before the No Child Left Behind Act of 2001, so a sizeable body of rigorous research evidence exists about their outcomes, including their unintended consequences.<sup>79</sup> Multiple high-quality research studies and evaluations confirm that each iteration of these test-driven, "no excuses" policies have disproportionately affected students of color, and that these effects have been deleterious.<sup>80</sup>

Researchers consistently document how the percentages of African American and Latinx students and teachers in schools targeted for these reforms are higher than their respective districts' overall populations. In Chicago, researchers found that district and city officials employed school closures as part of larger plans to displace African American communities, privatize public schools, and gentrify historically African American neighborhoods.<sup>81</sup> 88% of the students in the 54 Chicago Public Schools' schools that were closed, phased out, or "turned around" through mass layoffs were African American, compared to the district's overall African American enrollment of 43%. At the same time that Chicago's school closures

displaced more than 12,700 students, almost all of whom live in high-poverty, predominantly Black and Latinx neighborhoods, it has also opened more than 15 charter schools.<sup>82</sup> The school closings were concentrated in areas undergoing gentrification.

Similar patterns have been documented in New York City, Philadelphia, Detroit, Washington D.C., Oakland, Newark, and other cities.<sup>83</sup> Students of color, often those from high-poverty backgrounds, experience closures of their schools at higher rates than do their White counterparts from higher wealth backgrounds. These reforms have continued in the face of evidence that school closures and charter schools do not consistently result in students attending better schools.<sup>84</sup>

Scholars who have investigated the effects of turnaround-driven layoffs and charter conversions or expansions found that they decreased the representation of teachers of color.<sup>85</sup> In Chicago Public Schools, for instance, researchers found that reforms over the last two decades, most of which included turnaround-style interventions based on mass layoffs, made teacher workforces more likely to be White, younger, less experienced, and more likely to possess only provisional certification, than the teachers employed at the schools prior to the reforms.<sup>86</sup>

According to the final, longitudinal evaluation of the federal School Improvement Grant program (SIG), which incentivized states to implement these types of changes in exchange for large temporary grants, the reforms were found to have had little to no significant impacts on math or reading test scores across all grades, on high school graduation rates, or on college enrollment.<sup>87</sup> Thus, in addition to their disruptive effects on schools and students, they have also proven to be minimally or not at all effective at improving student outcomes. The punitive policies were ineffective because they were not designed to address the root causes of consistently low school performance – the unjust social contexts in which they were implemented. Instead, the policies continued to lead to acts of violence, usually against communities of color, in the form of heavy-handed penalties for test outcomes that are partly shaped by the economic and political conditions outside of schools – factors beyond the control of teachers, students, and families.

From a legal perspective, these types of reforms have motivated concerned educators, parents, community members, and community organizers to file Title VI and Title VII complaints in more than 22 metropolitan centers where they have been implemented.<sup>88</sup> Although the specifics of each civil rights complaint vary based on the unique conditions in each setting, the most common complaints include the claim that reforms such as school turnarounds or closures disproportionately and adversely affect African American and Latinx students. The reforms, plaintiffs contend, degrade either the quality of the educational opportunities available to their students or the employment opportunities for educators. Specifically, they contend that the reforms violate Titles VI or VII of the Civil Rights Act of 1964 in that they have the effect of discriminating against African Americans and Latinos by disproportionately impacting high numbers of racial minorities or by disproportionately reducing the access of students of color to adequate opportunities for teaching and learning.<sup>89</sup>

Against this backdrop, many students of color make important life choices within a circumscribed “social context of choice.”<sup>90</sup> A favorable context of choice would consist of a social environment that helps enrich and expand young people’s capacities to learn, envision their life possibilities, and meaningfully choose among good options.<sup>91</sup> From a structural perspective, while individuals in unfavorable circumstances can make certain choices, those choices

are shaped by the social context within which they are choosing.<sup>92</sup> Race is central to the social context of choice. This means that, although persons may be making “free” choices, if they are choosing from among a limited range of options, these choices may be empty ones.<sup>93</sup> For example, in their study of Black and Latino male high school students, Howard *et al.* found that narrow definitions of success at school consistently excluded those students and limited their options, even though they were seen as successful within their communities.<sup>94</sup> Similarly, how teachers perceive their students may affect how they perceive the behavior and actions of students of color. Teachers of color generally have more positive views of their students of color, with fewer students of color in their classes suspended from school.<sup>95</sup> Thus, when making the claim that people are ultimately responsible for their choices, it is important to acknowledge that such choices are shaped (limited or expanded) by the social circumstances under which they learn about life’s possibilities.

Indeed, for young people of color operating within constrained social contexts of choice, racist and oppressive social structures often limit what they imagine to be possible for their education and for their lives.<sup>96</sup> The nature of the choice makes a difference. Individuals are certainly responsible for their choices, but an unjust situation arises when rampant social inequalities shape the contexts within which young people grow up. For example, when students of color experience violence, concentrated poverty, education policies that exacerbate White supremacy, and segregated and inadequate public schools, unjust contexts and structures are (re)constituted.

Despite decades of social science research that points to the pervasive effects of poverty and the impact of racial and economic segregation on academic performance,<sup>97</sup> these policies focus exclusively on within-school factors to improve achievement. They do not address the community conditions surrounding struggling schools.<sup>98</sup> In their narrow focus on teacher- and school-based accountability for test results, they minimize attention to students’ social, emotional, mental, and physical health— factors that determine students’ academic and life outcomes to a much greater degree than the presence of high-stakes sanctions. The result is a collection of policies that perpetuate racial and ethnic inequalities.

## Recommendations

We conclude by presenting alternatives to current ineffective and unjust educational and social policies. These alternatives are supported by the research as more equitable reforms, particularly for communities of color, because they address the root causes of the racial and socioeconomic disparities in academic performance. These reforms depart from narrowly focused, punitive strategies in that they are designed to systematically and comprehensively address the structural and institutional obstacles that students in traditionally low-scoring schools in limited-opportunity neighborhoods and communities face.

Policymakers at all levels of educational and social systems must design a robust system of support that addresses the many opportunity gaps children of color and low-income families face outside of school and alters the patterns of policing and violence described above. These reforms are intended to ensure greater educational opportunity by redistributing resources in a manner that targets families that lack access to stable housing, employment, health care, and other elements that strongly predict educational success. They require district, city, and state leaders to shift toward an assistance and capacity-building role, as

opposed to a regulatory or monitoring role.<sup>99</sup> They also require those leaders to collaborate with social service and other agencies to ensure adequate personal, social, and economic opportunities for high-poverty communities of color. Finally, they work to break down the prejudices and structural racism that is embedded in schools and other agencies involved with youth through training, communication, and development of student agency. Black and Brown youth, and their experiences with discipline and policing, should be central to these efforts.

While the scope of the violence and discipline felt by students of color goes well beyond what takes place in school, our recommendations are focused on educational policies that could be developed and implemented at the local and state levels as a starting point to address these issues. For a broader set of complementary recommendations, see for example Crenshaw & Ritchie, Tonry, and White, Gaub, & Tobak.<sup>100</sup>

## Local

1. Develop systematic communication and planning between municipalities and school districts, including integrated city and school policies on policing, housing, transportation, and racial disparity. While this kind of municipal coordination can be challenging, cities with mayoral control of schools, such as Chicago and New York, are in a unique position to pilot such an effort.
2. Redirect funds currently spent on school resource officers to expenditures shown to improve student engagement and social connectivity, including increasing the number of guidance counselors, advanced-level and enrichment courses, socio-emotional learning curricula, and high-quality extracurricular activities.
3. Invest in the creation or support of racially and socioeconomically integrated schools.
4. Integrate community-based policing programs with school restorative and transformative justice initiatives to shift the emphasis from discipline and punishment toward capacity building, relationship building, and positive behavioral interventions and supports.

## State

5. Require teachers, school leaders, and all police/security staff to receive intensive preparation, trauma-informed professional development, and ongoing training on the causes of, and remedies for, racial inequality within and outside of school.
6. Require reporting of in-school and out-of-school suspensions and expulsions for charter schools and traditional public schools, disaggregated by race and gender. Develop interventions for schools with racially identifiable, disproportionate rates of these disciplinary actions.
7. Develop multiple measures of schools' effectiveness in place of narrowly focused test-based measures. Use these data to develop more positive, supportive interven-

tions aimed at decreasing suspension, expulsion, and referral rates.

8. Invest in “grow your own” teacher preparation and/or residency programs that help to develop, support, and retain teachers of color and teachers committed to equitable educational practices. Create teacher-police collaborative networks to develop positive supports for students of color within and outside of schools. An untapped resource, paraprofessionals in schools, who often come from the very communities in which they work, could be offered a career ladder.

## Notes and References

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- 1 We use the term Latinx to allow for gender inclusivity. In this report, we alternate between the use of “Black, Latinx, and students of color” to describe students most vulnerable to violence and discipline, but recognize that these terms are incomplete descriptors for how students identify racially and ethnically.
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