

Oregon Commission on Black Affairs (OCBA) / Oregon Advocacy Commission Office (OACO) / Oregon Department of Education (ODE) / Governors Office of Diversity and Inclusion

# Addressing the Disproportionate Discipline Problem in Oregon Public Schools using Restorative Justice

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## INTRODUCTION

The Oregon public school system, similar to schools across the nation, disproportionately discipline African American students and other minorities in relation to their white peers.<sup>1</sup> In fact, African Americans are twice as likely, than their white peers, to be disciplined under the heading of disruptive behavior, a discretionary provision not necessarily linked to violent behavior.<sup>2</sup> Likewise, African American students are over two times as likely to be suspended or expelled.<sup>3</sup> These statistics are concerning for two main reasons. First, because students that are disciplined, and pulled out of the classroom, are punished not only for their behavior but also for the learning time on which they miss out.<sup>4</sup> Second, research illustrates that students repeatedly disciplined in school are more likely to dropout and come in contact with the justice system.<sup>5</sup> That said the focus of this paper is on the disproportionate discipline of African American students. However, it is critical to note that other minorities and vulnerable subgroups have also been subjected to disparate treatment in the school system.<sup>6, 7</sup>

This paper begins by fully analyzing the disproportionate discipline issue and its many facets before presenting the emerging and promising technique of restorative justice. Restorative justice is a dispute resolution technique that is “focused on the belief that those affected by harm

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<sup>1</sup> *Executive Numbered Memo 002-2014-15 – House Bill 2192-School Discipline*, ODE, <http://www.ode.state.or.us/news/announcements/announcement.aspx?=10122> (last visited Mar. 10, 2015).

<sup>2</sup> *Oregon’s School to Prison Pipeline*, ACLU, [http://www.aclu-or.org/sites/default/files/ACLU\\_STPP\\_FINAL.pdf](http://www.aclu-or.org/sites/default/files/ACLU_STPP_FINAL.pdf) (last visited Feb. 3, 2015).

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

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

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

<sup>6</sup> *Talking Points: The School-to-Prison Pipeline*, ACLU, [https://www.aclu.org/files/assets/stpp\\_talkingpoints.pdf](https://www.aclu.org/files/assets/stpp_talkingpoints.pdf) (Last visited Feb. 13, 2015).

<sup>7</sup> African American students with disabilities experience even more dramatic disproportionate discipline, as these students are more than three times as likely to be suspended than their white peers and are four times as likely to end up in a correctional facility. *Talking Points: The School-to-Prison Pipeline*, ACLU, [https://www.aclu.org/files/assets/stpp\\_talkingpoints.pdf](https://www.aclu.org/files/assets/stpp_talkingpoints.pdf) (Last visited Feb. 13, 2015).

can work together to repair it and that this collaboration leads to true accountability.”<sup>8</sup> This paper is comprised of four parts; Part I discusses the costly economic and societal impacts the disproportionate discipline problem creates. Part II discusses the current state of Oregon law and its response to the disproportionate discipline problem. Part III addresses the reasons why disproportionate discipline continues to be a prevalent problem in our society and why this issue is not unique to just the public school system. Finally, Part IV introduces restorative justice and argues why Oregon public schools should widely adopt it.

## **I. WHAT ARE THE SOCIETAL COSTS OF THE DISPROPORTIONATE DISCIPLINE PROBLEM?**

African Americans make up 2.9% of the student body in Oregon, however receive 6.9% of the proportion of student discipline.<sup>9</sup> Moreover, African Americans are subjected to 7.37% of suspensions and 4.09% of expulsions, which relative to their school population size, is largely disproportionate.<sup>10</sup> To put these numbers in perspective, African American students are two to three times as likely to be disciplined, suspended, or expelled in comparison to their white peers.<sup>11</sup> Discouragingly, students pushed out of the school system, through these practices, increase the likelihood that they will become a dependent of the state by means of social welfare programs or incarceration.<sup>12</sup> Therefore, the disproportionate discipline problem targeted at African Americans, other minorities, and vulnerable subgroups is more than just a school issue; it is a costly societal issue. When a student is pushed out of school, and ultimately drops out, through repeated discipline, suspensions, or expulsions, the student is deprived of gaining the skill sets necessary to enter the modern workforce.

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<sup>8</sup> Jon Kidde & Rita Alfred, *Restorative Justice: A Working Guide for Schools*, <http://healthyschoolsandcommunities.org/Docs/Restorative-Justice-Paper.pdf> 5 (last visited Feb. 17, 2015).

<sup>9</sup> Oregon’s School to Prison Pipeline, *supra* nt. 3.

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

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

<sup>12</sup> Russell W. Rumberger, *Poverty and High School Dropouts*, APA, <http://www.apa.org/pi/ses/resources/indicator/2013/05/poverty-dropouts.aspx> (last updated May 2013).

Alarming, Oregon's 2013 high school graduation rate was the worst of any state in the nation, only 69% of students graduated on time.<sup>13</sup> Although not solely attributable to disproportionate discipline, 6.01% of African American students dropped out in the 2013-2014 school year, which is double the rate of their white peers.<sup>14</sup> The National Bureau of Economic Research (NBER) found "over a lifetime, an 18 year old who does not complete high school earns approximately \$260,000 less than an individual with a high school diploma and contributes about \$60,000 less in lifetime federal and state income taxes."<sup>15</sup> In the aggregate these numbers add up to nearly \$200 billion in lost state and federal income tax revenue.<sup>16</sup> For the state of Oregon these numbers add up to \$173 million in yearly-lost tax revenues.<sup>17</sup> Likewise, students that dropout earn \$10,000 less per year, experience twice the unemployment rate, and African American students are five times more likely to be incarcerated, than students with high school diplomas.<sup>18</sup>

In correlation with Oregon's high drop out rate, students that are pushed out of school increase expenditures in other state welfare programs.<sup>19</sup> High school dropouts report worse overall health than high school graduates and increasingly rely on Medicaid assistance.<sup>20</sup> Indeed, over 40 percent of students that do not complete high school depend on Medicaid, costing the state \$200 million annually.<sup>21</sup> In contrast, only 20 percent of students with high school diplomas

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<sup>13</sup> Betsy Hammond, *Oregon Posts Nation's Worst Graduation Rate for Class of 2013*, The Oregonian, [http://www.oregonlive.com/education/index.ssf/2015/01/oregon\\_posts\\_worst\\_graduation.html](http://www.oregonlive.com/education/index.ssf/2015/01/oregon_posts_worst_graduation.html) (last updated Jan. 27, 2015) (Oregon was placed in 49th spot overall in the nation because Idaho did not report its graduation rate).

<sup>14</sup> *Dropout Data 2013-2014*, ODE, <http://www.ode.state.or.us/search/page/?id=1> (last visited Feb. 27, 2015).

<sup>15</sup> Cecilia Elena Rouse, *The Labor Market Consequences of an Inadequate Education*, NBER, <http://www.literacycooperative.org/documents/TheLaborMarketConsequencesofanInadequateEd.pdf> 2 (last updated Sept. 2005).

<sup>16</sup> *Id.* at 2-3.

<sup>17</sup> Emily House, *Oregon's High School Dropouts: Examining the Economic and Social Costs*, Cascade Policy Institute, <http://files.eric.ed.gov/fulltext/ED509327.pdf> (Last updated Mar. 2010).

<sup>18</sup> *Id.*

<sup>19</sup> House at 17.

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

<sup>21</sup> *Id.* at 18-19.

require Medicaid assistance.<sup>22</sup> In addition, high school dropouts cost taxpayers nationwide \$8 billion in public assistance programs such as federal food stamps.<sup>23, 24</sup>

Disturbingly, the American Civil Liberties Union (ACLU) links the disproportionate school discipline problem to the increase in the number of African American youth in the criminal justice system.<sup>25</sup> This increase is concerning because contact with the juvenile justice system is the number one predictor of future adult crimes.<sup>26</sup> In a study done in Montreal, following 774 students from kindergarten to age 25, found that students incarcerated in the juvenile justice system were 38 percent more likely to enter the adult prison population later on in life.<sup>27</sup> Moreover, the ACLU asserts that the disproportionate discipline problem is reflected in the disproportionate representation of African Americans in the adult prison population.<sup>28</sup> African Americans make up 2% of the Oregon population but compose 9% of the Oregon adult prison population.<sup>29</sup> To further associate education with the prison population, in the year 2000 only 44% of the United States inmates had a high school degree.<sup>30</sup> Likewise, in Oregon 69% of the 2015 prison population lacked some form of education or training.<sup>31</sup>

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<sup>22</sup> *Id.* at 18.

<sup>23</sup> Bill Whitaker, *High School Dropouts Costly for American Economy*, CBS, <http://www.cbsnews.com/news/high-school-dropouts-costly-for-american-economy/> (last updated May 28, 2015).

<sup>24</sup> Federal food stamps is now termed Supplemental Nutritional Assistance Program (SNAP). *Supplemental Nutrition Assistance Program (SNAP)*, USDA, <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> (last updated Nov. 20, 2014).

<sup>25</sup> Oregon School to Prison Pipeline at 4.

<sup>26</sup> Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, The Annie E. Casey Foundation, <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf> 12 (last visited Feb. 10, 2015).

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

<sup>28</sup> Oregon's School to Prison Pipeline *supra* nt. 3 at 5.

<sup>29</sup> *Racial Disparity and Its Consequence in Oregon's Criminal Justice System*, Partnership for Safety and Justice, [http://www.safetyandjustice.org/files/Racial%20Disparity%20and%20its%20Consequences%20in%20Oregon\\_0.pdf](http://www.safetyandjustice.org/files/Racial%20Disparity%20and%20its%20Consequences%20in%20Oregon_0.pdf) (last visited Feb. 24, 2015).

<sup>30</sup> *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System*, The Sentencing Project, [http://sentencingproject.org/doc/publications/rd\\_Black\\_Lives\\_Matter.pdf](http://sentencingproject.org/doc/publications/rd_Black_Lives_Matter.pdf) 13 (last updated Mar. 10, 2015).

<sup>31</sup> *Oregon Department of Corrections: Inmate Population Profile for 3/1/2015*, [http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf) 1, 4 (last visited Mar. 10, 2015) (calculated by dividing the number of inmates with no need of educational improvement and the total number of inmates).

From a purely financial standpoint, these statistics are problematic because it costs the state of Oregon \$263 per day or approximately \$90,000 a year to keep a child in the juvenile justice system, whereas, it costs \$56.75 per day or about \$10,000 a year to keep a student in school.<sup>32</sup> Similarly, it costs the state \$84.81 per day to house an adult prison inmate, which amounts to \$31,000 a year.<sup>33</sup> In addition, researchers at Princeton University found that African-American youth who spent some time incarcerated in a youth facility worked five weeks less per year over their lifetime in comparison to youth who had no history of incarceration.<sup>34</sup> The NBER also found that “areas with the most rapidly rising rates of incarceration are areas in which youths, particularly African-American youths, have had the worst earnings and employment experience.”<sup>35</sup> Therefore, allocating state financial and other resources to counteract the disproportionate discipline problem is crucial for cutting costs to other expensive state social programs. But the Oregon legislature deserves some recognition for the passage of some recent bills targeted at the disproportionate discipline issue.

## **II. WHAT IS OREGON CURRENTLY DOING TO ADDRESS THE DISPROPORTIONATE DISCIPLINE PROBLEM?**

In 2013 the legislature passed a bill that weakened the longstanding “zero tolerance” rule, which required mandatory expulsions and suspensions for certain student behavior.<sup>36, 37</sup> States across the nation passed zero tolerance laws in the early 1990s, in response to the federal

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<sup>32</sup> *Delivering Services to Youth While Managing Costs*, Oregon Youth Authority, [http://www.oregon.gov/oia/docs/issue\\_briefs/IB\\_managing\\_costs\\_2013-15.pdf](http://www.oregon.gov/oia/docs/issue_briefs/IB_managing_costs_2013-15.pdf) (last updated March 2014); *Actual Operating vs Capital Expenditures per Student*, Oregon Department of Education, <http://www.ode.state.or.us/sfda/reports/r0051Select2.asp> (last visited Jan. 30, 2015) (calculated using the total expenditure divided by 165 day school year).

<sup>33</sup> *Oregon Inmate Cost-Per-Day Fact Sheet*, Partnership for Safety and Justice, <http://www.safetyandjustice.org/files/Oregon%20Inmate%20Cost-Per-Day%20Fact%20Sheet.pdf> (last updated June 2013).

<sup>34</sup> Barry Holman & Jason Zeidenberg, *The Dangers of Detention*, Justice Policy Institute, [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf) 10 (last visited Jan. 30, 2015).

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

<sup>36</sup> O.R.S. § 339.250.

<sup>37</sup> This bill went into effect on July 1, 2014.

enactment of the Gun Free Schools Act, which created mandatory expulsions for students possessing firearms or weapons.<sup>38</sup> The intent of the 2013 bill was to counteract exclusionary school discipline, spurring from zero tolerance laws, or as the media and interest groups have called it the “school to prison pipeline,” which is associated with disproportionate discipline.<sup>39, 40</sup> The bill went into effect on July 1, 2014 and in addition to diminishing zero tolerance, also requires local school district to create policies to:

“(1) provide opportunities for students to learn from their mistakes; (2) foster positive learning communities; (3) keep students in school and attending class; (4) impose disciplinary sanctions without bias against students from a protected class; (5) implement a graduated set of age-appropriate responses to misconduct that are fair, nondiscriminatory, and proportionate in relation to each student’s individual conduct; and (6) employ a range of strategies for prevention, intervention and discipline that take into account a student’s developmental capacities and that are proportionate to the degree and severity of the student’ misbehavior.”<sup>41</sup>

In other words, the statute recognizes that schools must begin implementing policies to address disproportionate discipline by finding alternatives to exclusionary punishment by providing students with an opportunity to learn from their mistakes.<sup>42</sup> The statute allows school districts to come up with their own policies rather than mandating action at the state level because of the structure of the Oregon public school system. Oregon public schools operate on a local control system, which means that school district set policies at the local level rather than on a statewide basis.<sup>43</sup> Therefore local school districts can choose whether or not to implement

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<sup>38</sup> Tyler Leeds, *New Law Changes Expulsion Policy*, The Bulletin, <http://www.youthrightsjustice.org/media/2474/Bend%20Bulletin%20article%20on%20HB%202192.pdf> (last updated July 8, 2013).

<sup>39</sup> *Id.*; *Oregon’s School to Prison Pipeline*, ACLU, [http://www.aclu-or.org/sites/default/files/ACLU\\_STPP\\_FINAL.pdf](http://www.aclu-or.org/sites/default/files/ACLU_STPP_FINAL.pdf) (last visited Jan. 27, 2015).

<sup>40</sup> O.R.S. § 339.303 is a statute that pertains to restraint and seclusion in the school setting. John English J.D. at the ODE contends that this statute is drafted in the most effective manner for procedural guidance. Dr. English argues that the O.R.S. § 339.250 should be drafted in a similar manner to more productively address the disproportionate school discipline problem.

<sup>41</sup> O.R.S. § 339.250 (5)(b)-(g).

<sup>42</sup> It is important that students are not blamed for the disproportionate discipline and giving them a chance to learn from their mistakes should not be used for such victim blaming.

<sup>43</sup> ORS § 332.072.

certain policies. The implication of local control, for this paper, is that any solutions to the disproportionate discipline problem will need to be adopted by each individual school district.

Nevertheless, the 2015 legislature, currently, has three bills before it that addresses the disproportionate discipline problem. The first bill is Senate Bill 553, which alters the zero tolerance bill, described above, to prevent school districts from suspending or expelling students under the age of 12 unless the student's action inflicts serious physical injury.<sup>44</sup> The second bill, Senate Bill 554, also alters the above zero tolerance bill by rewording the bill to create more mandatory actions for schools and focuses on building strategies to improve academic achievement.<sup>45</sup> In addition, Senate Bill 554 allocates funding to the Oregon Department of Education (ODE) to help school districts, through training and consultation, develop methods for solving the disproportionate discipline problem.<sup>46</sup> The third bill is Senate Bill 556, which prevents school districts from expelling students for truancy.<sup>47</sup>

Each of these bills has the potential to further intervene in the disproportionate discipline issue. In particular, Senate Bill 554 deserves highlighting because it provides funding to implement lasting change. Because the Oregon public school system operates on local control the most effective means to urge school districts to adopt restorative justice and other programs is through providing funding. In addition, Senate Bill 553 demands emphasis because of the bills potential to decrease disproportionate discipline for children. Youth often make mistakes and punishing them with suspension or expulsion for misbehavior under the age of 12 is counterproductive. Children under the age of 12 are still assimilating into cultural norms and

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<sup>44</sup> S. Bill 553, 78th Leg. Assemb., Reg. Sess. (Or. 2015).

<sup>45</sup> S. Bill 554, 78th Leg. Assemb., Reg. Sess. (Or. 2015).

<sup>46</sup> S. Bill 554.

<sup>47</sup> S. Bill 556, .78th Leg. Assemb., Reg. Sess. (Or. 2015).

therefore must learn from their misbehavior through alternative means than exclusion from the classroom.

In addition to these encouraging bills, Oregon agencies and communities retain the tools to address the disproportionate discipline issue through a strategy employed at the Governor's Summit on Reducing Disproportionate Minority Contact (DMC) in the Juvenile Justice System, last held on November of 2014.<sup>48</sup> The DMC committee adopted the Collective Impact model as a framework to guide its work.<sup>49</sup> Collective impact "is an approach to solving a community problem through commitment of key leaders from different areas to a common purpose."<sup>50</sup> In other words, the strategy recognizes that solving complex issues, such as the disproportionate discipline problem, requires sharing of information and participation of government agencies, nonprofit organizations, and other private sector entities.

This paper endorses the collective impact approach to solve the disproportionate discipline problem because addressing the problem is going to require cooperation of Oregon agencies, non-profits, and community members. The disproportionate discipline problem is not an insular issue and cross agency and community collaboration for adoption of restorative justice, recognition of cross-sectional cost savings, and allocation of funding is essential to achieving a solution. But it deserves emphasizing that any policy decisions used to address the disproportionate discipline issue must consider, by regulation, how the decision will impact equity within educational systems.<sup>51</sup>

## **A. WHAT IS EQUITY AND HOW DOES IT AFFECT DECISIONS MADE IN THE OREGON PUBLIC SCHOOLS?**

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<sup>48</sup> *See It's a Matter of Justice*, <http://www.oregon.gov/oia/dmcs Summit/2014/pages/summit.htm> (last visited Feb. 17, 2015).

<sup>49</sup> *Id.*

<sup>50</sup> Joe Christy, *Collective Impact Overview*, <http://www.oregon.gov/oia/dmcs Summit/2014/materials/collectiveimpactoverview.pdf> (last updated July 10, 2014).

<sup>51</sup> OAR 581-017-0010 (1)(a); *See also OEIB Equity Lens Facilitation Tool*, OEIB, <http://education.oregon.gov/Pages/Commitment-to-Equity.aspx> (last visited Feb. 24, 2015).

In 2011 the legislature passed a statute that created the Oregon Education Investment Board (OEIB), chaired by the Governor.<sup>52</sup> The legislature established the board in an effort to build a seamless education plan for students from birth to college or career.<sup>53</sup> One of the ways the board plans on accomplishing this goal is through the adoption of the Equity Lens for state policies, which is meant to “ensure that each and every student, regardless of circumstances receives a high quality education.”<sup>54</sup> In other words, the board acknowledges that equity is crucial for the success of Oregon students.

Equity is a broad term with many different definitions depending on the context. In the social context equity means fairness and justness.<sup>55</sup> However, equity is not synonymous with equality, as is widely believed.<sup>56</sup> For many years leaders have talked about creating equality in society by giving everyone the same benefits and opportunities.<sup>57</sup> But the fundamental flaw with providing equal benefits is that it assumes that everyone starts out on the same footing.<sup>58</sup> That is, equality does not consider the external disadvantages or privileges each individual carries in society.<sup>59</sup> For instance, a child in poverty generally does not come to school with the same outside academic and social opportunities as their more wealthy and affluent peers.<sup>60</sup> Equity therefore attempts to provide the student without certain life privileges the opportunity to receive a boost in benefits in order to compete on the same playing field as their peers.

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<sup>52</sup> *Oregon Education Investment Board*, <http://education.oregon.gov/Pages/default.aspx> (last visited Mar. 17, 2015).

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

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

<sup>55</sup> George Frederickson, *The State of Social Equity in American Public Administration* <http://oied.ncsu.edu/selc/wp-content/uploads/2013/03/The-State-of-Social-Equity-in-American-Public-Administration.pdf> 32 (last visited Feb. 17, 2015).

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

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

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

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

<sup>60</sup> Julia B. Isaacs, *Starting School at a Disadvantage: The School Readiness of Poor Children*, Brookings Institution, [http://www.brookings.edu/~media/research/files/papers/2012/3/19%20school%20disadvantage%20isaacs/0319\\_school\\_disadvantage\\_isaacs.pdf](http://www.brookings.edu/~media/research/files/papers/2012/3/19%20school%20disadvantage%20isaacs/0319_school_disadvantage_isaacs.pdf) 2 (last updated Mar. 2012).

Certain countries recognize that equity is critical to overall student success and as a consequence have implemented a more balanced approach in opportunities for students. For instance, in the world of education, the country of Finland's public school system is touted as the worlds best.<sup>61</sup> However, astonishingly, Finland schools do not test their students or give them large amounts of homework.<sup>62</sup> Yet, Finland consecutively ranks highest or near highest on international tests.<sup>63</sup> Pasi Salhberg, the director of Finnish Ministry of Education's Center for International Mobility, argues that these high rankings are attributable to Finland's focus on equity.<sup>64</sup> The Finnish people spend their resources ensuring that each student, no matter what their background, has an equitable opportunity to education by providing every student with "free school meals, easy access to health care, psychological counseling, and individualized student guidance."<sup>65</sup>

Basically, Finland creates equity for all of its students by administering opportunities to each student no matter their race or socio economic background. Thus, considering Finland's proven track record of equity in their schools, it makes logical sense that when Oregon policymakers consider creating new school policies they should acknowledge equity's important role. Along with confirming that equity is considered in school policies, it is critical to understand why the disproportionate discipline issue is still a prevalent problem, both inside and outside of the school context, in order to institute an effective solution, like restorative justice.

### **III. HOW IS DISPROPORTIONATE DISCIPLINE STILL PRESENT IN OREGON PUBLIC SCHOOLS IF EXPLICIT DISCRIMINATION IS NO LONGER WIDELY TOLERATED IN OUR SOCIETY?**

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<sup>61</sup> Anu Partanen, *What Americans Keep Ignoring About Finland's School Success*, The Atlantic, <http://www.theatlantic.com/national/archive/2011/12/what-americans-keep-ignoring-about-finlands-school-success/250564/> (last updated Dec. 29, 2011).

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

<sup>63</sup> *Id.*

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

<sup>65</sup> *Id.*

Recently in the news, the nation observed the tragic deaths of young African Americans including Trayvon Martin, Eric Garner, Michael Brown, and Tamir Rice.<sup>66</sup> Regardless of the differing viewpoints on these events, racial discrimination is back in the mainstream conversation. However one might be asking, has the United States not already overcome racial discrimination? The civil rights movement was over fifty years ago and as a nation discrimination is no longer widely tolerated.<sup>67</sup> This observation would be partly correct, overt race discrimination or beliefs held during the Jim Crow era are not as pervasive.<sup>68</sup> But explicit discrimination has not been completely eradicated and continues to play a role in our society.<sup>69</sup>

Nonetheless, many in this country do not identify as individuals who explicitly discriminates based on race. Indeed, many of us know a considerable number of people that would never intentionally discriminate. In addition, many of us presume, that individuals in the public service system, such as in schools, the police department, hospitals, or the court system, would encounter barriers to prevent racism. But how do these observations reconcile the statistics that African Americans are not only disproportionately disciplined in schools but in nearly every other social system.<sup>70</sup> Recent research at universities across the nation is finding that implicit bias may be attributable to this disproportionate treatment.<sup>71</sup> Implicit biases are

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<sup>66</sup> Prudence Carter et. al., *You Can't Fix What you Don't Look At: Acknowledging Race in Addressing Racial Discipline Disparities*, Indiana University, [http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race\\_121514.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2014/12/Acknowledging-Race_121514.pdf) (last updated Dec. 2014).

<sup>67</sup> Richard Wolf, *Equality Still Elusive 50 Years After Civil Rights Act*, USA Today, <http://www.usatoday.com/story/news/nation/2014/01/19/civil-rights-act-progress/4641967/> (last updated April 1, 2014).

<sup>68</sup> Black Lives Matter *supra* nt. 31 at 16.

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

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

<sup>71</sup> See e.g. Cheryl Staats, *State of the Science: Implicit bias review 2014*, Kirwain Institute, <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf> (last visited Feb. 18, 2015); Matthew Galliot et. al., *Stereotypes and Prejudice in the Blood: Sucrose drinks reduce prejudice and stereotyping*, 45, 288-290 (2009).; Erik Girvan, *Wise Restraints?: How learning law affects socially biased decision making*, <http://ssrn.com/abstract=2274314> (last visited Feb. 18, 2015).; Thomas Pettigrew & Linda Tropp, *A Meta-Analytic Test of Intergroup contact theory*, <http://blogs.law.columbia.edu/genderandsexualitylawblog/files/2012/04/A-Meta-Analytic-Test-of-Intergroup-Contact-Theory.pdf> (last visited Feb. 18, 2015).

defined as “deeply seated attitudes that operate outside conscious awareness – that may even be in direct conflict with a person’s stated beliefs and values.”<sup>72</sup>

Stated differently, implicit biases “are unintentional and unconscious racial biases that affect decisions and behaviors.”<sup>73</sup> From a psychological standpoint implicit biases are activated from schemas, or an efficiency technique we all use to categorize and navigate our world.<sup>74</sup> The human brain is exceptional at using perceived information and applying it unconsciously to situations.<sup>75</sup> For example, participants in a foundational psychology study on categorization efficiency were able to more quickly state the font color of a word when the word represented a specific color.<sup>76</sup> In particular, participants that saw the font color red, within the word red, more promptly stated the color than when, for example, the word green was filled in with the red font color.<sup>77</sup>

The implications of this categorization efficiency study have been demonstrated outside the context of just color and word associations. Researchers that asked participants to sort negative and positive words with African American faces and European American faces, found that most of the participants more rapidly associated positive words with the European American faces than with the African American faces.<sup>78</sup> Moreover, the race of the participants did not always dictate a different outcome.<sup>79</sup> African American participants were split evenly on the negative and positive association in the above study.<sup>80</sup> Psychological studies prove that we

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<sup>72</sup> Prudence Carter et. al. *supra* nt. 67 at 4.

<sup>73</sup> *Black Lives Matter* at 16.

<sup>74</sup> Jerry Kang, *Implicit Bias: A Primer for Courts*, ABA, [http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/unit\\_3\\_kang.auth\\_checkdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/unit_3_kang.auth_checkdam.pdf) 1 (last updated Aug. 2009).

<sup>75</sup> *Id.* at 1.

<sup>76</sup> *Id.* at 3.

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

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

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

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

quickly and unconsciously categorize African Americans with negative words because of our daily exposure to non-verbal racial bias on television, video games with racial violent depictions, and television shows that portray African American's as criminals.<sup>81</sup> In addition, early life racial biased experiences may shape future implicit biases.<sup>82</sup>

On a grander scale this research uncovered biases in all areas of society. For example, researchers of implicit bias found that pediatricians prescribe more pain medication to white children after surgery than to African American children; interviewers discriminate against obese job candidates; and implicit bias played a role in the number of American citizens that voted against President Obama.<sup>83, 84, 85</sup> However, note that these implicit bias studies involve time periods of quick, unconscious, and ambiguous decisions.<sup>86</sup> With this understanding in mind psychologists have found ways to alter implicit biases, called de-biasing.<sup>87, 88</sup>

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<sup>81</sup> Cheryl Staat, *State of the Science: Implicit Bias Review 2013*, Kirwan Institute, [http://kirwaninstitute.osu.edu/docs/SOTS-Implicit\\_Bias.pdf](http://kirwaninstitute.osu.edu/docs/SOTS-Implicit_Bias.pdf) 7-8 (last visited Feb. 4, 2015).

<sup>82</sup> *Id.* at 8.

<sup>83</sup> Janice A. Sabin & Anthony G. Greenwald, *The Influence of Implicit Bias on Treatment Recommendations for 4 Common Pediatric Conditions: Pain, Urinary Tract Infection, Attention Deficit Hyperactivity Disorder and Asthma*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483921/> (last updated May 2012).

<sup>84</sup> Dermot Lynott et. al., *Modeling the IAT: Implicit Association Test Reflects Shallow Linguistic Environment and not Deep Personal Attitudes*, <http://mindmodeling.org/cogsci2012/papers/0341/paper0341.pdf> (last visited Feb. 4, 2015).

<sup>85</sup> Eric Knowles et. al., *Racial Prejudice Predicts Opposition to Obama and his Health Care Reform Plan*, <http://socialecology.uci.edu/files/users/eknowles/knowles2010.pdf> (last updated Oct. 23, 2009).

<sup>86</sup> Kent McIntosh et. al., *Education not Incarceration: A Conceptual Model for Reducing Racial and Ethnic Disproportionality in School Discipline*, *Journal of Applied Research on Children*, <http://digitalcommons.library.tmc.edu/cgi/viewcontent.cgi?article=1215&context=childrenatrisk> (last visited Feb. 13, 2015).

<sup>87</sup> Staat at 53-54.

<sup>88</sup> Another promising study for de-biasing is exposure to counter stereotypical images, which changed research participant's answers in the above negative and positive word association test. Cheryl Staat, *State of the Science: Implicit Bias Review 2013*, Kirwan Institute, [http://kirwaninstitute.osu.edu/docs/SOTS-Implicit\\_Bias.pdf](http://kirwaninstitute.osu.edu/docs/SOTS-Implicit_Bias.pdf) 56 (last visited Feb. 4, 2015). Participants that were primed with positive and counter stereotypical images of African American's such as Michael Jordan, Colin Powell, and Martin Luther King showed a significant decrease in the negative word associations with African American faces in a subsequent test. *Id.* Encouragingly, in a test done 24 hours later, participants that were primed by the counter stereotypical images still showed significant decreases in negative word associations with African American faces *Id.* However one issue with the study was that participants must identify with the particular counter stereotypical primer in order to change their bias. *Id.*

De-biasing “refers to methods, strategies, and techniques used to overcome biases in thinking.”<sup>89</sup> In the school setting, de-biasing is crucial because implicit bias is ubiquitous and exhibited by educators regardless of race or ethnicity.<sup>90</sup> Evidence indicates that cultural training does not shift implicit biases.<sup>91</sup> Likewise, current, studies indicate that the prevalence of implicit bias is tied to time periods of vulnerable decision points for teachers and administrators.<sup>92</sup> In other words, vulnerable decision points express the quick, unconscious, and ambiguous decisions prone to implicit biases, described earlier in this section.<sup>93</sup>

One major vulnerable decision point, in the school setting, is discipline of students under the heading of disruptive behavior.<sup>94</sup> Disruptive behavior is defined as “repeated refusal or failure to comply with directions or the instruction of a staff member.”<sup>95</sup> In Oregon public schools, 64% of all discipline is under the category of disruptive behavior.<sup>96</sup> African Americans made up 2.4% of the 2013-2014 school year population but received 4.3% of the disruptive behavior violations.<sup>97</sup> This data, however, is not entirely representative of the problem, as it does not account for students disciplined multiple times.<sup>98</sup> African American students experience closer to 6% of disruptive behavior violations due to conservative estimates and limitations on

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<sup>89</sup> *Debiasing*, The Skeptics Dictionary, <http://skeptdic.com/debiasing.html> (last updated Jan. 14, 2014).

<sup>90</sup> Prudence et. al. *supra* nt. 67 at 4.

<sup>91</sup> *Helping Courts Address Implicit Bias: Strategies to Reduce the Influence of Implicit Bias*, NSCS, [http://www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB\\_Strategies\\_033012.ashx](http://www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_Strategies_033012.ashx) 1 (last visited Feb. 20, 2015).

<sup>92</sup> McIntosh et. al. at 9.

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

<sup>94</sup> Erik Girvan & Kent McIntosh, *Implicit Bias in School Discipline*, [https://www.pbis.org/school/equity-pbis slide 37](https://www.pbis.org/school/equity-pbis-slide-37) (last visited Feb. 24, 2015).

<sup>95</sup> Michael Mahoney, *Discipline Incidents* Collection, ODE Office of Student Learning & Partnerships, [http://www.ode.state.or.us/opportunities/grants/nclb/title\\_iv/a\\_drugfree/disciplinecollectionmanual.pdf](http://www.ode.state.or.us/opportunities/grants/nclb/title_iv/a_drugfree/disciplinecollectionmanual.pdf) 11 (last updated Apr. 2014); OAR 581-021-0055 (2) (h).

<sup>96</sup> *Primary Offense Type by Selected Subgroup*, ODE, <http://www.ode.state.or.us/apps/Navigation/Navigation.Web/default.aspx#/Discipline> (last visited Feb. 19, 2015).

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

<sup>98</sup> Interview with John English, Education Program Specialist at the Oregon Department of Education, in Salem, OR. (Feb. 26, 2015).

analysis of the collected data.<sup>99</sup> Nevertheless, research demonstrates that adopting restorative justice may counteract these implicit biases and the associated disproportionate discipline.<sup>100</sup> The reason restorative justice counteracts implicit bias is it removes vulnerable decision points from teachers and administrators because it includes others in the community for decision making.<sup>101</sup> Encouragingly, the federal government in a recent guidance document approved of restorative justice and other promising techniques to combat the disproportionate discipline problem in public schools.

#### **IV. WHAT IS THE SUPPORTIVE SCHOOL DISCIPLINE INITIATIVE AND HOW DOES IT RELATE TO RESTORATIVE JUSTICE?**

During the summer of 2011, the United States Attorney General, Eric Holder, and the United States Secretary of Education, Arne Duncan, instituted a joint program called the Supportive School Discipline Initiative (SSDI) to address growing concerns over the disproportionate discipline problem in American public schools.<sup>102</sup> Subsequently, in 2014 the Secretary of Education released a guidance document to help school districts across the nation address the disproportionate discipline problem.<sup>103</sup> The document explains the joint program's goal of improving school climate and school discipline by creating and maintaining safe, supportive, and caring relationships throughout the school community.<sup>104</sup> The guidance document concedes that it does not present a direct answer, program, or policy to solve the

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<sup>99</sup> *Id.*

<sup>100</sup> *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, Kirwan Institute, <http://kirwaninstitute.osu.edu/racial-disproportionality-in-school-discipline-implicit-bias-is-heavily-implicated/> (last visited Feb. 24, 2015).

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

<sup>102</sup> *Supportive School Discipline Initiative*, <http://www2.ed.gov/policy/gen/guid/school-discipline/appendix-3-overview.pdf> (last visited Feb. 11, 2015).

<sup>103</sup> *U.S. Departments of Education and Justice Release School Discipline Guidance Package to Enhance School Climate and Improve School Discipline Policies/Practices*, US Department of Education, <http://www.ed.gov/news/press-releases/us-departments-education-and-justice-release-school-discipline-guidance-package-enhance-school-climate-and-improve-school-discipline-policiespractices> (last visited Feb. 10, 2015).

<sup>104</sup> *Directory of Federal School Climate and Discipline Resources*, US Department of Education, <http://www2.ed.gov/policy/gen/guid/school-discipline/appendix-1-directory.pdf> 1 (last updated Jan. 2014).

disproportionate discipline problem but alternatively provides a multitude of effective examples from schools across the nation.<sup>105</sup> In essence, the SSDI is a federal umbrella program meant to encourage states to implement policies that create safer schools through stronger school communities. One promising policy is restorative justice, which is employed in school districts across the country, including but not limited to, California, Colorado, Washington, Minnesota, Maryland, and Oregon.<sup>106</sup>

### **A. WHAT IS RESTORATIVE JUSTICE AND HOW CAN IT BE EMPLOYED IN OREGON PUBLIC SCHOOLS?**

Restorative justice is a dispute resolution technique with ancient roots beginning with the Greek and Roman civilizations, and more contemporarily with prominent Buddhists and the Dalai Lama.<sup>107</sup> Moreover, restorative justice is widely associated with the Maori, an indigenous tribe in New Zealand that in 1989 began successfully practicing restorative justice with the government.<sup>108</sup> However, beyond restorative justice's adoption elsewhere, in the school setting, the fundamental goal of restorative justice is to repair the harm caused by an offense through community participation in disciplinary procedures.<sup>109</sup> The way this is accomplished, is by building support for victims and offenders by providing both parties “with an opportunity to share their perspectives and to work together to reach a reparative solution.”<sup>110</sup> Stated differently, restorative justice brings together all the interested parties including the victim, offender, and other members of the community, to discuss the event and how the action affects the individual

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<sup>105</sup> *Id.* at 2.

<sup>106</sup> *Restorative Justice*, Portland Public Schools, <http://www.pps.k12.or.us/schools/rigler/506.htm> (last visited Jan. 28, 2015); Claudia Rowe, *In school discipline, intervention may work better than punishment*, Seattle Times, [http://seattletimes.com/html/education/2025538481\\_edlabrestorativejusticexml.html](http://seattletimes.com/html/education/2025538481_edlabrestorativejusticexml.html) (last updated Jan. 25, 2015).

<sup>107</sup> John Braithwaite, *Restorative Justice and Response Regulation 3* (Oxford University Press 2002).

<sup>108</sup> Fred Celera, *Twenty Years of Restorative Justice in New Zealand*, <http://www.tikkun.org/nextgen/twenty-years-of-restorative-justice-in-new-zealand> (last visited Mar. 18, 2015).

<sup>109</sup> Cara Suvall, *Restorative Justice in Schools: Learning from Jena High School*, 44 Harv. C.R.-C.L. L. Rev. 547, 548.

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

and the overall community.<sup>111</sup> Restorative justice revolves around the idea that everyone in the community is part of a system wide social contract in which any breach to the contract impacts the entire school community.<sup>112</sup> Therefore, the punishment spurs from the social stigma resonating from the breach of relationship ties, or as the Maori tribe has said “let shame be the punishment.”<sup>113</sup> Consequently, by focusing on a social contract students are taught to take accountability for their actions, are educated on fair responses, and trained on reacting to situations.<sup>114</sup> Moreover, students learn how to collectively problem-solve through conflict resolution and other collaborative support models.<sup>115</sup>

Likewise, because restorative justice uses a community based resolution technique, the method builds inclusion into the school community rather than exclusion like that used in current suspension and expulsion practices.<sup>116</sup> Simply stated, rather than pushing the student out of the school system, he or she is given the opposite treatment whereby the community rallies around the student, questions their conduct, and attempts to come to a fair solution to fix the harm to the overall community.<sup>117</sup> Coincidentally, restorative justice is built on a strong culture of community relationships requiring system wide involvement and commitment.<sup>118</sup> For example, a teacher recently caught a student in Seattle, WA smoking marijuana at a school using restorative justice.<sup>119</sup> The principal gave the student a choice to either face suspension or engage in restorative justice; she chose the latter.<sup>120</sup> Under the restorative justice method, the principal

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

<sup>112</sup> Thalia Gonzalez, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 *J. L. & Educ.* 281, 300 (2012).

<sup>113</sup> Rowe *supra* nt. 106.

<sup>114</sup> Gonzalez at 300.

<sup>115</sup> *Id.* at 300-01.

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

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

<sup>118</sup> *Id.* 304.

<sup>119</sup> Rowe.

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

opened up a dialogue with the student, telling her how her actions made him feel and how it breached his trust.<sup>121</sup> In addition, the principal brought in the student's teachers and classmates to describe how the student's misconduct offended them.<sup>122</sup> The teacher explained her high hopes for the student's potential, and her disappointment in the student's action.<sup>123</sup> Furthermore, the student's classmates described the student's rough recent home life, which gave some mitigating reasons for the student's misconduct.<sup>124</sup> In the end, the parties came to an agreement and the student signed a contract stating that she will research and lead a discussion on the negative implications of drug use.<sup>125</sup>

Besides restorative justice providing alternative discipline through research projects, schools across the nation using restorative justice provide evidence that the technique dramatically decreases misbehavior. Furthermore, even though evidentiary support for restorative justice in schools is in its infancy, short-term impacts have been impressive. For instance, in 2005 a school district in Oakland, California adopted a pilot restorative justice program, which after a two-year school wide adoption saw suspension rates fall from fifty students out of one hundred to only six in one hundred.<sup>126</sup> In addition, to the school district in Oakland, in 2009 San Francisco Unified School District adopted a restorative justice model into their educational policy.<sup>127</sup> But San Francisco's adoption of restorative justice is unique because the school district collaborated with the community and state agencies, similar to the

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

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

<sup>123</sup> *Id.*

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

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

<sup>126</sup> Gonzalez at 305-06.

<sup>127</sup> *Id.* at 306.

collaborative impact approach described earlier in this paper, for its implementation.<sup>128</sup> Since that time, and during the 2012-2013 school year, suspensions dropped by up to 89% in some schools.<sup>129</sup>

In Illinois, the Peoria Public School system implemented a restorative justice program and saw in school referrals drop by 35% and African American students referrals dropped by 43%.<sup>130</sup> In 2008, Parkrose School District in Oregon did a three-year restorative justice pilot and found in 168 cases, 91% resulted in agreements with no further incidents.<sup>131</sup> Finally, Denver, Colorado has adopted the most progressive, longest sustained, and most effective restorative justice program in the nation.<sup>132</sup> The program began in 2003, in response to the Denver Public Schools experiencing “high rates of student dropout, suspensions, and expulsions with a disproportionate representation among minority students in each of these areas.”<sup>133</sup> The program developed through three growth phases, since 2003, beginning with a single school exploratory pilot program, then a grant-funded expanded pilot, and finally district-wide adoption.<sup>134</sup>

In 2006, as part of the grant fund phase, the district targeted North High School, a high-risk school, to implement restorative justice.<sup>135</sup> Subsequent data from North High School in the 2009-2010 school year found that failing grades fell for some students, attendance improved by 31% for students who received at least two restorative justice referrals, and referrals to law

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<sup>128</sup> See *Restorative Juvenile Justice Strategic Plan*, [http://www.ousd.k12.ca.us/cms/lib07/CA01001176/Centricity/Domain/97/RJ\\_Strategic\\_Plan\\_4\\_8\\_09.pdf](http://www.ousd.k12.ca.us/cms/lib07/CA01001176/Centricity/Domain/97/RJ_Strategic_Plan_4_8_09.pdf) (last visited Mar. 18, 2015).

<sup>129</sup> Jane Ellen, *San Francisco's El Dorado Elementary uses trauma-informed & restorative practices; suspensions drop 89%*, <http://acestoohigh.com/2014/01/28/hearts-el-dorado-elementary/> (last updated Jan. 28, 2014).

<sup>130</sup> Gonzalez at 309.

<sup>131</sup> *Id.* at 310.

<sup>132</sup> *Id.* at 321.

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

<sup>134</sup> *Id.* at 323.

<sup>135</sup> *Id.* at 328.

enforcement dropped by 70%.<sup>136</sup> Moreover, out of school suspensions dropped by 34% and expulsions dropped by 85%.<sup>137</sup> As a consequence of the success of this program, the Colorado legislature in 2011 enacted a bill that encourages school districts across the state to adopt restorative justice.<sup>138</sup>

Beyond Colorado's progressive bill, restorative justice programs also provide educators with teaching opportunities for students. The Oakland School District, which adopted restorative justice in 2005, views student misbehavior as an opportunity to teach and train rather than to punish.<sup>139</sup> Indeed, the Oakland's school-wide restorative justice approach teaches "social emotional intelligence; builds community and relationships, referred to as social capital; and increases the schools community's ability and capacity to communicate and address challenges, referred to as human capital."<sup>140</sup> In essence, Oakland's restorative justice program and others across the nation provide students with an occasion to learn social and communication skills that the classroom does not always teach. Restorative justice is a relatively new program in the school setting; however, as will be discussed, in other contexts it has been proven as a successful intervention strategy.

## **B. WHAT OTHER SOCIAL SYSTEMS HAVE SUCCESSFULLY IMPLEMENTED RESTORATIVE JUSTICE AND WHY DO THE SKILL SETS DEMANDED BY THE BUSINESS WORLD REINFORCE ITS ADOPTION?**

Restorative justice, at first, may come across as an aberrant solution to the school discipline problem. In addition, some may quickly dismiss it as another program that will ultimately fail. However, comparing the program with its success in the juvenile justice system

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<sup>136</sup> *Id.* at 326, 334.

<sup>137</sup> *Id.* at 334.

<sup>138</sup> Joshua Wachtel, *Colorado's New Restorative Justice Law Goes Into Effect*, <http://restorativeworks.net/2011/08/colorados-new-restorative-justice-law-goes-into-effect/> (last visited Mar. 19, 2015).

<sup>139</sup> Kidde *supra* nt. 9 at 7.

<sup>140</sup> *Id.* at 11.

legitimizes it as encouraging technique. For instance, in 1992, Lane County Department of Youth Services, located in Eugene, Oregon, partnered with the non-profit group, Center for Dialogue and Resolution (CDR), to adopt restorative justice into its juvenile justice system.<sup>141</sup> The program focuses on youth ages 12-17 and handles a broad range of offenses including “vandalism, harassment, burglary, theft, and assault.”<sup>142</sup> A little over ten years after the adoption of the restorative justice program, a study of the effectiveness of the program found that offenders that met their victim showed an 80.8% decrease in offenses, a year after a referral to the restorative justice program.<sup>143</sup> Furthermore, the average number of repeated offenses, a year after the referral, was 64.6%.<sup>144</sup> Lastly, youth that choose to go through the restorative justice program maintained lower recidivism rates, decreasing offenses by 76.4% compared to the 54% of youth that choose not to go through the program.<sup>145</sup> Although the study did not provide specific cost savings a similar program in Barron County, WI saved an average of \$378 per offender in related recidivism and diversionary costs.<sup>146</sup>

In addition to the financial success of restorative justice, the model also provides students with skill sets the modern business world demands. In other words, restorative justice presents educators with an opportunity to teach students how to resolve disputes in a manner that the working world mandates for their employees. In corporations across America, a current ideology

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<sup>141</sup> *Restorative Justice Program* CDR, <http://www.communitymediationservices.com/pg19.cfm> (last visited Feb. 24, 2015).

<sup>142</sup> *Id.*

<sup>143</sup> *Evaluation of the Restorative Justice Program*, Lane County Department of Youth Services, [http://www.lanecounty.org/BCC\\_info/Meeting\\_Info/2001/OrderText/2001/7-24/W6a-Restorative.pdf](http://www.lanecounty.org/BCC_info/Meeting_Info/2001/OrderText/2001/7-24/W6a-Restorative.pdf) 5 (last visited Feb. 24, 2015).

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

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

<sup>146</sup> *Barron County Restorative Justice Programs: A Partnership Model for Balancing Community and Government Resources for Juvenile Justice Services*, *Journal of Juvenile Justice*, <http://www.journalofjuvjustice.org/jojj0101/article02.htm> (last visited Feb. 24, 2015).

for employee effectiveness is emotional intelligence.<sup>147</sup> Emotional intelligence “refers to an ability to recognize the meanings of emotions and their relationships, and to reason and problem-solve on the basis of them. Emotional intelligence is involved in the capacity to perceive emotions, assimilate emotion-related feelings, understand the information of those emotions, and manage them.”<sup>148</sup>

Thus, emotional intelligence involves recognizing ones own emotions in order to appropriately react to situations. It means building skill sets to direct ones emotions into positive and beneficial reactions. Studies show that emotional intelligence is linked to a persons overall intelligence and self-reported empathy.<sup>149</sup> Likewise, emotional intelligence, in the business world, parallels the social emotional intelligence component of restorative justice, described earlier in this paper. Through restorative justice programs students learn to respond to their emotions in positive ways. Basically, social emotional intelligence taught through restorative justice programs could make Oregon students more competitive in the future workforce.

Another business trend, related to restorative justice, is the adoption of kaizen production methods. Kaizen is a Japanese word that means continuous improvement or practice.<sup>150</sup> Kaizen is linked to the business practices of the Toyota Production System, Lean-Six Sigma, and Just In Time (JIT) manufacturing, which companies across America largely use.<sup>151</sup> Kaizen is a methodology that promotes “sustainable continuous improvement as a daily way of life for every

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<sup>147</sup> *Emotional Intelligence*, David Goleman, <http://www.danielgoleman.info/topics/emotional-intelligence/> (last visited Feb. 20, 2015).

<sup>148</sup> John Mayer et. al., *Emotional Intelligence Meets Traditional Standards for an Intelligence*, University of New Hampshire, [http://www.unh.edu/emotional\\_intelligence/EI%20Assets/Reprints...EI%20Proper/EI1999MayerCarusoSaloveyIntelligence.pdf](http://www.unh.edu/emotional_intelligence/EI%20Assets/Reprints...EI%20Proper/EI1999MayerCarusoSaloveyIntelligence.pdf) (last visited Feb. 10, 2015).

<sup>149</sup> *Id.* at 293.

<sup>150</sup> *What is Kaizen?*, Kaizen Institute, <http://www.kaizen.com/about-us/definition-of-kaizen.html> (last visited Feb. 20, 2015).

<sup>151</sup> *What is Lean/Lean Manufacturing Definition*, <http://leanmanufacturingtools.org/34/lean-manufacturing-definition-2/> (last visited Feb. 20, 2015).

member within the organization. It supports the flow, implementation and recognition of improvement proposals made by all collaborators.”<sup>152</sup> Kaizen teaches that when an employee makes a mistake it creates an opportunity for learning in which the company can capitalize upon. Associating Kaizen with restorative justice in schools, both programs include the offender in coming to a resolution to solve the problem. Each technique also recognizes that when mistakes are made it provides for a learning opportunity for all parties involved.

Aside from these learning opportunities, restorative justice establishes a symbolic significance that the school adopting the program is a trusted and safe community for students. When students, teachers, and administration openly communicate with one another, a symbolic message of a safe and inclusive environment echoes throughout the community. Symbolic messages are important in our society because it can drive reconciliation, understanding, and empathy. For instance, on a tour of the Supreme Court of the United States (SCOTUS), the author was told that the Supreme Court Justices, prior to entering the courtroom, have a ritual of holding hands to symbolize that they are a unit with a collective interest whether or not they agree on the ultimate outcome of the case. Apparently, Chief Justice Marshall started this ritual when he first took the bench and it is continued to this day. This symbolic ritual of the SCOTUS is similar to the restorative justice teaching of open communication that joins the victim with the offender.

Besides these communication benefits, restorative justice is an encouraging technique that can combat the disproportionate discipline problem in Oregon public schools. Because restorative justice is linked to the federal SSDI program, Oregon has an opportunity to take the lead in widely adopting restorative justice and paving the way for addressing the

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<sup>152</sup> *Kaizen: The Culture of Continuous Improvement*,  
<http://www.lean.org/Workshops/WorkshopDescription.cfm?WorkshopId=55> (last visited Feb. 20, 2015).

disproportionate discipline issue. In addition, Oregon school districts can seamlessly adopt restorative justice through the already established Positive Behavioral Intervention and Support (PBIS) programs.<sup>153</sup> Moreover, adoption of restorative justice is further emphasized because of its long and proven track record from ancient societies to present day social programs, such as the juvenile justice system. Its practices correlate with the skill sets the business world demands. And it creates a safe and inclusive school community, which is necessary for success of students. Therefore, Oregon school districts should begin widely adopting restorative justice.

### **CONCLUSION**

The disproportionate discipline problem is not an insular issue and instead has become a costly societal issue. However, Oregon has an opportunity to act on this issue and get ahead, before graduation rates and other educational achievement markers further decrease. The state of Oregon in order to stay competitive in the national and global economy must ensure that students are no longer being pushed out of the school system through outdated policies, such as, expulsion and suspension. Common sense dictates that excluding children from the classroom is an ineffective punishment technique that fails to grasp the tremendous teaching opportunity that student misbehavior can provide. Furthermore, because a substantial number of African Americans are disciplined under the heading of disruptive behavior, a discretionary decision open to subjective and ambiguous outcomes, such discipline can no longer be tolerated. Implicit biases are pervasive throughout the school system as well as other public systems, but by taking away vulnerable decision points from teachers and administrators through restorative justice can decrease this problem.

Moreover, the state of Oregon's population is becoming more diverse thus the time to act on the disproportionate discipline problem is now. Between 2003 and 2013 Oregon's African

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<sup>153</sup> See *Positive Behavioral Intervention & Supports*, PBIS, <https://www.pbis.org> (last visited Mar. 17, 2015).

American population grew by 19.3%.<sup>154</sup> Therefore, we must begin creating inclusionary practices in the school system by providing the same opportunities to students no matter what their race or socio economic background. We must replicate the country of Finland’s proven equitable methods, which recognize that placing resources into education has lasting positive effects. We cannot afford financially and socially to incarcerate and provide social welfare support to an entire classes of people because of explicit and implicit discriminatory practices.

Although, restorative justice is not the only technique to fix the disproportionate discipline issue, it is a promising method that is gaining traction throughout the United States. This paper advocates the method because of its ancient roots and proven record in other societal programs. Restorative justice is a rational answer to change school climate and create a safe and supportive environment for learning. Thus, the disproportionate discipline issue must be dealt with, through programs like restorative justice, for the success of the state of Oregon and more importantly for the prosperity of African American and other minority youth. In wrapping up, I leave you with a quote from *Brown v. Board of Education* that briefly touches on why the disproportionate discipline problem is a present day civil rights issue comparable to racial segregation:

“To separate them from others so similar in age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”

– Chief Justice Earl Warren<sup>155</sup>

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<sup>154</sup> Governors Budget 2015-2017, A-19, [http://www.oregon.gov/gov/admin/Documents/2015-17\\_gb\\_ForWeb.pdf](http://www.oregon.gov/gov/admin/Documents/2015-17_gb_ForWeb.pdf).  
<sup>155</sup> *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 494 (1954) *supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955).