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SCHOOLYARD COPS AND ROBBERS: LAW ENFORCEMENT'S ROLE IN THE SCHOOL-TO-PRISON PIPELINE

M. ALEX EVANS*

I. INTRODUCTION

Imagine a young man by the name of Kahjah. Many believe that he is the best athlete to come out of the state since Michael Jordan, making him a favorite son of Apex, North Carolina and Middle Creek High School. From the front desk attendant, to the janitor, to the principal, the entire Middle Creek community acknowledges him as a prototypical student-citizen, both in and out of the classroom. Kahjah is a 16-year old National Honors Society member, as well as an ESPN National Top-5 high-school football recruit with well over 100 scholarship offers for both his athletic and academic prowess.

It is early in the morning as he walks into school with a group of his friends the Monday after his team's big state championship win the previous Friday night. Excited to finally join their fellow classmates in celebration, members of the football team playfully take part in the latest dance moves with a large group of students as they enter the school building.

Nearby Officer Jones, a substitute school resource officer (SRO), sees the commotion and immediately seeks to break up the gathering of students as he has no idea who the students are or why they are behaving in such a rousing manner. As Officer Jones approaches the group of students, Kahjah reaches out to humorously embrace the officer. Feeling threatened by the large student, the officer forcefully attempts to bring Kahjah to his knees. Officer Jones was unaware that Officer Beckwith, the full-time SRO and

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family friend of Kahjah, had built a healthy and, at times, playful relationship with the entire student body.

Known popularly as a kind-hearted hugger, Kahjah had no reason to believe that the new SRO was unfamiliar with him, or his upstanding character in the community. However, Officer Jones perceived Kahjah's actions as an imminent threat to his personal safety, justifying his arrest. Upon being placed in handcuffs while on his stomach, Kahjah responded with anger causing the officer to repeatedly bang his head on the concrete with force.

After video of the altercation went viral, even appearing on national television, Kahjah lost all of his athletic and academic scholarship offers from top schools. Kahjah was charged, as an adult, with assaulting a police officer and resisting arrest, both serious offenses that will leave a permanent mark on his record, which will also affect his future employment opportunities. Now Kahjah suffers from migraines, nightmares, social withdrawal, severe anxiety, and depression as a result of the incident, along with facing the harsh reality that his single mother cannot pay for him to go to college, and his dreams have been crushed.

Although the particular facts of this story are imagined, there are thousands of similar instances that take place each day across America. The inclusion of law enforcement officers in schools has created an unproductive tension within the learning environment, and students of color have taken the brunt of the residual consequences. School districts that have failed to implement precise procedures and protocols for law enforcement presence within their schools have particularly intensified the school-to-prison pipeline.¹ Professor Erica R. Meiners of Northeastern Illinois University highlights the correlations between schools and prisons in forming the school-to-prison pipeline when she states, “[s]chools and prisons are public pathways, and these pathways signify individuals’ deep histories of structural inequities. These pathways are visible as early as preschool, where youth of color are expelled and suspended at higher rates than white children.”²

Relatively speaking on America's history of inequities in public education, the nation has made progress over the last sixty years; however, with the emergence of the school-to-prison pipeline, the United States is now

1. The “school-to-prison pipeline” refers to the emerging pattern of tracking students out of educational institutions through “zero-tolerance” policies and tracking them directly or indirectly into the juvenile and adult criminal systems.

2. Erica Meiners, *Resisting Civil Death*, 3 DEPAUL J. FOR SOC. JUST. 79, 93 (2009) (discussing the loss of voting rights, struggles in securing living-wage employment, and denial of access to public housing and welfare of the incarcerated as part of civil death).

struggling to hold on to the advances of the past.³ Many social justice advocates have worked to eliminate the vestiges of Jim Crow segregation, such as our system of education that still contains remnants of *de jure* discrimination in the form of unambiguous statistics, which reveal disturbing racial disparities.⁴ For decades, numerous issues have plagued poor communities of color, such as rising incarceration rates, poverty, and the lack of access to quality education.⁵ Thus, the school-to-prison pipeline simply increases the amount of challenges that many students face each day.

Through the school-to-prison pipeline, the continuing legacy of *de jure* discrimination lives on as African-American students are at least three times more likely to be expelled or suspended than their white peers.⁶ Notwithstanding the fact that schools remain the safest place for children,⁷ in the wake of a few isolated gun violence tragedies, many school districts have elected to increase security by placing armed officers in every school.⁸ Since this sudden increase of police presence, high numbers of African-American youth are being arrested for trivial misbehaviors through discriminatory zero-tolerance policies.⁹ A number of districts and states nationwide push students out of schools and into the criminal justice system for behavior that should be handled only within schools.¹⁰ Equally troubling, a recent study “found that 95 percent of out-of-school suspensions were for non-violent, minor disruptions such as tardiness and disrespect.”¹¹

Between 1997 and 2007, the presence of SROs inflated by 38 percent,¹² which allowed school discipline to be reshaped by this increased reliance on law enforcement to maintain public school order. Factors such as the enlarged presence of SROs contribute to the statistics that show that Black students are disproportionately placed within the juvenile justice system;¹³

3. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS*, 3 (2010).

4. *Id.*

5. *Id.*

6. U.S. DEP'T OF EDUC., *GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE* i (2014).

7. ADVANCEMENT PROJECT, ALLIANCE FOR EDUC. JUSTICE, DIGNITY IN SCH. CAMPAIGN & NAACP LEGAL DEF. AND EDUC. FUND, INC., *POLICE IN SCHOOLS ARE NOT THE ANSWER TO THE NEWTOWN SHOOTING I* (2013).

8. *Id.*

9. *Id.*; see also American Psychological Ass'n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST, 852-62 (2008) (discussing that there is no evidence that zero-tolerance disciplinary policies and their application to non-violent misbehavior improve school safety or student behavior).

10. Catherine Y. Kim, *Policing School Discipline*, 77 BROOK L. REV. 861, 862 (2012).

11. U.S. DEP'T OF EDUC., *supra* note 6, at ii.

12. Amanda Petteruti, *Education Under Arrest: The Case Against Police in Schools*, Nov. 2011, at 1, (available at http://www.justiccpolicy.org/uploads/justiccpolicy/documents/educationunderarrest_fullreport.pdf).

13. *Id.* at 21.

therefore school districts must dramatically reduce law enforcement officers' participation in disciplining procedures. School districts must also establish unambiguous discipline procedures in which officers may or may not be allowed to take part, along with strict limitations on the use of excessive force and arrests. Further, school districts like Wake County Public School System (WCPSS), which have a particularly aggravating history of inflicting discriminatory injuries to students, should partake in goodwill measures to rebuild a community climate of healthy learning and equality.¹⁴

While there is a large amount of scholarship discussing the discipline and policing policies that aggravate the school-to-prison pipeline, this article specifically uses WCPSS as a model to highlight the challenges that many school districts face nationwide. This article not only evaluates conventional methods to extinguish the school-to-prison pipeline that have been widely introduced, but it also tenders non-conventional methods such as goodwill, as an effort to cure the community from the harms suffered by the pipeline's powerless targets. This model has proven successful in places like Clayton County, Georgia, and Ohio's Department of Youth Services' program RECLAIM Ohio that have created programs to reverse the harms generated by the school-to-prison pipeline.¹⁵

Part II of this paper will examine America's racially discriminatory criminal justice system and climate of law enforcement in America, while exploring the correlations of this inequitable climate with schools. Part III summarizes extensive data on the school-to-prison-pipeline and analyzes WCPSS' security and policing policies. This section will culminate with narratives of instances in which students-of-color suffered injuries under WCPSS' unjust student discipline and policing practices. Part IV will explore multiple programs that have proven to be successful in improving school discipline and policing policies to extinguish the school-to-prison pipeline. Finally, Part V will conclude by proposing solutions for WCPSS and surrounding areas which will ideally serve as a standard of development for school districts nationwide that have encountered similar challenges within their respective school-to-prison pipelines.

14. See generally *District Facts*, WAKE COUNTY PUBLIC SCHOOL SYSTEM, <http://www.wcpss.net/domain/100> (last visited Mar. 5, 2015) (Wake County Public School System's enrollment for the 2014-2015 school year was 155,184 students, an increase of 1,884 children. WCPSS is the largest school system in the state of North Carolina and the 16th largest school system in the nation. Their student population has almost tripled since 1980 and as many as 20,000 additional children are expected by 2020.).

15. *Ending the School to Prison Pipeline: Testimony for the Record Before the U.S. Sen. Judiciary Comm. Subcomm. on Constitution, Civil Rights and Human Rights*, 112th Cong. (2012) (testimony of Mike DeWine, Att'y Gen., Ohio) (testimony of Steven C. Teske, C.J., Clayton County Juvenile Court).

II. CRIMINAL JUSTICE IN MODERN AMERICA

There are many ways in which racial stereotyping can secretly infiltrate decision-making processes at all levels within the criminal justice system, with devastating consequences.¹⁶ It is unfortunate that, through law enforcement especially, our criminal justice system is anything but covert in its discriminatory practices.¹⁷ While the United States has the highest rate of incarceration in the world, totaling over seven times more than countries like Germany, the racial dimension of mass incarceration is by far the most striking factual element.¹⁸ America makes up 5 percent of the entire World population, yet it accounts for 25 percent of the total number of those imprisoned.¹⁹ The United States is home to growing prisons and jails that house over two million persons, and has by far the highest incarceration rate for any developed country.²⁰ When the four million people on probation and the 750,000 parolees are included, the amount of persons under the control of the State in the U.S. triples to nearly seven million, and this number does not incorporate those retained in Immigration and Naturalization detention facilities or U.S. penitentiaries outside of the United States.²¹ Latinas are four times more likely and African American women are eight times more likely to be jailed than white women, and three out of four incarcerated women are detained for nonviolent crimes.²²

This obsession with prison expansion has separable and nationwide penalties that extend much further than the dreadful stowing of the nation's impoverished.²³ One out of every fifty U.S. citizens is stripped of voting rights due to imprisonment, and in some states almost 33 percent of African-American males are disenfranchised.²⁴ In major cities wracked by racial inequity, nearly 80 percent of young African-American men now have criminal records, which subject them to a life of discrimination and restricted rights.²⁵ Amazingly, one in three African-American men will serve time in prison if current trends continue, and in some cities more than half of all young adult African-American men are under correctional control, whether in jail, probation, or parole.²⁶

16. ALEXANDER, *supra* note 3, at 4.

17. *Id.*

18. *Id.* at 6.

19. ERICA R. MEINERS, *RIGHT TO BE HOSTILE: SCHOOLS, PRISONS, AND THE MAKING OF PUBLIC ENEMIES 2* (2007).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 5.

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Once one recognizes that an identical pattern of vast racial disproportionality in punishment exists in the criminal justice system as in the juvenile justice system, the connection with education becomes even more apparent.²⁷ “Schools look an awful lot like prisons, and sometimes schools look more like prisons than do real detention centers.”²⁸ The parallels are also recognizable in the administration of daily life inside the walls of schools through the creation of policies that incorporate juvenile justice laws within school discipline policies.²⁹ Accordingly, an essential inquiry posed by many juvenile justice advocates questions why schools coast-to-coast continue to include law enforcement officers within the enforcement of school discipline procedures. This practice has caused schools to feel more like correctional facilities when they were once one of the few safe havens for the youth of this country to grow up in peace.

A. *Historical Discrimination by Schools and Law Enforcement*

i. *Desegregation Era*

The prevailing feeling amongst the majority of Americans regarding the landmark United States Supreme Court decision in *Brown v. Board of Education (Brown I)*,³⁰ is progression. Though the “separate but equal” doctrine from *Plessy v. Ferguson*³¹ was overturned, the Supreme Court in *Brown II*³² only provided remedies for the school districts named in the litigation because it did not have jurisdiction to sanction remedies across the entire Nation, leaving many school districts plagued by oppressive policies.³³ “Ultimately, implementation of desegregation was left to local authorities subject to the supervision of federal district judges.”³⁴

School districts, most notably in southern states, have historically acted in unfettered solidarity to restrain African-Americans’ aspirations and tal-

27. See, e.g., MARC MAURER & RYAN S. KING, *UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY* 4 (2007) (stating that the United States prison and jail system is marked by an engrained racial disparity in the incarcerated population. The study also reports that, in 2005, the incarceration rate per 100,000 people was 2,290 for Blacks and only 412 for whites.).

28. MEINERS, *supra* note 19, at 2–3.

29. *Id.* at 3.

30. *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483 (1954).

31. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

32. *Brown v. Bd. Of Educ. (Brown II)*, 349 U.S. 294, 301 (1954) (holding that District Courts were to “enter such orders and decrees . . . as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed”).

33. Irving Joyner, *Pimping Brown v. Board of Education: The Destruction of African-American Schools and the Mis-Education of African-American Students*, 35 N.C. CENT. L. REV. 160, 175–76 (2013).

34. Monique Langhorne, *The African American Community: Circumventing the Compulsory Education System*, 33 BEVERLY HILLS B. ASS’N J. 12, 18 (2000).

ents, even within the post-*Brown* desegregated institutions.³⁵ Students were effectively segregated within many schools, as it was common practice to track African-American students into special education and occupational classes at disparate rates.³⁶ African-American students were barred from certain extracurricular activities and a large number of districts devised bus routes to ensure that students were segregated."³⁷ African-American students during this period also faced intimidating attitudes, dismissals from school at excessive rates, modest scholastic expectations, and little if any support to encourage them to finish school.³⁸

One of the first widely recognized instances of armed officers in schools is also arguably one of the most deplorable images of the American education system, which took place at Central High in Little Rock, Arkansas in 1957.³⁹ In response to the federal district court ordering admission of nine African-Americans into Central High, Arkansas Governor Orval Faubus proclaimed a state of emergency, and subsequently ordered troops to prohibit the African-American students from entering the school.⁴⁰ Armed troops, not disgruntled community members, sought to dismiss the nine African-American students as they approached the doors of their new school.⁴¹ It was only after weeks of pressure, due to foreign policy implications, that President Dwight Eisenhower acted by sending federal troops to safely escort the students into the school.⁴² The iconic image of armed guards shielding African-American students from a vicious mob of white protestors represents the modern day school-to-prison pipeline, and quite literally symbolizes the double standard that is deeply rooted in the criminal justice system. Whites were often allowed to act in violence against African-American students with no consequences from government officials, yet today students of color are arrested at alarming rates for the very same non-violent acts, for which white students are rarely arrested.⁴³

While under what many believed to be an educational oppression, a great number of African-American students in segregated schools were able to overcome these challenges to achieve outstanding success in the arts and

35. DAVID S. CECELSKI, *ALONG FREEDOM ROAD: HYDE COUNTY, NORTH CAROLINA AND THE FATE OF BLACK SCHOOLS IN THE SOUTH* 170 (1994).

36. Joyner, *supra* note 33, at 201.

37. *Id.*

38. *Id.* at 201–02.

39. Mary L. Dudziak, *The Little Rock Crisis and Foreign Affairs: Race, Resistance, and the Image of American Democracy*, 70 S. CAL. L. REV. 1641, 1659–60 (1997).

40. *Id.*

41. *Id.*

42. *Id.* at 1674–75.

43. David Simson, *Exclusion, Punishment, Racism and Our Schools: A Critical Race Theory Perspective on School Discipline*, 61 UCLA L. REV. 506, 532 (2014).

sciences, as well as in the business and professional world.⁴⁴ This discredited the widespread argument that African-American students achieve and behave at an inferior level than that of other students.⁴⁵ Now African-American students must confront similar levels of prejudice due to the school-to-prison pipeline within their schools, which were supportive learning environments under *de jure* segregation.⁴⁶

ii. The Introduction of Law Enforcement to Schools

Many school districts placed additional police officers, security guards, metal detectors, and surveillance cameras in schools in response to the April 1999 shooting at Columbine High School.⁴⁷ This tragedy, which horrified parents and teachers across America, proved to be a critical event in the landscape of school disciplinary procedures.⁴⁸ After the Columbine tragedy, law enforcement officers were positioned in American schools at an alarming rate.⁴⁹ Consequently, schools have become less welcoming and more frightening to children, largely causing the culture of many schools to change considerably.⁵⁰ With an increase of law enforcement officers in schools, there was a policy change to arrest students for minor offenses that traditionally would be disciplined within the school setting.⁵¹

For a four-year span beginning in 2000, Denver, Colorado saw a 71 percent surge in school discipline referrals to law enforcement.⁵² From 2002 to 2004 the school district paid the Denver Police Department more than \$1.2 million annually for police presence in schools.⁵³ The District expended this substantial amount of capital for police involvement in occurrences that previously resulted in a call to students' guardians or a visit to the front office.⁵⁴ Between 2007 and 2012, these unintended consequences persisted as most incidents referred to law enforcement were for detrimental misconduct, "drug violations," code of conduct violations, and defiance, not for school safety concerns such as possession of a dangerous weapon.⁵⁵

44. *Brown I*, 347 U.S. at 490.

45. *Id.*

46. Joyner, *supra* note 33, at 202.

47. ADVANCEMENT PROJECT ET AL., *supra* note 7, at 5. (referring to Columbine High School in Littleton, Colorado, where two students killed fourteen other students and two teachers).

48. *Id.*

49. *Id.* at 6–8.

50. *Id.* at 7–8.

51. *Id.* at 8.

52. *Id.* at 5 Most discipline referrals were for minor misconduct involving foul language, distracting attire, and property damage. Only 7 percent of the referrals were for severe conduct, like carrying a firearm to school. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

iii. Current Racial Criminalization of Youth in Schools

Due to the intimate connection between school officials and law enforcement, “the hallways of our nation’s public schools have become the portals to the revolving door of the criminal justice system.”⁵⁶ With this increase in the criminalization of schools, students are more often placed within the grasp of the criminal justice system than the school system, which traditionally handled misbehavior in solidarity.⁵⁷ There are several states and districts where it is mandatory to refer students to criminal justice authorities for petty school-related misbehaviors.⁵⁸ The criminalization of student behavior does not stop at issuing referrals, but it in fact has created a shift towards increasing the presence of law enforcement personnel on public school campuses.⁵⁹ This criminalization of schools has transformed school campuses into well-policed institutions, which produces an exponentially increasing number of school-based arrests.⁶⁰ While learning in this distracting environment is problematic, students of color suffer at disproportionate rates from this form of criminalization.⁶¹

The prevailing narrative of youth criminalization, which applies particularly to inner-city students of color, labels school children as threatening, violent, drug-dealing, gang-affiliated, out-of-control mischief-makers.⁶² The United States Supreme Court embraced this plot in *New Jersey v. T.L.O.*,⁶³ which stated that according to the “rubric of school safety,” children were “stripped of the full protection provided by the Fourth Amendment; probable cause, instead of reasonable suspicion, became the standard in school searches.”⁶⁴ Many students’ perspectives on law and justice are tainted when disciplinary procedures in schools undervalue basic principles of liberty through abridged individual rights for students.⁶⁵ The use of police officers to enforce school rules constricts the scope that students recognize themselves because the law is not just a set of rules.⁶⁶

56. Sarah Jane Forman, *Countering Criminalization: Toward A Youth Development Approach to School Searches*, 14 SCHOLAR 301, 328 (2011).

57. Simson, *supra* note 43, at 518.

58. *Id.* at 522–23.

59. *Id.*

60. *Id.* at 518.

61. *Id.* at 522–23.

62. *Id.*

63. 469 U.S. 325, 346 (1985) (The principal case in school search jurisprudence that created the current standard of reasonable suspicion is this 1985 case involving the search of a fourteen-year-old high school student’s purse. To determine what was reasonable in the context of a public school, the Court balanced the students’ interest in privacy against the substantial interest of teachers and administrators in maintaining school discipline.).

64. Forman, *supra* note 57, at 305.

65. *Id.*

66. *Id.*

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School discipline also serves as an instrument of political and legal socialization, which sends a regulating message to students of color about “their relationship with government, society, and the law itself.”⁶⁷ Sarah J. Forman, an Assistant Professor of Law at the University of Detroit Mercy School of Law, inquires as to what type of lessons are taught to students when they are subjects of pats, frisks, sniffs, and searches on a consistent basis?⁶⁸ Students who are subjected to such a standard of school discipline may feel that the law is prejudicial and question its validity, because adults in positions of influence have treated them with suspicion and contempt.⁶⁹ Students’ trust in a democratic society is specifically lost in instances when severe zero-tolerance policies subject violators to harsh punishments regardless of the circumstances of the infraction.⁷⁰

This type of damaging socialization is especially harmful to adolescent students, because during this period students undergo “significant psychological, intellectual, and emotional development.”⁷¹ Professor Forman explained that brain science and developmental psychology suggest that teenage youth are in the process of developing their individualities, and are coming to understand their place in society.⁷² Adolescent students are being shaped and programmed into patterns of understanding and conduct that influence the way they relate with the world in which they live, and decide “what type of adults they will become.”⁷³ As a result, many of these adolescents have extremely delicate characters that make them exceptionally susceptible to outside influences and burdens.⁷⁴ During the adolescent years, students absorb as much from their exchanges with authority figures and peers as they do from their schoolbooks.⁷⁵ Therefore, the overbearing punitive policies in a number of America’s schools, where students are viewed with suspicion and treated like hazards, generate a “self-fulfilling prophecy” that “when students are treated as threats to society, they become threats to society.”⁷⁶

67. *Id.*

68. *Id.*

69. *Id.* at 306.

70. *Id.* at 331–32.

71. *Id.* at 307.

72. *Id.* (See also Sarah Spinks, *Inside the Teenage Brain: Adolescent Brains Are Works in Progress*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/work/adolescncnt.html> (indicating that the period of “hardwiring” occurs during adolescence)).

73. *Id.*

74. *Id.*

75. *Id.* at 307–08.

76. *Id.* at 308.

III. EXPOSING THE PIPELINE DATA

A. *Survey of National Landscape*

In January 2014, the Obama Administration announced new guidelines to school districts calling for them to condense zero-tolerance policies and not to arrest students for slight disciplinary infractions.⁷⁷ Data gathered by the U.S. Department of Education's Office for Civil Rights (OCR) shows that the school-to-prison pipeline disproportionately marginalizes youth of color. Former U.S. Attorney General Eric Holder said African-American students were disciplined more severely and more frequently because of their race.⁷⁸

UCLA's Civil Rights Project, which surveyed data from more than 26,000 American secondary schools, estimates that more than two million students were pushed out during the 2009–2010 school year.⁷⁹ This means that out of every nine secondary school students, one was suspended at least one time during that school year.⁸⁰ The study selected secondary schools for this survey because, at that level, children of color, as well as students from other “historically disadvantaged groups,” have a much higher probability than other students to be suspended.⁸¹ Suspension rates since 1970 have increased for all students across demographic lines; however, students of color have seen drastic increases.⁸² African-American students' suspension rates saw a 12.5 percent increase from 11.8 in 1970 to 24.3 in 2009–2010; during the same period, the rate only increased by 1.1 percent for White students, from 6 to 7.1 percent.⁸³ In short, the increase is more than eleven times higher for African-Americans than for Whites.⁸⁴ It seems probable that racial stereotyping, whether deliberate or unconscious, has contributed to the inequalities and can shed light upon at least some part of current racial disproportionality in school discipline.⁸⁵

Nationally, high suspension rates in middle and high schools have increased dramatically over time for African-American students.⁸⁶ One in

77. GUIDING PRINCIPLES, *supra* note 6.

78. *Id.*

79. Daniel J. Losen & Tia Elena Martinez, *Out of School & Off Track: The Overuse of Suspensions in American Middle and High Schools*, THE UCLA CENTER FOR CIVIL RIGHTS REMEDIES AT THE CIVIL RIGHTS PROJECT (Apr. 2013), http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack_UCLA_4-8.pdf.

80. *Id.* at 1.

81. *Id.*

82. *Id.* at 1–2.

83. *Id.*

84. *Id.*

85. Simson, *supra* note 43, at 524.

86. Losen & Martinez, *supra* note 79, at 3.

four African-American secondary school children, and nearly one in three African-American middle school males, were suspended at least once in 2009–2010.⁸⁷ It is significant to note that Black female secondary students were the most marginalized group, as they were suspended at a much higher rate of more than 18 percent, than any other racial or ethnic group.⁸⁸

A 2010 report entitled, “*Suspended Education: Urban Middle Schools in Crisis*,” disclosed overwhelming racial and gender disproportions at the middle school level, presenting much greater rates than appear when collective K-12 data are evaluated.⁸⁹ For instance, nearly 30 percent of Black males in middle school were suspended, compared to just 10 percent of White males. Likewise, almost 20 percent of Black females were suspended, in comparison to only 4 percent of White females.⁹⁰ Additional assessment of data for eighteen of America’s largest school districts discovered that in fifteen of those districts, at least 30 percent of all Black males enrolled were suspended at least once.⁹¹ Throughout these urban districts, hundreds of different schools had unusually high suspension rates of 50 percent or higher for African-American males.⁹²

The Civil Rights Project’s study demonstrates that 2,624 secondary schools in 323 districts across the nation suspended 25 percent or more of their student body.⁹³ This study also shows that 519 of these schools had suspension rates equal to or exceeding 50 percent of their respective student bodies.⁹⁴ The study labels schools as hotspot secondary schools if they suspend more than 25 percent of any subgroup.⁹⁵ Chicago had the highest number of high-suspension hotspot schools in the nation with eighty-two schools, while Wake County, North Carolina had the highest number in North Carolina, with thirty-eight hotspot schools.⁹⁶

When considering a student’s scholastic life, the extensive abuse of suspensions and expulsions has tremendous costs.⁹⁷ When suspended or expelled from school, students are often unsupervised and are not able to take advantage of teachers, healthy peer exchanges, and mature mentorship offered in schools.⁹⁸ School officials fail to help suspended students cultivate

87. *Id.*

88. *Id.*

89. Daniel J. Loscn, *Discipline Policies, Successful Schools, Racial Justice, and the Law*, 51 FAM. CT. REV. 388 (2013).

90. *Id.* at 390.

91. *Id.*

92. *Id.*

93. Loscn & Martinez, *supra* note 79, at 3.

94. *Id.*

95. *Id.*

96. *Id.* at 4.

97. GUIDING PRINCIPLES, *supra* note 6, at ii.

98. *Id.*

the skills and approaches they desire to develop their conduct and circumvent future difficulties.⁹⁹ “Suspended students are less likely to graduate on time and more likely to be suspended again, repeat a grade, drop out of school, and become involved in the juvenile justice system.”¹⁰⁰ Jon Powell, a law professor at Campbell University Law School in Raleigh, North Carolina states that what is taking place within WCPSS at high schools like Enloe and Broughton has a proximate and long-lasting consequence on those affected students who choose to apply for college or try to get a job, because of the criminal charges filed against them for minor classroom misbehavior.¹⁰¹

In 2013, the American Pediatrics Association stated that research demonstrates that schools with higher rates of out-of-school suspension and expulsion are not safer for students or faculty.¹⁰² The Civil Rights Project research demonstrates that the idea that we must “kick out the bad kids so the good kids can learn” is a myth, because there are many viable alternatives that do not result in chaotic school environments.¹⁰³ Harsh punitive responses do more harm than good, and reserving out-of-school suspension as a measure of last resort can lead to higher achievement and improved graduation rates.¹⁰⁴

B. *Wake County Public School System Pipeline*

i. WCPSS Data

The fight against the school-to-prison pipeline in North Carolina is currently at a fever pitch as WCPSS has received a number complaints from various organizations, including: the American Civil Liberties Union of North Carolina Legal Foundation, the Center for Civil Rights Remedies at the Civil Rights Project at UCLA, the Coalition of Concerned Citizens for African-American Children, North Carolina Heroes Emerging Amongst Teens (NC HEAT), the North Carolina Justice Center, the North Carolina chapter of the NAACP, and the University of North Carolina Center for Civil Rights.¹⁰⁵ The glaring solidarity of this large group of juvenile justice

99. *Id.*

100. *Id.*

101. Caroline Cooper, *Black Students and the 'School-to-Prison Pipeline'*, AL JAZEERA AMERICA (Jan. 22, 2014, 10:00 AM), <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2014/1/22/black-students-andtheschooltoprisonpipeline.html>.

102. Losen & Martinez, *supra* note 79, at 2.

103. *Id.*

104. *Id.*

105. LEON W. RUSSELL, HILLARY O. SHELTON & JOTAKA EADDY, SHADOW REPORT OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE TO THE UNITED NATIONS

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advocates is just one piece of a puzzle that tends to show the magnitude of the pipeline concerns within WCPSS, as well as the State of North Carolina.

Legal Aid of North Carolina supervising attorney, Jason Langberg, suggested that WCPSS has one of the most conspicuous school-to-prison pipelines in the entire nation, which is largely due to WCPSS having one of the greatest long-term suspension rates in the state.¹⁰⁶ Langberg's examination of this data at WCPSS revealed that there are more than 20,000 suspensions per year that last for ten days or more.¹⁰⁷

It is important to note that WCPSS' suspension rates have declined in recent years. For example, throughout the 2011 and 2012 school years, WCPSS produced fewer than 15,000 short-term suspensions and nearly 400 long-term suspensions; however, the racial discrepancies in the data are still apparent.¹⁰⁸ According to Langberg's analysis of the data, Black WCPSS students are suspended five times as often as their white peers.¹⁰⁹ For example, in Wake County, less than 20 percent of white students caught with cell phones were suspended last year. That number more than doubles when compared with the same rate of Black students.¹¹⁰ Specifically, at Enloe High School, Black students represent less than 40 percent of the population, yet receive nearly three-fourths of the short-term suspensions and, shockingly, slightly more than nine out of ten of the long-term suspensions.¹¹¹

In Wake County, African-American students are subject to 62.3 percent of short-term suspensions (less than ten days), 67.5 percent of long-term suspensions (ten or more days), and 73.4 percent of school-based delinquency complaints, while only making up 26.1 percent of the total student population.¹¹² During the 2011–2012 academic year, African-American students had, by far, the highest short-term suspension rate at 23.6 short-term suspensions per 100 African-American students, followed by American Indian (13.5), Hispanic (10.1), Multi-Racial (9.3), white (3.7), and Asian (1.2) students.¹¹³ African-American students were 6.4 times more

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION CONCERNING THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 51 (2014).

106. Coopcr, *supra* note, 101.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. Jason Langberg & Jennifer Story, *The State of the School to Prison Pipeline in the Wake County Public School System*, LEGAL AID OF NORTH CAROLINA, Aug. 2013, at 4, available at <http://www.legalaidnc.org/statcofpipeline.pdf>.

113. *Id.* at 111–13.

likely than White students to receive a suspension.¹¹⁴ Black students were 24.7 percent of the total student population, but received 60.2 percent of suspensions and were 55.9 percent of students who received at least one suspension.¹¹⁵ Thirteen percent of African-American students were suspended at least once, compared to 2.5 percent of White students.¹¹⁶ Black male students were 12.2 percent of the total student population, but were 37.7 percent of students who received at least one suspension.¹¹⁷

While nearly 6 percent of the entire student population was removed from school at a minimum once during the 2011–2012 school year, 23 percent of Black, 13.3 percent of Hispanic, and 11.7 percent of multi-racial students with disabilities were suspended on one occasion or more.¹¹⁸ Socioeconomically underprivileged students (characterized by students who qualify for free or reduced price lunch) made up a third of the total student population during the 2011–2012 school year, but were almost two-thirds of suspended students.¹¹⁹ The proportion of students receiving free or reduced price lunch at a particular school was compared with suspension rates, which produced findings that the more underprivileged a school was, the greater its rates of suspension.¹²⁰ This is particularly noteworthy because, as a study conducted by the Civil Rights Project of the Center for Civil Rights Remedies suggests, the highest rates of suspension are observed when the intersection of race, disability, poverty, and gender are calculated; making poor African-American students with disabilities the most at risk demographic to be subject to suspension in WCPSS.¹²¹

Recent data from North Carolina also rebuts arguments in support of punitive school discipline procedures, which attribute more frequent and more severe misbehavior to higher suspension rates for students of color.¹²² The

114. *Id.*

115. *Id.* at III-13–14.

116. *Id.* at III-14.

117. *Id.*

118. *Id.* at III-16.

119. *Id.* at III-17.

120. *Id.*

121. Losen & Martinez, *supra* note 79, at 3.

122. *Id.*; see also Kyle Rogers, *Obama Asks Public Schools to Ignore Bad Behavior by Black Students*, EXAMINER.COM, (July 30, 2012, 12:41 PM), <http://www.examiner.com/article/obama-asks-public-schools-to-ignore-bad-behavior-by-black-students> (indicating that the reason Black students are more likely to be disciplined is because, “Black students are more likely to misbehave.”); Roger Clegg, *How the Obama DOJ’s School-Discipline ‘Guidance’ Will Hurt Well-Behaved Poor Kids*, NATIONAL REVIEW, (January 8, 2014, 4:43 PM), <http://www.nationalreview.com/corner/367901/how-obama-doj-school-discipline-guidance-will-hurt-well-behaved-poor-kids-roger-clegg> (indicating that some racial and ethnic groups are more or less likely to misbehave.); Ruben Navarrete, *Obama’s school discipline plan is overkill*, CNN, (March 28, 2014, 8:42 AM), <http://www.cnn.com/2014/03/28/opinion/navarrete-school-discipline-white-house/> (advising that “we stop meddling in the schools” and confront issues like “poverty, despair and broken homes,” which according to the author causes students to “get into trou-

data illustrates that “Black first-time offenders in the State of North Carolina were far more likely than White first-time offenders to be suspended for minor offenses, including cell-phone use, disruptive behavior, disrespect and public displays of affection.”¹²³ This data on first-time offenders, broken down by race and type of infraction, is not commonly available or conveyed to the community at-large, but was acquired by attorneys through a freedom-of-information request.¹²⁴ The attorneys then filed an OCR complaint against Wake County School Board of Education affirming that district data, like that mentioned above, proves that Black first time offenders received much greater percentages of out-of-school suspensions than of White first-time offenders for equal categories of offenses.¹²⁵

ii. WCPSS Security and Law Enforcement Policies

An analysis of the data pertaining to WCPSS does not seem to align itself with the state of affairs in the school system. While the data tends to rebut the argument that officers are needed to prevent dangerous activities, WCPSS has continued to finance an extremely expensive security unit; notwithstanding this fact, only 5 percent of out-of-school suspensions are issued for disciplinary incidents usually defined as severe or hazardous, such as any possession of dangerous weapons or illegal substances.¹²⁶ WCPSS’ extensive security branch includes at least 130 employees.¹²⁷ There are sixty-four full-time law enforcement officers, an unknown number of part-time off-duty law enforcement officers, sixty-one private security officers, and nine security department staff.¹²⁸

Further, there are notable gaps in the available information regarding these security implementations which, if made available, would help to determine their necessity. During the 2011–2012 school year, WCPSS and local law enforcement agencies severely limited public information about their security practices while exhausting millions of taxpayer dollars.¹²⁹ No data is collected in reference to school-based restraints, searches, interroga-

ble.” The author also asserts that federal school discipline initiatives cause students of color to identify themselves as victims.).

123. DANIEL J. LOSEN, NAT’L EDUC. POLICY CTR., *DISCIPLINE POLICIES, SUCCESSFUL SCHOOLS AND RACIAL JUSTICE* 8 (2011).

124. *Id.*

125. Complaint at 36, *NAACP v. Wake Cnty. Bd. of Educ.* (Sept. 24, 2010); *see also* T. Keung Hui & Mandy Locke, *Federal civil rights complaint filed against Wake Schools*, NEWS & OBSERVER, Sept. 25, 2010.

126. Russell J. Skiba & M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*, in *HANDBOOK OF CLASSROOM MANAGEMENT: RESEARCH, PRACTICE, AND CONTEMPORARY ISSUES*, 1063, 1068–69 (Carolyn M. Evertson & Carol S. Weinstein eds., 2006).

127. Langberg, *supra* note 112, at 112.

128. *Id.*

129. *Id.*

tions, uses of force, arrests, or criminal court referrals, and WCPSS' security practices have never been independently evaluated.¹³⁰ Causing even more difficulties, there are no straightforward procedures for students, parents, and staff to use when filing a complaint against security personnel who behave inappropriately.¹³¹ Lastly, these inconsistent security practices extend across all of WCPSS.¹³²

1. WCPSS Security Department

The school system also houses a dedicated security department and provides specific monetary support for its maintenance. During the 2011–2012 school year, WCPSS' annual security budget was more than three million dollars, excluding related expenditures by local law enforcement agencies.¹³³ Their Security Department consisted of a total of nine employees: three administrative personnel, five Security Administrators (SAs), and one Emergency Management Coordinator (EMC).¹³⁴ Each SA was situated at a different school and appointed to cover certain regions of the school district, while the EMC was assigned to cover the entire district.¹³⁵

Each of the SAs must have at least five years of experience in law enforcement or security services.¹³⁶ They are not required to have a college degree, but must have either a Bachelor's degree or functional equivalent.¹³⁷ When taking into account their salary, benefits, training, and communication devices, SAs are paid nearly \$65,000.¹³⁸ An SA's principal responsibilities consist of investigating confrontations, delivering presentations regarding school security related topics, keeping written security risk evaluations of WCPSS locations, and aiding schools with performing safety drills.¹³⁹ Their duties also include, but are not limited to: providing "internal intelligence;" creating "suspect pools;" probing students and taking written statements; searching students, facilities, vehicles, and lockers; properly cataloguing seized evidence and turning it over to the appropriate law enforcement agency; examining surveillance equipment; administering student drug tests; formulating reports for and testifying at court procedures and hearings; and serving as a point of contact for local law enforcement.¹⁴⁰

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 113.

139. *Id.* at 112.

140. *Id.* at 112–13.

2. Security Officers

In spite of a dedicated budget and security department, not all of the security measures are handled by WCPSS employees. Starting in 2006, WCPSS began to outsource some of its security practices to a private security firm called AlliedBarton, which brought in nearly two billion dollars in revenue during the 2010 fiscal year.¹⁴¹ During the 2011–2012 school year, WCPSS paid AlliedBarton more than one million dollars for bike patrol officers, night patrol officers, security officers, supervisors, as well as alarm monitoring, project coordination, uniforms, gas, and automobile maintenance.¹⁴² Security officers earned up to eleven dollars per hour, and the job requirements did not specify a prerequisite for any previous experience or training in security.¹⁴³ Instead the only requirement was that the security officer have a minimum of 20/20 correctable vision; healthy physical condition; respectable ethical character, as evidenced, in part by “areas of residence/neighborhood;” “meaningful work history” associated with or supporting the work to be completed for WCPSS; and “education beyond the high school level in a field related to or complimenting the work to be performed for WCPSS.”¹⁴⁴

During the 2011–2012 school year, throughout the district security and bike patrol, SROs were assigned to elementary, middle, and high schools.¹⁴⁵ Three high schools had two officers and the five elementary schools with security guards were all located in predominantly lower-income communities of color in Raleigh, North Carolina.¹⁴⁶ Security guards’ responsibilities were to issue parking tickets, watch over the grounds, assist school officials with lunch and carpool, as well as participate in “behavior management.”¹⁴⁷ During the following school year, AlliedBarton employed sixty-one SROs at thirty-seven schools, and three administrative locations.¹⁴⁸

3. Law Enforcement

WCPSS’ Security Department is in charge of WCPSS’ SRO Program.¹⁴⁹ SROs are appointed on a full-time basis to public schools.¹⁵⁰ During the 2011–2012 school year, sixty SROs were assigned to fifty-two schools in

141. *Id.* at 113.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 114.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

the WCPSS.¹⁵¹ During the following school year, WCPSS schools increased the number of SROs to sixty-four.¹⁵² The Sheriff's Department of Wake County along with eight other local police departments employs SROs.¹⁵³

Law enforcement agencies and WCPSS share the costs of SROs.¹⁵⁴ During the 2011–2012 school year, WCPSS paid a total of \$893,355 for portions of SROs salaries and¹⁵⁵ paid over \$2,000 toward cell phone bills for SROs.¹⁵⁶

Although SROs are afforded salaries and other allotments that are partially funded by the Sheriff's Department, none of the funds are spent on training or proper guidance. WCPSS has contracts with each of the law enforcement agencies that speaks chiefly to monetary and managerial arrangements, and do not address their training, the proper or improper use of force, discipline data, or SRO accountability.¹⁵⁷ Thus, there are no requirements, or even guidelines, for issues such as whether SROs should have any type of training in “adolescent development, mental health issues, positive behavior management, working with school staff, cultural competency, etc.” There is no indication as to when SROs may or may not utilize force through the use of handcuffs, TASERS, pepper spray, guns, or the like. Further, there is no standard procedure as to what type of complaint and arrest data must be collected, when SROs may or may not detain students or file charges against them, or the process in which SRO misconduct should be reported by students, parents, staff, and fellow SROs.¹⁵⁸

WCPSS can look to nearby school districts for examples of what implementing such policies might look like. “Chapel Hill-Carrboro City Schools has a procedure that compels SROs to divert ‘minor law enforcement infractions through school disciplinary avenues and parent counseling as opposed to sending the student into the criminal court system’ and prohibits SROs from ‘being utilized as school disciplinarians.’”¹⁵⁹ “WCPSS has no broad policy that addresses the scope of SROs authority.”¹⁶⁰

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.* at 115.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* at 115.

159. *Id.* (citing Chapel Hill-Carrboro City Schools, *Policy Code 5121: School Resource Officer*, NCBSA LEGAL/POLICY SERVICES (Nov. 18, 2010), http://policy.microscribepub.com/cgi-bin/om_isapi.dll?clientID=209624460&advquery=%22law%20cnforcement%22&depth=2&headingswithhits=on&h itsperheading=on&infobase=chaphill.nfo&record={190D}&softpage=PL_frame.}).

160. *Id.*

“Despite [over three million dollars] of taxpayer [money] being spent on SROs each year, the WCPSS SRO Program has never been meaningfully evaluated.”¹⁶¹ One evaluation of the SRO Program took place, and two months later the WCPSS Senior Director of Security, Russ Smith, “presented the results of a favorably skewed “study” of his own program that he created and conducted on his own.”¹⁶² In addition to omitting self-evaluations of SROs themselves, Smith’s study lacked community involvement, as it excluded parents, educators, school staff, and students.¹⁶³

In spite of the lack of evaluation, and though data does not indicate a necessity, SROs are funded on an apparent assumption that they make schools safer environments. “Overall, there is no reliable evidence that SROs make schools safer.”¹⁶⁴ Actually, “research conducted in other states has produced evidence showing that SROs can actually have negative impacts on students and schools.”¹⁶⁵

[S]tudies have shown that the presence of SROs in schools leads to: [i]ncreased arrests and court referrals for minor misbehavior that should instead be treated as teachable moments by educators; [d]isruption and damage to learning environment through the creation of an atmosphere of hostility, suspicion, fear, and control; [n]egative impacts on student morale; and [u]ndermining of the authority of teachers and school administrators.¹⁶⁶

iii. Evidence of Unjust Policing Policies in WCPSS and Surrounding Areas

Many scholars have indicated the importance of researchers and educators operating as change agents for school reform.¹⁶⁷ A vital part of serving as a change agent is sharing the experiences of those students who are mar-

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* (citing Petteruti, *supra* note 12; Randall R. Berger, *The “Worst of Both Worlds:” School Security and the Disappearing Fourth Amendment Rights of Students*, 28 CRIM. JUST. REV. 336, 340 (2003); Erik Eckholm, *With Police in Schools, More Children in Court*, N.Y. TIMES, Apr. 12, 2013, <http://www.nytimes.com/2013/04/12/education/with-police-in-schools-more-children-in-court.html>).

165. *Id.*

166. *Id.* at 115–16 (citing Katayoon Majd, *Students of the Mass Incarceration Nation*, 54 HOW. L.J. 343, 367–68 (2011); Petteruti, *supra* note 12; Paul J. Hirschfield, *Preparing for Prison?: The Criminalization of School Discipline in the USA*, 12 THEORETICAL CRIMINOLOGY 79, 83 (2010); Heather Cobb, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*, 44 HARV. C.R.-C.L. L. REV. 581, 583–84 (2009); Berger, *supra* note 165, at 340; ADVANCEMENT PROJECT ET AL., *supra* note 7, at 12.).

167. See Daniella Ann Cook & Adrienne D. Dixon *Writing Critical Race Theory and Method: A Composite Counterstory on the Experiences of Black Teachers in New Orleans Post-Katrina*, 26 INT’L J. OF QUALITATIVE STUD. IN EDUC. 1238 (2013).

ginalized and labeled as “from the bottom.”¹⁶⁸ The ensuing collection of narratives provides a full contextual foundation, which attempts to personify the school-to-prison pipeline and fully assist one to appreciate the hardships that many students of color face on a daily basis. As a number of students battle with challenging circumstances that extend far beyond their own control, WCPSS’ school-to-prison pipeline has proven to uphold harsh penalties despite unmistakably mitigating factors.

1. Interrogations Without the Aid of Attorney, Parents, or Advocate

In 1975, the United States Supreme Court held in *Goss v. Lopez*¹⁶⁹ that “[t]he authority possessed by the State to prescribe and enforce standards of conduct in its schools . . . must be exercised consistently with constitutional safeguards.”¹⁷⁰ Students’ constitutional safeguards are too often placed directly in the hands of officers who are trained to obtain confessions.¹⁷¹ Adult criminal suspects on the streets enjoy more constitutional safeguards than that of a student accused of having a water gun at school or simply tearing paper out of a textbook.¹⁷² School officials can even search students’ backpacks without a warrant or probable cause, and they are allowed to question them without delivering their *Miranda* warnings.¹⁷³

Consider the case of J.D.B. where a 13-year old, seventh grader at Smith Middle School in Chapel Hill, N.C. was stopped and questioned by the police near the site of two home break-ins.¹⁷⁴ Days later J.D.B would be seen with some of the stolen items in his possession while at school.¹⁷⁵ A uniformed police officer on detail to the school took J.D.B. from his classroom to a closed-door conference room, where police and school administrators questioned him for at least thirty minutes.¹⁷⁶ At no point was J.D.B. given his *Miranda* warnings or the opportunity to call his guardian, nor was he

168. *Id.*

169. 419 U.S. 565, 574 (1975).

170. *Id.*

171. See Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL’Y 395, 412–15 (2013).

172. Kim, *supra* note 10, at 865.

173. *Id.* at 866.

174. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2399 (2011); (Smith Middle School in Chapel Hill, N.C. is not a part of WCPSS; it is a part of Chapel Hill-Carrboro City Schools. Although Smith Middle is not a part of WCPSS, the Chapel Hill-Carrboro district is within close proximity of WCPSS. Before its matriculation to the U.S. Supreme Court, this case was heard before the North Carolina Court of Appeals and Supreme Court of North Carolina, which are located in Raleigh, N.C., where the central office of WCPSS is located. Therefore, this case though originating from another district stands as an example of what goes on within schools in the region and state as a whole.).

175. *Id.*

176. *Id.* at 2396.

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told that he was free to leave the room.¹⁷⁷ Initially he denied involvement, but later confessed after officials urged him to tell the truth by threatening him with the possibility of detention.¹⁷⁸ Then, for the first time, the officer told J.D.B. he could refuse to answer questions and could leave if he wanted.¹⁷⁹ After being asked whether he understood, J.D.B. nodded and proceeded to disclose more information, including the location of the stolen items.¹⁸⁰ After writing a statement, he was allowed to go home on the school bus.¹⁸¹ J.D.B. was later charged with breaking and entering and larceny.¹⁸² Although his attorney moved to suppress his statements under the argument that J.D.B. had been interrogated in a custodial setting without receiving his *Miranda* rights, the trial court denied the motion.¹⁸³ The North Carolina Court of Appeals and state Supreme Court later affirmed the trial court holding.¹⁸⁴ The North Carolina Supreme Court found that J.D.B. was not in custody when he confessed, and it refused “to extend the test for custody to include consideration of the age of an individual subjected to questioning by police.”¹⁸⁵

The U.S. Supreme Court disagreed by stating that children are most susceptible to influence and outside pressures.¹⁸⁶ The Court stated that, “‘our history is replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.”¹⁸⁷ “[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.”¹⁸⁸ “By its very nature, custodial police interrogation entails ‘inherently compelling pressures.’”¹⁸⁹ “Even for an adult, the physical and psychological isolation of custodial interrogation can ‘undermine the individual’s will to resist and compel him to speak where he would not otherwise do so freely.’”¹⁹⁰ “Indeed, the pressure of custodial interrogation is so immense that it ‘can induce a frighteningly high percentage of people to confess to crimes they never committed.’”¹⁹¹

177. *Id.* at 2399.

178. *Id.* at 2399–400.

179. *Id.* at 2400.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* at 2400.

184. *Id.*

185. *Id.*

186. *Id.* at 2405.

187. *Id.* at 2404.

188. *Id.* at 2403.

189. *Id.* at 2401 (quoting *Miranda v. Arizona*, 384 U.S. 436, 467 (1966)).

190. *Id.*

191. *Id.* (quoting *Corley v. United States*, 556 U.S. 303, 321 (2009) (citing Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 906–07 (2004)); see also *Miranda*, 384 U.S., at 455, n. 23).

By taking this stance and voicing its opinion on the custodial interrogations of children in school, the Court has made valid points that extend across more than just interrogations. It is apparent by this opinion that the current policing policies in Chapel Hill-Carrboro City Schools, WCPSS, along with thousands of others continue to view students as “miniature adults” who do not deserve the same protections as adults.¹⁹²

2. Playful Water Balloon Fights Lead to Criminal Sanctions

In a similar vein, Caroline Cooper relays the story of a sizeable water balloon fight that developed at Enloe High School in Raleigh, N.C. in May 2013.¹⁹³ The Raleigh Police Department dispatched twenty-four officers to the scene following a 9-1-1 call about this senior-day prank.¹⁹⁴ The heightened security stemmed . . . from the rumors that the balloons would be “filled with urine and bleach.”¹⁹⁵ Officials later admitted that there was no indication that the balloons contained any substance other than water.¹⁹⁶ At the culmination of the events, eight Enloe High students, each between sixteen and seventeen years old, and one parent were detained for incidents directly related to the water balloon fight.¹⁹⁷

Jahbriel Morris, fifteen-year-old sophomore, waited at the bus with his friends nearby the water balloon incident.¹⁹⁸ As the water balloon fight started, Morris stated that he decided to run away from the water balloons as they were being flung in his direction.¹⁹⁹ Soon thereafter, a large officer grabbed him from behind.²⁰⁰ As he attempted to pull himself away from the officer, the officer then turned him around, grabbed Morris by the neck, and slammed him on his back.²⁰¹ Morris went on to state that he had a hard time processing exactly what was going on as his first thoughts were about how he could not get arrested because he had to walk his sister home.²⁰²

192. See Jason Langberg, & Cary Bregc, *Zero Tolerance for the School-to-Prison Pipeline in Wake County: Magnitude of the Crisis*, ADVOC. FOR CHILD. SERVICES Dec. 2009, at 2 (available at <http://www.legalaidnc.org/Public/Learn/projects/ACS/publications/zero-tolerance-for-the-school-to-prison-pipeline-in-wake-county.pdf>) (discussing a blatant example of unconstitutional policing of students is that WCPSS interrogates students, without proper *Miranda* warnings, in the presence of police and without a parent, guardian, or lawyer present).

193. Cooper, *supra* note 101.

194. *Id.*

195. *Id.*

196. *Id.* (citing *Raleigh Students Water Balloons were Filled with Urine, Bleach*, THE RALEIGH TELEGRAM, (May 21, 2013), <http://ralcightelegram.com/201305215312>).

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

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A parent, Kevin Hines, was parked in the carpool lane as he waited for his two daughters when he witnessed Morris being forcibly placed on the ground by the police officer.²⁰³ After observing what happened to the student, Hines went inside the school to warn the principal of what had happened.²⁰⁴ However, as Hines attempted to enter the administrator's office, the officer who had previously body-slammed Morris received him.²⁰⁵ At this point, the officer called in more officers who circled the parent and aggressively forced him against a wall.²⁰⁶ Then the officer continually threatened to use his TASER on Hines.²⁰⁷ Although the police officer did not use a TASER on Hines, Hines was subsequently charged with trespassing.²⁰⁸

Robert Brown, a sixteen-year-old sophomore, was one of the seven students arrested. As Brown walked out of the bathroom, he saw a water balloon being thrown.²⁰⁹ Although Brown stated that the water balloon was coming from an entirely different direction than from where he stood, an administrator came from behind him and grabbed his arm and shoulder.²¹⁰ The school official accused Brown of throwing the water balloon and subsequently took him to a meeting room where he was told that he would likely be arrested.²¹¹

3. Unfair and Discriminatory Suspension Procedures

Jason Langberg and Jennifer Story relay several instances that reveal the inadequacies of existing suspension procedures.²¹² Consider first the case of L.T. who was a Black middle school student suffering from Oppositional Defiant Disorder. Making matters worse, L.T.'s parents were going through a difficult divorce.²¹³ L.T.'s therapist and his mother met with school officials in order to develop preventative school-based involvement for L.T. but the school did nothing.²¹⁴ Nearly a month after the meeting, she was suspended for over two weeks for getting into an altercation with another student who had a history of bullying her.²¹⁵ The school was aware of the past

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. Langberg, *supra* note 112, at 75.

213. *Id.*

214. *Id.*

215. *Id.*

conflicts but chose to do nothing to address the issue.²¹⁶ Unfortunately, school officials would not allow for L.T. to participate in any type of restorative justice program that would have served to address the conflict without referring the students to out-of-school suspension.²¹⁷

I.E. was a Black twelfth grader who was continuously the target of “severe bullying and harassment” for his entire senior year.²¹⁸ In February of his senior year, he was suspended for the remainder of the school year because he reacted to insults from another student by chasing after the student.²¹⁹ He did not reach the student, as a teacher and an administrator stopped him. Notwithstanding the fact that he never actually confronted the other student, he was recommended for a long-term suspension, which was to last for the remainder of the school year.²²⁰

L.D. was a five-year-old preschool student with severe autism who was suspended time for “non-compliance” or “physical aggression.” These suspensions took place on various occasions throughout the 2012-13 academic year for one or two days at a time.²²¹ The school was persistent in using out-of-school suspension as a device for punishing these behaviors related to his autism.²²² L.D. is just one example of how unfair school discipline policies can penalize behaviors that are directly related to disabilities such as autism, which is completely out of students’ control.

Consider K.N., a low-income Black sophomore who suffered from an emotional disability.²²³ K.N. was suspended from school for nine months in September 2011 for initiating and in-class disturbance.²²⁴ It was clear that the misbehavior was associated with his emotional disability, but officials found in the appeals procedure that his behavior was not an expression of his disability.²²⁵ Officials upheld the suspension and K.N. was enrolled in an online alternative program with minimal special education supports for his disability for the remainder of the school year.²²⁶

T.S. was a Black low-income fifteen-year-old ninth grader who was a part of a confrontation with a number of students, which produced a commotion at the bus circle after school.²²⁷ T.S. did not start the fight, and no

216. *Id.*

217. *Id.*

218. *Id.* at 77.

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.* at 66.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.* at 65.

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one was seriously injured; nonetheless, T.S. was long-term suspended for nine months, which was the school year.²²⁸

In early October 2012, N.E. a low-income, Black, eighth grade student with no major history of discipline issues, “took a single sip” from a friend’s soda bottle that contained alcohol, a fact unknown to him before he drank it.²²⁹ He was consequently suspended for the remainder of the school year.²³⁰

A.J. a thirteen-year-old student in middle school was suspended for eight months, which was the remainder of her final middle school year because of her connection to a fight with another student.²³¹ The school’s preliminary inquiry discovered that it was the other student that had attacked her at the bus stop.²³² However, they still proceeded in recommending her for the remainder of the school year because they believed that her actions exceeded that required for self-defense.²³³

During the 2012 through 2013 academic year, D.S. a student of a Black low-income family, was suspended from school for five days, for merely being present at the scene of an altercation that took place away from the school campus, after school hours.²³⁴

4. School Bus Altercation Lands Student in Adult Jail for 20 days

When a schoolyard fight breaks out at a community high school, explains Erin Zureick Dunn, the effects can be life-changing for any 16- and 17-year-olds involved.²³⁵ If an officer decides to press any charges, including simple assault, a conviction could shadow the teen for the rest of his or her life.²³⁶ North Carolina and New York are the only two states that allow for 16-year-olds to be automatically charged as adults.²³⁷ This undoubtedly affects their likelihoods at being admitted to a university and makes acquiring a job far more difficult.²³⁸ This would not be the case in a state like Virginia where comparable misdemeanor convictions are cloaked in privacy

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.* at 63.

232. *Id.*

233. *Id.*

234. *Id.* at 61.

235. See Erin Zureick Dunn, *N.C., N.Y. Only States Where 16-year-olds Considered Adults by Criminal Justice System*, STAR NEWS ONLINE (July 2, 2011, 6:24 PM), <http://www.starnewsonline.com/article/20110702/ARTICLES/110709926?p=1&tc=pg&tc=ar>.

236. *Id.*

237. *Id.*

238. *Id.*

because teens are considered juveniles and their criminal records are to be sealed.²³⁹

Sarah Barr of *The News and Observer* tells the story of Selina Garcia, a seventeen-year-old senior at Southeast Raleigh High School²⁴⁰ who spent three weeks in jail due to the fact that Wake County's foster care system could not find a group home placement for her.²⁴¹ Garcia pleaded guilty to misdemeanor counts of disorderly conduct and communicating threats that resulted from a fight on a school bus.²⁴² She was arrested on March 7, 2014 by an SRO following the fight, during which she allegedly hit another student, who did not suffer any serious injuries.²⁴³ By the time she was released nearly three weeks later, numerous juvenile justice advocates rallied around Garcia asserting that her case is one of many that demonstrates the hazards of placing police officers in school discipline procedures, and that SROs are too often involved in the criminalization of typical student behavior.²⁴⁴

Garcia was charged as an adult in the case and held with adult women at the Wake County Detention Center.²⁴⁵ Under North Carolina law, Garcia could have left jail after her first hearing just days after her arrest, except that the court system required she be released into the custody of a parent or guardian.²⁴⁶ However, because Garcia is part of the Wake County foster care system, she had to wait for the county to place her in a home.²⁴⁷ In cases such as this, the foster care services provided by the county to help teenagers enroll in higher education are placed in jeopardy as the students look to get back on track to graduate.²⁴⁸

In Selina Garcia's case, the very fact that policy allows for students on one hand to be charged as adults, and on the other hand to be held in adult detention centers while concurrently being detained due to their status as juvenile wards of the state is disconcerting. This case alone illuminates the

239. *Id.*

240. See Langberg, *supra* note 112 at 117. (Southeast Raleigh High School in Raleigh, N.C. is a Member School of WCPSS.).

241. Sarah Barr, *Southeast Raleigh High Senior Selina Garcia to be Released From Jail After 3 Weeks*, THE NEWS & OBSERVER (RALEIGH) (Mar. 27, 2014), available at NewsBank, Inc.

242. *Id.*

243. *Id.*

244. Julia Sims, *Raleigh Teenage Case Highlights Problems in Foster System, Some Say*, WRAL.COM (Mar. 27, 2014), <http://www.wral.com/story/1351887/> (Mar. 27, 2014), <http://en-s-case-highlights-problems-in-foster-care-system-some-say/1351887/>.

245. Jennifer Story, *Selina Garcia: Multi-System Failure*, YOUTH JUSTICE NORTH CAROLINA (Apr. 15, 2014), <http://olinafailure.com/raleigh-teen-s-case-highlights-problems-in-foster-care->

246. Sims, *supra* note 245.

247. Story, *supra* note 246.

248. Adrienne Harreveld, *Selina is Not Free*, UWIRE TEXT, Mar. 31, 2014, <http://www.nclive.org/cgi-bin/nclsm?url=http://go.galegroup.com/ps/i.do?id=GALE%7CA363326383&v=2.1&u=nclivedurc&it=r&p=STND&sw=w&asid=cc3c98d0fc534f31353cac59884aa49c>.

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criminalizing effect that law enforcement in schools places on students. Professor Catherine Y. Kim, asserts that today, police officers routinely patrol public school hallways on a full-time basis as SROs and school officials refer a growing number of youth to the juvenile and criminal justice systems for school-based misconduct.²⁴⁹ Professor Kim further states that these developments call for a critical reevaluation of the extent to which contemporary school discipline practices advance the educational goals that historically justified their isolation from judicial scrutiny.²⁵⁰

IV. IMPROVING THE POLICING OF SCHOOL DISCIPLINE

A. *Successful Policy Making*

Policymakers in a number of jurisdictions have now assumed a leading role in examining the crossroads between law enforcement and school discipline.²⁵¹ For example, school administrators in Clayton County, Georgia, amassed a committee to examine their own school discipline issues.²⁵² Centered on the findings of the committee, the chief judge of the local juvenile court assembled a group of local stakeholders comprised of parents, police officers, school officials, and juvenile public defenders to review the use of the juvenile justice system to administer student discipline.²⁵³ After a chain of committee meetings, participants reached a declaration that would promote school safety and at the same time decrease the number of youth referred to juvenile court for school-based misbehavior.²⁵⁴

During his testimony before the Senate Subcommittee hearing on ending the school-to-prison pipeline, Chief Judge Steven Teske discussed how his community in Clayton County worked collectively to decrease school arrests, cultivate a system of care to assess, treat habitually disruptive students, improve graduation rates, and increase school and community safety.²⁵⁵ The resulting mutual agreement enacted a three-strikes policy for disciplinary violations.²⁵⁶ The first time a student has committed a certain violation identified as “focus acts,” the student obtains a warning instead of a referral to law enforcement, which was the former procedure.²⁵⁷ If the student commits an offense for a second time, he or she is then directed to a

249. Kim, *supra* note 10 at 856–66.

250. *Id.* at 864–65.

251. *Id.* at 901.

252. *Id.*

253. *Id.*

254. *Id.*

255. *Hearings supra* note 15 at 1 (testimony of Mike DeWine).

256. Kim, *supra* note 10 at 901.

257. *Id.* at 901–02.

“school conflict-diversion program,” “mediation program,” or another type of court-sponsored program.²⁵⁸ The student may be referred to law enforcement if he or she commits the offense for a third time.²⁵⁹

Outstandingly, these policy modifications have thrived by decreasing the amount of school-based arrests, they have yielded a positively humanizing school order, and according to its advocates, have improved educational outcomes.²⁶⁰ From the time the agreement was executed, dangerous weapons 87 percent, and other “focus acts” decreased by thirty-six percent.²⁶¹ Although Jason Langberg and other juvenile justice advocates have made similar reforms efforts in Raleigh, N.C.,²⁶² there is still a vast amount of work left to be done.

Ohio Attorney General Mike DeWine, Former Ohio Lieutenant Governor and overseer of the Ohio juvenile justice system, testified along with Chief Judge Teske before the Senate.²⁶³ In his testimony Attorney General DeWine provided testimony on the extent of the disarray of Ohio’s juvenile justice system when he took office as Lieutenant Governor in 1991.²⁶⁴ State facilities were overflowing at almost double capacity, many young people in the system were merely learning to sharpen their criminal skills, and the Department of Youth services and juvenile courts were at odds with one another.²⁶⁵ He testified that his first goals were to: (1) enhance public safety by reducing violence in their facilities, (2) place youth in the most appropriate settings to address their respective needs, and (3) keep children as close to their families, schools, and community support systems as possible.²⁶⁶ Attorney General DeWine worked hand in hand with the community in creating RECLAIM Ohio²⁶⁷ as they focused on these strategies, which would ultimately reduce recidivism and improve the lives and outcomes for their students.²⁶⁸

DeWine noted the difficulties in juvenile justice reform, which caused it to be an “arduous, painstaking process complicated by difficult and often

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Hearings supra* note 15 at 1 (testimony of Mike DeWine).

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.* (“Our preliminary reform efforts led to the creation of RECLAIM Ohio, ‘Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors.’ This program reduced the number of commitments to DYS state institutions and expanded the community-based options available by providing a financial incentive where essentially, the money started to follow the juvenile. If he or she stayed in the community, so did the funding.”)

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conflicting factors.”²⁶⁹ However, his testimony concluded by supplying data demonstrating the enormous success that RECLAIM Ohio became for their juvenile justice system and schools.²⁷⁰ According to his testimony, RECLAIM Ohio works because it prevents “institutionalizing low risk youth”.²⁷¹ Instead of perpetuating the problematic issues of the juvenile justice system, RECLAIM Ohio keeps youth with their friends, schools, community, and most importantly their family.²⁷² This type of compassionate surrounding fosters a climate where communities are more capable of working in harmony to use developmental measures to correct behavior instead of simply sending students to prison, which is a tactic more akin to punishment.²⁷³ “RECLAIM Ohio and the successes it has produced can be replicated in other states.”²⁷⁴

B. Proffered Solutions

In the various literatures on the school-to-prison pipeline there are a number of recommendations that range from administrative duties such as compiling data, or filing complaints with the U.S. Department of Education, to structural changes such as providing support for teachers, and training for SROs and law enforcement.²⁷⁵ However, in a school district with a large number of hotspot schools and a long history of egregious treatment of students like WCPSS, there is a greater need for a more impactful difference.

The N.C. state legislature must take action by clarifying statutes pertaining to the referral of students to law enforcement agencies. Further, the recommendations by Secretary Arne Duncan of the Department of Education should not be regarded lightly, but school districts in the position of WCPSS should aim to replenish the community’s faith in the education system by focusing on goodwill efforts. Going forward, WCPSS should partner with the various local education non-profits and student advocate groups such as the American Civil Liberties Union of North Carolina, the Center for Civil Rights Remedies at the Civil Rights Project at UCLA, the Coalition of Concerned Citizens for African-American Children, N.C. HEAT, the North Carolina Justice Center, the North Carolina chapter of the NAACP, and the University of North Carolina Center for Civil Rights to name a few.

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. Loscn & Martinez, *supra* note 79, at 3.

By implementing programs and supporting existing programs that will promote an increased focus on the well-being of students versus the current focus on restoring order, WCPSS will be in a far better position to sustain any progression that they may make in the near future. By spending less on excessive security measures and more on student educational well-being, WCPSS will witness vast improvements similar to other districts, like Clayton County Georgia and RECLAIM Ohio, which have made comparable investments.²⁷⁶ While other school districts with a far less appalling history of treatment to its students may choose to simply follow the recommendations of the nation's educational leaders, WCPSS is not in a position to settle for the minimal prerequisites for pipeline destruction. WCPSS must go above and beyond to restore faith and trust with its parents because previous students of Middle Creek High School in Apex, N.C. from ten years ago, who witnessed their classmates being tased while lying handcuffed helplessly on their stomachs, have now become the parents of WCPSS students.

An entire generation of students has had to survive in today's society with criminal records from childhood mistakes, or even worse, simple misunderstandings. Therefore WCPSS should seek to retroactively expunge all non-violent criminal offenses of their previous students, most particularly the students who were placed in the juvenile court system for minor school code infractions. Although these measures may seem drastic, this would signal to the WCPSS community that they would then be able to trust that their students are once again in capable hands.

In order to fully dismantle the pipeline we must build national programs that mirror the successes that district programs in Clayton County, Georgia, and Ohio's RECLAIM Ohio have achieved. Efforts to "recreate the wheel" would not only be a waste of valuable time, but it would also be a waste of much needed resources. The nation's policymakers must not only follow the federal guidelines suggested to dismantle the pipeline but they must also seek the assistance and counsel of existing community resources within their respective states to create a less draconian system of school discipline.

By criminalizing youth and relying on age-old stereotypes as justification for practices that hinder positive school climates, we continue to place millions of students on a path to incarceration instead of college or a successful career. Policymakers, community members, and parents alike must join in creating a supportive network of advocates for all students. This should bring all to recognize that while in the process of dismantling the school-to-prison pipeline, students that have avoided school discipline should not be

276. *Ending the School-to-Prison Pipeline*, *supra* note 15

forgotten. Progressive measures must be taken to ensure that chronically disruptive students and mostly well-behaved students' interests are met equitably. One way in which all students will be benefitted is the severe contraction of zero-tolerance penalties, because they harm every student, whether or not they have faced these harsh disciplining procedures, which have no respect of the surrounding circumstances.

As very few violent crimes are committed in schools, student resource officers and other police officers should no longer be involved within the school discipline procedures. Police officers in schools should only act as security for the students, not as prison guards for the incarcerated. More programs and procedures must be put in place to reduce the tension between the juvenile justice system, criminal justice system, and juvenile justice advocates within the most troubled pipeline areas of the United States. It is not only important to restore an optimistic learning climate within the schools of America, but it is also essential that students are met with support in the instances in which they are referred to the justice system. By requiring a more extensive federal reporting system for school discipline, districts will be more accountable for potentially worsening racial disparities in school discipline procedures. And by truthfully acknowledging the pervasive nature of racial inequalities in the school-to-prison pipeline we will be better prepared to tackle issues that face our youth today, which will in turn provide for them a better tomorrow.

V. CONCLUSION

Most people in society were either involved in altercations as teenagers, or know someone else who was involved. The combination of bullying, peer pressure, hormones, and societal expectations has and likely always will produce occasional moments of irritation for minors, which manifests itself in physical altercation. It is hard to fathom that the same petty behavior that a great number of people have experienced, is now labeled and charged as criminal acts. The burden of disciplining such behavior should not automatically be placed on the shoulders of law enforcement, but should instead be placed on school administrators and counselors who are more likely to have an intimate understanding of each student's unique set of circumstances.

Cops and robbers, a staple in childhood playtime for centuries has always been an innocent game that many generations of students have played. However, the emergence of officers in the school disciplining process has made what used to be just a game a real life struggle, which pits the students against law enforcement officers. Yet the constant variable is that kids

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are still kids and behave just as kids have always behaved; this article simply aims to point out the severity of the games' rule changes.