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Opposing Viewpoints:
School Discipline: Is developmental appropriateness required?
By: Kate Malcolm

Research on adolescent brain development over the past decade has indicated that many adolescent behaviors that previously resulted in disciplinary action are actually normative, and require a more flexible response than what is currently available. This has implications for both school discipline and the juvenile justice system, particularly if one considers the disproportionate number of students of color and individuals with mental health needs in each system. There is no evidence to suggest that these populations misbehave or act violently at higher rates than their peers to explain their greater involvement in the system, suggesting biased implementation of disciplinary policies. School attendance is a significant protective factor against adolescent delinquency. *Roper v. Simmons* established that juveniles are categorically different from adults, and are less culpable based on their lack of education and development. This principle can be extended beyond its application to capital punishment in that case. This article lays out different approaches to effectively discipline students for misconduct, while also taking into consideration their normal development and environmental factors.

I. THE PROBLEM

The school system is the largest feeder for youth into the juvenile justice system, with nearly 70% of offenders disciplined for non-violent crimes. While the fundamental purpose of the juvenile justice system is to rehabilitate youth, the juvenile justice system and schools alike have become more punitive. The presence of police officers, usually referred to as school resource officers (SRO), has increased since the 1990s. Since SROs have become more commonplace in public schools, referrals to juvenile court have increased dramatically, particularly for minor offenses that were traditionally handled at school, such as fights, disorderly conduct or disrupting class. Overuse of out of school suspension for minor offenses, or referral to juvenile court, has been linked to lower graduation rates and higher rates of subsequent criminality. Additionally, use of SROs and other security technology is resource heavy. Reliance on the juvenile justice system for discipline of minor offenses has not been shown to be cost effective.

Some argue that school disciplinary measures fail to adequately consider emerging data on adolescent development. Current policies that are rooted in a zero-tolerance approach are largely utilitarian, with the purpose to deter and incapacitate offenders. They were created to help schools deter students from more serious crimes by cracking down on minor offenses, while also removing troublemakers from school grounds to create a better learning environment for other students. Since the inception of these policies, they are applied without regard to the circumstances of the case or consideration of mitigating factors. Early zero-tolerance policies were enacted to address issues of drugs and guns or other weapons in school; however, they were broadened to include smoking or disruptions at school. Additionally, the Gun Free Schools Act of 1994 mandated transfer to the juvenile justice system if a student possessed a gun at school. This provision was expanded in some states to include minor offenses like swearing, getting into fights, and skipping school. There is a strong argument to be made for taking a hard line on guns, weapons, or drugs at school. However, there is little evidence to show zero-tolerance actually reduces problem behaviors in adolescents.

Implementation of zero-tolerance policies receives mixed reviews from parents as well. Parents are conflicted between desiring stronger disciplinary measures for the safety of their own children, and on the other hand, being outraged when they believe a student has been deprived of a right to an education. This dichotomy is at the heart of school disciplinary issues. It is the right and duty of school officials to maintain the safety of the school and its students, however current policies sometimes result in undue and harsh punishments.

Social science research on adolescent brain development can help schools identify high-risk offenders and tailor interventions more specifically to them. High-risk offenders require intensive interventions to reduce criminality, but studies have also shown that intensive intervention strategies can increase delinquency for low-risk offenders. Separating youth according to risk of recidivism is a key component of treatment that should not be overlooked. Doing so will also reduce the risk of imposing unduly harsh punishments on students who commit minor offenses. This in turn reduces the risk of reoffending. This article will explore new approaches to school discipline in light of emerging research on adolescent brain development, which establish more realistic expectations of youth offenders.

II. REFORM OF EXISTING POLICIES

Zero tolerance policies were reasonably instituted as a response to serious offenses in school. However, research indicates that implementation of zero tolerance policies has resulted in disparate punishments across schools and districts. Consequently, one way to maintain current policies while ensuring greater efficacy would be to allow school administrators more discretion through the consideration of external factors. In addition, SROs should receive trauma-informed and culturally competent training to better assess student behavior. Such reforms would ensure that more serious offenses could still be met with severe consequences. In cases of less extreme offenses, SROs and teachers could use more discretion in diverting students to see a school social worker or counselor, who would be better equipped to assess the student's mental health needs. This type of reform would require a tiered approach that would allow broader discretion from school officials.

A tiered approach would still allow long-term suspension or expulsion for serious offenses that put teachers or other students at risk of physical harm, but would allow schools to issue less severe consequences for minor offenses. Schools are not federally required to expel or impose lengthy suspensions for drug use, yet they do so anyway. For example, a school might retain harsh penalties like long-term suspension for students who bring alcohol to school functions, but take a more moderate stance for a student who shares over-the-counter, anti-inflammatory medication with a classmate. Although both might violate the school code of conduct, the latter example is clearly less egregious than the former. This approach maintains the fundamentally retributive approach of the previous disciplinary policies, but scaled so the punishment fits the crime.

Although recent Supreme Court rulings on whether juveniles are fundamentally different from adults have not examined the impact that ruling has on schools, the limits on punishment have the potential to significantly change school discipline. The US Supreme Court in *Graham v. Florida* analyzed whether the rationale for punishment impacted the constitutionality of the

sentence at issue in that case, life without parole. The Supreme Court found that retribution was an acceptable basis for punishment for juvenile offenders. However, because retribution is based on the personal culpability of the offender, life without parole was too severe a consequence for a non-homicide case. The Supreme Court reached similar conclusions in regard to deterrence and incapacitation as bases for punishment. The Supreme Court has only defined cruel and unusual punishment in regard to juveniles at the most extreme end of the juvenile justice system, and leaves a lot of gray area for punishment of less serious crimes.

Presently, this ruling has not been extended to cases of disciplining by schools, but many school punishments would be permissible under the ruling if it were. Schools still have broad discretion to discipline students who threaten the safety of the school environment, and school administrators may rely on theories of retribution, incapacitation, or deterrence to justify long suspensions or expulsions based on the *Graham* ruling. Some teachers and administrators believe that suspension is a valuable disciplinary tool to remove disruptions and keep other students safe. None of the schools' available punishments rise to the standard considered in *Graham*.

III. COMPLETE OVERHAUL- “DEVELOPMENTALLY APPROPRIATE” INTERVENTIONS

The Supreme Court has consistently expanded their consideration of social science research on juvenile offenders. This is evident not only in *Roper*, where the court eliminated the death penalty for minors, but in subsequent cases where they eliminated sentences for life without parole both for homicide and non-homicide offenses. There is a large body of social science research indicating that juvenile offenders are more amenable to rehabilitative tactics, and many people believe that juveniles' decreased culpability makes them worthier of such interventions. This acknowledgement of lowered culpability indicates a broader shift towards crafting appropriate and effective punishments for juvenile offenders and school misconduct.

Critics of zero-tolerance based policies argue for a more extreme overhaul of the system, and advocate for a complete replacement of zero tolerance policies with rehabilitative programs. They argue that policy changes to school discipline should take reform a step further, and embrace a more restorative, developmentally informed stance. To start, transfer to juvenile court should be reserved for only the most serious offenses. Some argue that the current Supreme Court jurisprudence for Eighth Amendment cases regarding juveniles asserts a right to rehabilitation. This right prevents transfer from juvenile court to the adult criminal justice system. The same principle can be applied to school discipline cases. Suspending a student or referring them to the juvenile justice system for criminal sanctions deprives them of their opportunity to reform. A rehabilitative perspective would still demand accountability from the offender, but it is responsive to the needs of the offender rather than to the offense. This approach is informed by adolescent development, which indicates that young people have not developed good decision making skills. Youth decision-making skills can be further impaired by external factors such as an absence of parental guidance, long-term poverty, or a history of trauma. These external issues are not adequately addressed in a punitive model, and typically persist after punishment.

The “replace” approach allows for greater involvement of other systems that youth regularly interact with. At-risk youth might need counseling for various issues, including problems at home or at school, or mental health problems. Some schools have done away with zero tolerance

policies entirely, and have implemented multiple interventions instead. This approach is supported by research that shows low-risk offenders are not helped by extreme interventions. The majority of juvenile offenders can be successfully treated in community settings, which may include a restorative justice court, school mediation, or family interventions. The juvenile justice system is not equipped to handle the number of adolescents who enter the system with mental health needs. These types of issues would more appropriately be dealt with in the community, and could be part of early interventions to prevent violence and disruptions at school.

One way to replace zero-tolerance policies in schools in a developmentally informed way is to use a tiered intervention strategy. Primary interventions target the entire student body; this might include a student-led anti-bullying campaign. Another benefit to this approach is that it can help increase the school climate and students' sense of belonging, both of which are risk factors for student misconduct. Secondary interventions use a risk assessment to determine which students are at a higher risk for engaging in disruptive or violent behavior. Risk assessments are crucial to ensure that high-risk offenders receive the correct interventions, and they prevent low-level offenders from receiving unduly harsh penalties. Tertiary response is reserved for students who have already been disruptive, and might involve restorative justice practices. This is in contrast to the reform approach, where schools could still take a zero-tolerance approach to the most serious offenders and use out of school-suspension or expulsion. A school may still exercise discretion in imposing tertiary responses, scaled to the severity of the offense.

IV. CONCLUSION

Schools are at a crossroads in determining to what extent emerging data on adolescent development applies to school discipline. Although the initial push for zero tolerance policies at school was well intentioned, it has since morphed into an inconsistent and punitive model for discipline. On one hand, existing policies may be reformed to better serve the school community. This would include better training for school resource officers, teachers, and other school employees to be more culturally competent and aware of student mental health needs. To apply more consistent punishments, schools should also create clear guidelines on impermissible conduct, and more appropriately scaled punishments that are proportional to the violation. The other side argues for a more extreme overhaul of the system, and advocates for a complete replacement of zero tolerance policies with rehabilitative programs. This model would incorporate more stringent preventive programs and early interventions, as well as restorative justice models following misconduct. Both approaches have merits and evidence to support their efficacy.

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