

# RACE DISCRIMINATION AND DISPROPORTIONALITY IN SCHOOL DISCIPLINE:

## A LEGAL ANALYSIS

by

CASIE MAE NAUMAN

(Under the Direction of John Dayton)

### ABSTRACT

Race discrimination and disproportionality is commonplace within United States school discipline procedures, as research suggests that African American students receive disciplinary action more frequently and severely than their White peers. This legal analysis reviews historical foundations and federal and state court decisions addressing race discrimination and disproportionality in school discipline amongst African American students. In the eight cases reviewed, the courts overwhelmingly protect school officials' actions in regards to both equal protection of law and due process of law. Through conducting a legal policy analysis, policy and practice recommendations are made at the federal, state and local levels. A concentration on how race discrimination, and the subsequent disproportionality in school discipline, in K-12 public schools can be reduced through improved teacher and school leader practice is emphasized.

INDEX WORDS: School discipline, Race discrimination, Disproportionality, Overrepresentation, African American, Equal protection, Due process, Zero tolerance policies

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CASIE MAE NAUMAN

B.A., University of Wisconsin – Eau Claire, 2001

M.Ed., University of Georgia, 2006

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CASIE MAE NAUMAN

Major Professor: John Dayton

Committee: April Peters-Hawkins

Sheneka Williams

Electronic Version Approved:

Maureen Grasso  
Dean of the Graduate School  
The University of Georgia  
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## DEDICATION

This dissertation is dedicated to my father, Dr. Duane Ollendick, for his continuing support throughout my education and dissertation process. I would also like to thank my mother, Marilyn Ollendick, for always instilling in me the importance of higher education. Finally, I would like to thank my husband, Benjamin Nauman, for his ongoing support and selflessness during this process. I would, however, be remiss to not ultimately dedicate this dissertation to my unborn child (due in three weeks) with whom I hope education is a lifelong venture and interest.

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## CHAPTER 1

### INTRODUCTION

#### **Statement of the Problem**

Race discrimination in education was commonplace during the pre-desegregation era, as African American students were provided with an education that was, on many levels, unequal to that of their White peers. In the current era of post-desegregation education, race discrimination is felt through inequalities such as unequal distribution of punishment and the resulting disproportionality in school discipline.

This dissertation addresses the question: What policy and practice recommendations can be made to reduce race discrimination and disproportionality in school discipline? This question is important as it addresses unequal discipline procedures and practices and its effects on African American students' educational success and the status of public education. Studies (Jordan & Anil, 2009; Skiba, Michael, Nardo, & Peterson, 2002) have examined race discrimination and disproportionality in school discipline and its causes and effects, but little research has been committed to defining where the law stands on the issue and what policy and practice recommendations can be made to improve school discipline policies and implementation in the United States.

Race discrimination and disproportionality in school discipline has been occurring in public schools for roughly the last six decades. Research (Skiba, et al., 2002) has shown that there has been a disparity in the amount of school discipline referrals and actions African American males have received since court-ordered and voluntary desegregation was implemented in the United States public schools. Currently, research (Akom, 2001; Mendez & Knoff, 2003; Noguera, 2003; Roderick, 2003; Skiba, et al., 2002) suggests that African

American males are on the receiving end of a disproportionate number of school discipline referrals, suspensions and expulsions.

Factors that contribute to race discrimination and disproportionality in school discipline are many, some of which include institutional norms, school disengagement and lack of cultural competencies within schools (Akom, 2001; Monroe, 2005; Noguera, 2003; Skiba, et al., 2002). Further, Skiba, et al. (2002) suggests that African American males are disciplined more frequently than their White peers for more subjective behaviors, which may indicate bias on the part of school leaders and teachers.

Research (Jordan & Anil, 2009; Skiba et al., 2002) shows that school discipline tends to have adverse effects on students. The idea that discipline (a reactive and negative consequence) will actually prevent further discipline has been largely unfounded in research. In fact, research (Jordan & Anil, 2009; Skiba et al., 2002) shows that students who endure multiple office referrals and suspensions are actually pushed away (often referred to as “push out”) from schools and sometimes turn to dropping out. Missing school and instructional time has civil rights implications as it takes away a student’s educational rights.

Repeated suspensions and expulsions induce several other implications for students, including increased likelihood of being suspended and/or expelled again, loss of instructional time, potential academic failure, negative school attitudes, lower self-efficacy, increased likelihood of dropping out of school, increased likelihood of becoming a parent at a young age, higher rates of future antisocial behavior, possible loss of human and cultural capital and increased likelihood of becoming a juvenile or adult delinquent (Davis, 2006; Iselin, 2010; Jordan & Anil, 2009, Mendez & Knoff, 2003; Skiba, et al., 2002). In addition, as race

discrimination and disproportionality in school discipline continues to be a concern, implications of a lack of equity within public schools, second generation segregation within schools and detriments to the social and economical growth of African Americans as a group become more pronounced (Jordan & Anil, 2009; Skiba, et al., 2002).

Education is not mentioned in the United States Constitution; therefore, exercised power over education is reserved to the states and the People. However, civil rights legislation under the Fourteenth Amendment of the United States Constitution has allowed for the involvement of the federal government and is often cited in education litigation, such as the topic of this study. As stated in the Fourteenth Amendment, “No state shall make or enforce any law which shall abridge the privileges or immunities of the United States” (Legal Information Institute, 1992, para. 1).

Several federal laws have been cited in plaintiffs’ attempts to seek relief from race discrimination and disproportionality in school discipline. The Fourteenth Amendment of the United States Constitution put forth the Equal Protection Clause and the Due Process Clause, essentially guaranteeing that the law will be exercised upon each individual in an equal manner, while not depriving individuals of their right to life, liberty or property without certain steps taken to ensure fairness. The Civil Rights Act of 1866 and 1871 established protections for African Americans, including the prohibition of acts of discrimination and the introduction of civil remedies. Finally, the Civil Rights Act of 1964 introduced Title VI, which protects individuals from acts of discrimination based on race, color or national origin within institutions that receive federal monies.

State and federal courts have decided in a small number of cases concerning race discrimination and disproportionality in school discipline, with most decisions residing in favor of the school officials, as plaintiffs are unable to prove discriminatory intent. However, past cases concerning race discrimination and equal protection laws (*Brown v. Board of Education of Topeka* (1954) and *Goss v. Lopez* (1975) as examples) have shown that formal litigation is often needed to provide a catalyst for policy reformation and the establishment of new legislation. Research (Skiba, et al., 2002) suggests that the introduction of policy at the federal, state and local levels is necessary in order to halt race discrimination and disproportionality in school discipline.

### **Research Questions**

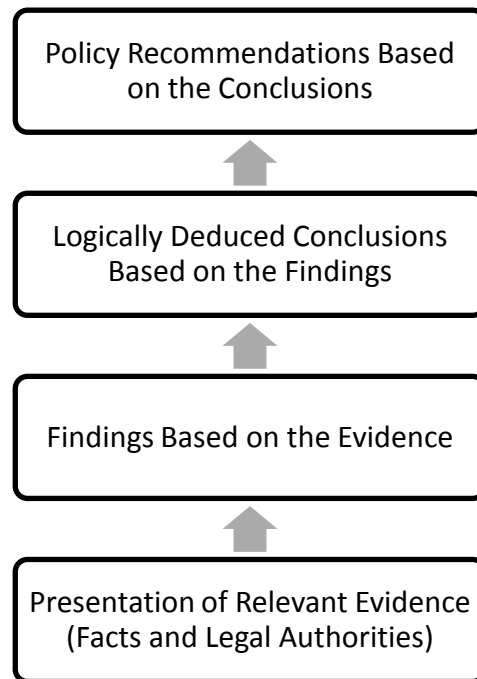
This study investigated the following research questions:

- 1) What is the current status of due process law and equal protection law regarding race discrimination and disproportionality in school discipline in the United States?
- 2) Based on an analysis of the current status of case law, what recommendations can be made for policy reformation and improved school leader and teacher practice?

### **Research Design**

Legal research has been in practice for hundreds of years, providing professionals with depictions of the law and how it affects practice. Legal research methodology allows for accuracy and efficiency in the search for an answer to a legal question. As Dayton (2012b) states, legal research presents relevant evidence, findings based on evidence, conclusions logically deduced from those findings and, when appropriate, policy recommendations based on

the research findings and conclusions. Figure 1 shows a visual depiction of the elements of legal research.

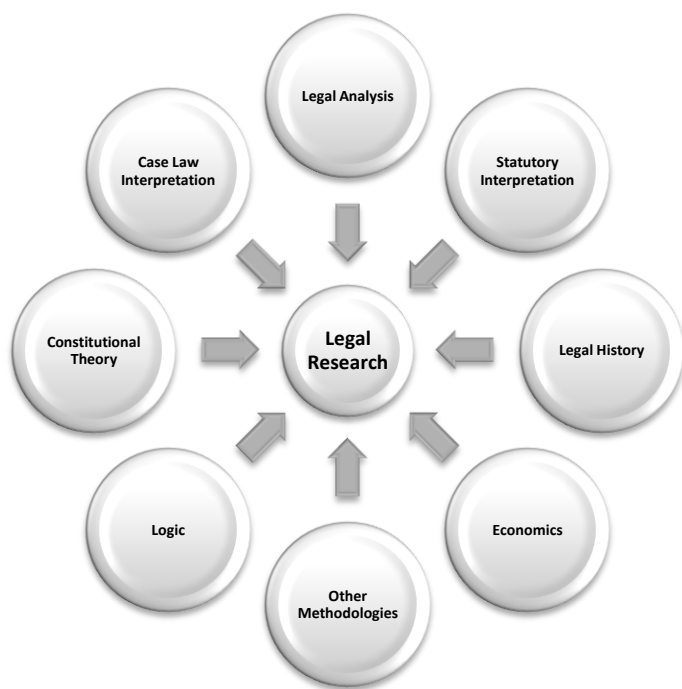


*Figure 1.* Elements of Legal Research. Adapted from “Georgia Education Law,” by J. Dayton, 2012. Reprinted with Permission.

Legal research is driven by the desire to know the law and improve upon the law when needed. Unless the law is properly understood and interpreted, it may be applied unfairly and may neglect to meet its intended purposes. Legal research is used as a tool for outlining the law in a clear and logical fashion as the many laws, amendments and case studies are often confusing and laden with conflicting information (Dayton, 2012b).

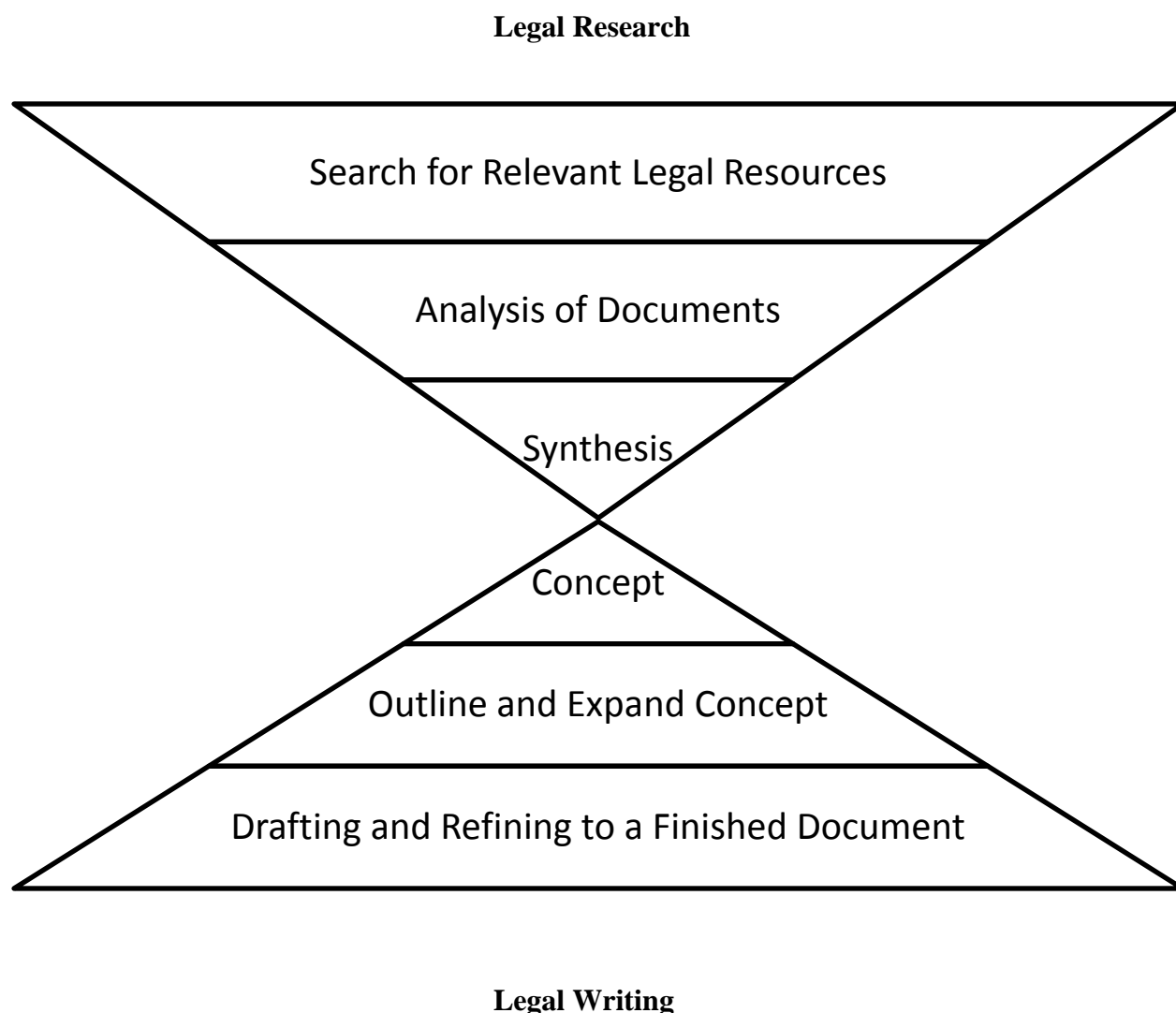
Legal research is different from many other forms of social science methodology in that it does not start with a hypothesis. Legal research starts with gathering data, followed by selecting relevant data, followed by organizing the data in a logical order. The collection and arrangement of the data in this manner then allows the legal researcher to further analyze and synthesize the

data and make an explanatory theory grounded within the data. This process involves deductive research, whereas other social science methodologies utilize a process of induction. Legal research often involves a variety of methodologies. Figure 2 below depicts the many methodologies that can be used (Dayton, 2012b).



*Figure 2. Methodological Tools in Legal Research. Adapted from “Georgia Education Law,” by J. Dayton, 2012. Reprinted with Permission.*

Legal writing involves three main tasks. First, the author develops a concept in effort to communicate the research synthesis and results, conclusions and recommendations. Second, the author develops an outline to expand the concept into a framework for presenting the results, conclusions and recommendations in a logical and sequential manner. And third, the author drafts and refines the outline into a finished document. Figure 3 below provides a visual representation of both the legal research and legal writing processes.



*Figure 3. The Combined Legal Research and Writing Process. Adapted from “Georgia Education Law,” by J. Dayton, 2012. Reprinted with Permission.*

Dayton (2012b) provides a tool for aiding legal researchers in the synthesis of research findings. He refers to this tool as IRAC: Issue, Rule, Application, Conclusion. IRAC involves a four step process:

**Issue:** Clearly state the legal issue

**Rule:** State the rule(s) of law/legal test(s) governing the legal issue

**Application:** Concisely explain the application of the rule(s) of law to the legal issue



**Conclusion:** Concisely explain your conclusions based on this process.

Dayton (2012b) suggests that the IRAC method may be useful in synthesizing findings in an orderly form while reaching logical conclusions.

Research for this study was mostly focused on case law analysis. Data was taken from federal and state court opinions involving race discrimination and disproportionality in school discipline. Cases where plaintiffs challenged the violation of their rights under the Fourteenth Amendment of the United States Constitution, the Civil Rights Acts of 1866 and 1871 and Title VI under the Civil Rights Act of 1964 were included in this analysis.

Skiba, Eckes, and Brown (2009/10) provides a summary of the court cases surrounding race discrimination and disproportionality in school discipline, which was used as a reference for compiling a listing of all relevant cases. In addition, searches for additional cases were done using key words/phrases such as “discrimination” and “school discipline” within the databases of LexisNexis and Westlaw. Each case was read, analyzed and summarized as a means to draw inferences and conclusions on the current status of the law as it pertains to race discrimination and disproportionality in school discipline. Chapter Two provides the summaries of these cases along with data on legislation and historical and monumental cases that are pertinent to the analysis of the current status of the law.

In an effort to provide recommendations for policy reformation at the federal, state and local levels, along with improved school leader and teacher practice, other social science research was analyzed in conjunction with the case law. Chapter Three contains a synthesis of the data presented in Chapter Two and Chapter Four will implement data taken from social science literature and research surrounding the issue of race discrimination and

disproportionality in school discipline. The combination of law research and a meta-analysis of the literature will allow for more informed and comprehensive policy and practice recommendations.

### **Limitations of the Study**

This study was limited to the available case law surrounding constitutional, Sections 1981 and 1983 of The Civil Rights Act of 1866 and 1871, and Title VI of The Civil Rights Act of 1964 challenges to race discrimination and disproportionality in school discipline in the United States federal and state courts. Individual state and local school policies were not taken into consideration when analyzing case law. In addition, other legal issues that may have been involved in the cases, but not pertinent to the issue of race discrimination and disproportionality in school discipline, were not taken into consideration. Finally, cases in which race discrimination and disproportionality in school discipline were secondary to the primary reason for filing suit were not taken into consideration and therefore were not analyzed.

## CHAPTER 2

### REVIEW OF THE LITERATURE

The purpose of this chapter is to outline all of the relevant legislation and court proceedings pertaining to race discrimination and disproportionality in school discipline. In addition, reference will be drawn to the historical discrimination and segregation of African Americans, as it will provide insight into the ways in which legislation and the courts' interpretation of the law has either aided or delayed the advancement of equal rights for African Americans in schools and other areas of governmental interest.

This chapter presents material that is historically relevant to this topic, and therefore, will be discussed in a chronological manner. The review of the literature will begin with an introduction to equal protection and due process of law and will end with a review of *Fuller v. Decatur Public School Board of Education School District 61* (2001), the most recent court ruling concerning race discrimination and disproportionality in school discipline. This approach to the review of literature will provide the reader with a formative overview of the history of the topic and how it informs its present state.

#### **The Makings of Equal Protection and Due Process of Law**

Since the period of colonization in the United States, the founding fathers placed great emphasis on equal protection of individual rights. Although provisions and legislation seemingly protected individual rights - and equal protection to those rights, race discrimination, such as the involuntary servitude of African Americans, was commonplace. In the context of public education, race discrimination was most certainly felt during the pre-desegregation era, as African American students were provided with an education that was unequal to that of their

White peers. In the current era of post-desegregation education, race discrimination is felt through inequalities such as race discrimination and disproportionality in school discipline. This section starts with one of the world's first written acknowledgements of the rights of man and will continue with an outline of United States legislation concerning equal protection, along with summaries of some of the monumental court decisions surrounding the issue.

## **Magna Carta**

The Magna Carta, also known as “The Great Charter” of 1215, was one of the earliest provisions addressing the rights of man. Established by Britain's King John in his attempts to recognize the rights for both noblemen and ordinary Englishmen, the Magna Carta delivered the principle that no one, including the king or a lawmaker, was above the law and that rights were delivered directly from God to the people (National Archives & Records Administration, 2007).

Not only did the Magna Carta address equal rights, but it also declared an individual's right to property and right to due process of law. An individual's right to property was outlined through several provisions that explicitly stated an individual's right to ownership and what shall not be involuntarily stripped from his possession. Further, an individual's right to due process of law was addressed through the following assertion,

No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land. (National Archives, 2007, para. 29)

The Magna Carta became the basis of the Fifth Amendment to the United States Constitution, which protects individuals from abuse of government authority during legal procedures. Therefore, legal practices and rights within the United States, such as “grand juries”

and due process of law, trace their roots back to the Magna Carta of 1215. Due process, which will be further addressed within the section on the Fourteenth Amendment to the United States Constitution, is paramount to public school students' rights and school discipline procedures (National Archives, 2007).

### **United States Declaration of Independence**

The United States Declaration of Independence was written in 1776 as mostly an explanation as to why the original thirteen colonies desired independence from Great Britain. In perhaps one of the most recognizable quotes from the United States Declaration of Independence, the writers called for the individual rights of man and equal protection to those rights. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness" (National Archives, 2012, para. 2). The Declaration was later seen as a statement of human rights and presidents of the United States, such as Abraham Lincoln, have been said to base their beliefs and policies on the Declaration's sentiments. Lincoln further endorsed the meaning of the Declaration by stating that the United States Constitution should be interpreted through the lens of the Declaration.

### **United States Constitution**

The United States Constitution, written in 1789, addressed similar sentiments as the United States Declaration of Independence. In the Bill of Rights (added in 1791) and other further amendments to the Constitution, the issue of individual rights and the equal protection of those rights were established. The Fifth Amendment, ratified in 1791, stated that no person shall "be deprived of life, liberty or property, without due process of the law" (Legal Information

Institute, 1992, para. 1). In 1868, the Fourteenth Amendment addressed the posture presented in the Fifth Amendment, but extended its reach to the state level.

The Fourteenth Amendment introduced both the Equal Protection Clause and the Due Process Clause. In short, the Equal Protection Clause guarantees that the law will be exercised upon each individual in an equal manner, while the Due Process Clause restricts state and local governments from depriving people of their right to life, liberty or property without certain steps taken to ensure fairness. The Equal Protection Clause was the basis for the landmark case, *Brown v. Board of Education of Topeka* (1954), and the Fourteenth Amendment is cited in more litigation than any other amendment (Library of Congress, 2011, para. 1).

**Equal protection clause.** The Equal Protection Clause protects an individual's right to not be discriminated against on the basis of race, color or national origin. Yet, it was not intended to provide "equality" among individuals, but only "equal application" of the laws. Therefore, the clause is not relevant as long as there is no application of discrimination. The clause is generally thought to be in violation if a state grants an individual or group the right to engage in an activity, yet denies another individual or group the same right. The courts typically find a state's classification as constitutional if it has "a rational basis" to a "legitimate state purpose" (Legal Information Institute, 1992).

In the context of education and school discipline, the U.S. Supreme Court has consistently declared that to establish a discriminatory effect in a race case, the claimant must show that similarly situated individuals of a different race were not prosecuted (Klein, 2000). In effort to determine if a student's equal protection rights have been violated, the court will apply different tests. If the court has determined that school officials have acted upon a legitimate

educational concern, the court will apply a rational basis test, which determines whether the school officials' actions are reasonably related to the legitimate educational concerns. This test is typically deferential to school officials, as the courts tend to treat school officials as experts in their own field (Fultz, 2002).

On the other hand, if school officials are motivated by racial disdain, then courts will apply strict scrutiny. In this test, school officials must provide evidence of a compelling justification for their actions and their actions must be narrowly tailored to advancing the justification. However, strict scrutiny does not apply to African American students who may experience disparate impact based on school officials' nondiscriminatory actions. If discriminatory intent cannot be proven, the courts typically will not side with student plaintiffs who happen to feel the burden of nonracially motivated disciplinary action (Fultz, 2002).

***Historically significant supreme court decisions surrounding the equal protection clause.*** The abolishment of slavery, as established in the Thirteenth Amendment to the Constitution, in conjunction with the Fourteenth Amendment to the Constitution, did little to prevent the racially segregated practices that took place within the United States following the legislations' establishments in 1865 and 1868, respectively. U.S. Supreme Court cases such as *Plessy v. Ferguson* (1896) and *Brown v. Board of Education of Topeka* (1954) depict times in which government ran institutions still took part in race-based segregation.

*Plessy v. Ferguson* (1896). In 1892, Plessy, a man who was seven-eighths White and only one-eighth African American, was denied access to the "white only" railroad car on the East Louisiana Railway from New Orleans to Covington, Louisiana. After being removed from the car, Plessy was taken to the New Orleans parish jail where he was charged with violating the

1890 Louisiana Act No. 111, which provided for separate railway carriages for white and colored races.

Plessy argued that the 1890 Louisiana Act No. 111 was unconstitutional and in violation of the Thirteenth and Fourteenth Amendments to the Constitution. In 1896, the Louisiana Supreme Court upheld his ejection from the railway car and the constitutionality of the Louisiana legislature. This decision re-established the “separate but equal” doctrine, and *de jure* segregation would remain lawful until the mid-twentieth century (*Plessy v. Ferguson*, 1896).

In this case, the Fourteenth Amendment was interpreted to enforce the equality of the races before the law, but not abolish distinctions based on color or force the “commingling of the two races upon terms unsatisfactory to either” (*Plessy v. Ferguson*, 1896, p. 544). Further, the Fourteenth Amendment allowed for laws that permitted or required the separation of the races without the implication that either race was inferior to the other (*Plessy v. Ferguson*, 1896).

On appeal, Justice John Marshall Harlan was the only U.S. Supreme Court justice who provided a dissenting opinion in the *Plessy v. Ferguson* (1896) decision. In his dissent, Justice Harlan stated,

But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. (*Plessy v. Ferguson*, 1896, p. 559)

He further posited,



The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. (*Plessy v. Ferguson*, 1896, p. 560)

Despite Justice Harlan's call for equality, the decades following the *Plessy v. Ferguson* (1896) decision were wrought with unequal protection of the laws, as African Americans were often segregated from the White race. In education, African American students were separated from their White peers and were provided with unequal access to education through dilapidated school buildings, old and over-used educational materials, and a lack of educational funding. The *Plessy v. Ferguson* (1896) doctrine "separate but equal" made separate educational facilities lawful (and commonplace) until the doctrine was overturned in the case of *Brown v. Board of Education of Topeka* (1954).

*Brown v. Board of Education of Topeka* (1954). The U.S. Supreme Court case, *Brown v. Board of Education of Topeka* (1954), combined plaintiff appeals from Delaware, Kansas, South Carolina and Virginia, all of which involved African American students who, based on their race, were denied admittance to public schools of their choice in their community. The plaintiffs individually based their discrimination claim on the Equal Protection Clause of the Fourteenth Amendment, but in three out of the four cases, the lower courts denied relief to the plaintiffs based on the separate but equal doctrine set forth by *Plessy v. Ferguson* (1896). Although the Supreme Court of Delaware awarded the plaintiffs with admittance to the White schools, it did so based on the fact that the African American schools had been found to be inferior to the White schools. Therefore, the Supreme Court of Delaware ultimately upheld the separate but equal doctrine – much akin to the decisions of the Kansas, South Carolina and Virginia courts (*Brown v. Board of Education of Topeka*, 1954).

In 1954, the U.S. Supreme Court decision in *Brown v. Board of Education of Topeka* overturned the separate but equal doctrine (and provided relief to the plaintiffs) on the basis that the doctrine had no place in public education. Further, the court determined that the Equal Protection Clause prohibits states from maintaining racially segregated public schools, even if the facilities and other factors, such as curriculum and teacher salaries, may have been equal (*Brown v. Board of Education of Topeka*, 1954). The court stated:

To separate them from others of similar 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... “Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of the child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of the Negro children and deprive them of some of the benefits they would receive in a racial[ly] integrated school system.” Concentrating only on the debilitating effects of segregation on black children, the Court fails to address explicitly the inevitable corollary effects of segregation on whites, including white teachers: the inculcation of a false ideology of superiority with its resulting cultivation of reductive misconceptions about blacks’ abilities. (Brown, 2004, p. 3)

Although the *Brown v. Board of Education of Topeka* (1954) decision required states to desegregate their public schools, many states – especially southern states – delayed the process of doing so. In *Brown v. Board of Education of Topeka* (1955), the U.S. Supreme Court gave the

federal district courts the responsibility of supervising and ensuring desegregation with “all deliberate speed” (*Brown v. Board of Education of Topeka*, 1955, p. 301). In the end, the decision put forth by *Brown v. Board of Education of Topeka* (1954) provided clear guidance on the issue of race based segregation and rendered advancement in the equal protection of all minorities in the United States (*Brown v. Board of Education of Topeka*, 1954).

**Due process clause.** As previously indicated, the Due Process Clause reflects Britain’s Magna Carta of 1215 in which King John promised all citizens that “he would only act in accordance with law (“legality”) and that all would receive the ordinary processes (procedures) of law” (National Archives, 2007, para. 5). In the United States, the Fourteenth Amendment declares similar sentiments, as the protection of life, liberty and property yields a two-stage analysis. First, it must be determined whether the individual interests are encompassed within the Fourteenth Amendment’s protection of life, liberty and property (substantive analysis), and second, if the interests are protected, it must be determined what procedures constitute due process of law (procedural analysis) (Yudof, Kirp, Levin, & Moran, 2002).

Due process is only required when a decision of the state concerns an interest under the protection of the Fourteenth Amendment. Further, the weight of the interest is not to be taken into consideration – only the nature of the interest (Yudof, et al., 2002). In the context of education and school discipline, the U.S. Supreme Court has determined that students do not have a constitutional right to education, yet it recognizes that the right to a public education is a property interest. This declaration denies public education as an absolute right, but nevertheless a right that cannot be taken away without due process of the law (Klein, 2000).

Having said that, the courts have given schools and school personnel wide interpretation of what constitutes due process for student discipline concerns (Klein, 2000). The United States adopted the term “in loco parentis” from English common law, which means “in place of the parent”. The British had adopted the law in effort to provide rights and responsibilities to children’s non-parental caretakers and the United States extended the term to school officials in order to permit them to use their custodial powers when students pose a dangerous threat to themselves or others (Skiba, et al., 2009/10). In *Wood v. Strickland* (1975), the court stated, “...it is not the role of the federal courts to set aside decisions of school administrators that the court may view as lacking a basis in wisdom or compassion” (p. 346). Due to this latitude afforded to schools, although the government must follow fair procedures, it has been determined that identifying appropriate and applicable fair procedures is not always a clear endeavor. In addition, schools are likely to not violate a student’s due process rights in all but the most neglectful incidences. Yet, it should be noted that school officials’ power is not unlimited and cannot be arbitrarily exercised (Skiba, et al., 2009/10).

***Historically significant supreme court decisions regarding the due process clause.***

*Dixon v. Alabama State Board of Education* (1961). On February 25<sup>th</sup>, 1960, Dixon, and six other plaintiffs who were students at the Alabama State College for Negroes in Montgomery, Alabama, took part in a “sit in” at a publicly owned lunch grill located in the basement at the county courthouse in Montgomery. The following day the same group of students staged a mass assembly at a trial being held in the county courthouse and then proceeded to march two by two back to the college – approximately two miles. Then on February 27<sup>th</sup>, 1960, the same group of students staged demonstrations in both Montgomery and Tuskegee, Alabama. It was on this same date that Dr. Trenholm, president of Alabama State College, warned the group of students

that the demonstrations and meetings were disrupting the business of the school and affecting the work of both participating and nonparticipating students (*Dixon v. Alabama State Board of Education*, 1961).

Several days later, the plaintiffs took part in hymn singing and speech making on the Capitol's steps. Plaintiff Lee instructed students to boycott the college if any students were expelled due to participation in meetings and demonstrations. The students received expulsion letters on March 4<sup>th</sup>, 1960 from Dr. Trenholm. The letters stated their expulsion was effective March 5<sup>th</sup>, 1960 and did not contain any information surrounding notice, hearing or appeal of the expulsions (*Dixon v. Alabama State Board of Education*, 1961).

The behavior(s) for which the students were expelled was never specifically defined. In addition, Dr. Trenholm testified that he did not know why the students were expelled, as the decision came from the State Board of Education. Evidence revealed that there was little to no proof that all of the expelled students took place in all of the meetings and demonstrations that were listed in the defendants' testimony. Finally, there was wide speculation that the expulsions took place without any regard to an actual violation of student conduct and testimonies from defendants who voted to expel the students revealed that the defendants lacked sound reasons for doing so. However, the court maintained that the trial was to concentrate on the violation of due process rights brought forth by the plaintiffs and the idea that school officials' power is not unlimited and cannot be exercised arbitrarily. These issues were addressed in its decision (*Dixon v. Alabama State Board of Education*, 1961).

The Fifth Circuit Court of Appeals disagreed with the district court's decision that a lack of notice or opportunity for any kind of hearing was required before the students were expelled.

Upon further examination of the defendants, it became apparent that the regular protocol utilized at Alabama State College was not awarded to the seven plaintiffs involved in this case. Further, the court stated, “Whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law” (Dixon v. Alabama State Board of Education, 1961, p. 155). The court further declared,

The precise nature of the private interest involved in this case is the right to remain at a public institution of higher learning in which the plaintiffs were students in good standing. It requires no argument to demonstrate that education is vital and, indeed, basic to civilized society. Without sufficient education the plaintiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens. (Dixon v. Alabama State Board of Education, 1961, p. 157)

In conclusion, the court recommended the following due process procedures for the expulsion of students from a state college or university: 1) notice containing a clear explanation of charges and grounds for charges, 2) an impartial tribunal hearing in which students have the opportunity to share their side of the story, and 3) the right to counsel, the right to present witnesses, and the right to cross examine during the hearing (Dixon v. Alabama State Board of Education, 1961).

*Goss v. Lopez* (1975). In this case, Lopez, along with eight other students, was suspended from a Columbus, Ohio school for 10 days for destroying school property and disrupting the learning environment. Ohio law provided for free education and compulsory

school attendance; however, procedures for a student facing suspensions up to 10 days in cases of misconduct were left out of the statute. The court stated,

At the very minimum, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing. The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences. (*Goss v. Lopez*, 1975, p. 582)

Since the Fourteenth Amendment forbids states to deprive any person of life, liberty or property without due process of law, states must recognize a student's legitimate right to public education as a property interest, as protected by the Due Process Clause. The court cited *Tinker v. Des Moines School District* (1969), "Young people required by compulsory attendance laws to attend school do not shed their constitutional rights at the schoolhouse door" (*Goss v. Lopez*, 1975, p. 574).

The United States District Court for the Southern District of Ohio struck down the Ohio law and declared that it violated students' right to due process of law. The court stated, "...plaintiffs were denied due process of law because they were suspended without hearing prior to suspension or within a reasonable time thereafter" (*Goss v. Lopez*, 1975, p. 571). The court ordered all references to the plaintiffs' suspensions be removed from school files. In addition, the court ordered the school board to create a new suspension policy. The case was appealed by the school to the U.S. Supreme Court (*Goss v. Lopez*, 1975).

The U.S. Supreme Court affirmed the district court's decision by concluding that the state had violated the students' due process rights by removing the process of a hearing. The court

further stated that because suspension has potential to hurt a student's reputation and their future education and employment, the state has no authority to remove the right of education without due process of law. The court declared,

The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all its unfortunate consequences. The Due Process Clause will not shield him from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted. The concern would be mostly academic if the disciplinary process were a totally accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process. (*Goss v. Lopez*, 1975, p. 579-580)

U.S. Supreme Court Justice Powell, along with three others, dissented. He concludes, "The decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education" (*Goss v. Lopez*, 1975, p. 585). Justice Powell also referred to what courts have recognized in past cases: that school administrators have broad discretionary authority in the daily operation of public schools, which includes "wide latitude with respect to maintaining discipline and good order" (*Goss v. Lopez*, 1975, p. 590). Lastly, Justice Powell addressed the individual interest of the student:



One who does not comprehend the meaning and necessity of discipline is handicapped not merely in his education but throughout his subsequent life. In an age when the home and church play a diminishing role in shaping the character and value judgments of the young, a heavier responsibility falls upon the schools. When an immature student merits censure for his conduct, he is rendered a disservice if appropriate sanctions are not applied or if procedures for their application are so formalized as to invite a challenge to the teacher's authority – an invitation which rebellious or even merely spirited teenagers are likely to accept. (*Goss v. Lopez*, 1975, p. 593)

*Goss v. Lopez* (1975) was instrumental in that it determined that a student must be given an informal opportunity to be heard prior to removal from a public school (Yudof, et al., 2002). In addition, it created a standard for the meaning of short and long-term suspensions. Prior to this case, what was determined a long-term suspension in one state may have been determined a short-term suspension in another. *Goss v. Lopez* (1975) effectively established a standard short-term suspension of ten days or less and its due process requirements. Due to this procedural establishment, states often adopted the Goss standard as the first step in establishing protection for students who are removed from school (Fultz, 2002).

### **Civil Rights Act of 1866 and 1871**

The Civil Rights Act of 1866 was passed largely in attempt to protect the rights of African Americans following the Civil War. Enacted as part of the Civil Rights Act of 1866, Section 1981 prohibits race discrimination in both the right to engage in legal action and the right to contract. In addition, it gives the person who is experiencing the discrimination the right to

sue both public and private parties, while also stating that people within the jurisdiction of the United States are accountable to all laws and regulations (Skiba, et al., 2009/10).

The Civil Rights Act of 1871 was partially passed in effort to protect African Americans from the abuse of the Ku Klux Klan by providing civil remedy for injustices committed in the South. Section 1983 of the Act provides for civil remedies, including the collection of monetary damages, when civil rights violations occur. Currently, Section 1983 is used to collect monetary damages when a governmental figure violates a statute or constitutional provision, such as the Equal Protection Clause and the Due Process Clause (Skiba, et al., 2009/10).

### **Civil Rights Act of 1964 – Title VI**

The United States Congress passed the Civil Rights Act of 1964 as a means to protect citizens from discrimination. Specifically, Section 601 of Title VI of the Act protects people from acts of discrimination based on race, color or national origin within institutions that receive federal funds. Section 602 of Title VI authorizes federal agencies to enforce Section 601 through the development of regulations. This legislation further establishes the Equal Protection Clause set forth by the Fourteenth Amendment (United States Department of Labor, 2012).

Further, the regulations under Title VI incorporate a legal standard known as “adverse impact.” The adverse impact doctrine states that if a racially neutral policy or practice produces a disproportionately harmful impact on students of color, the burden shifts to the school system (or other governmental institutions) to justify its policy or practice under a relatively high standard. Two rationales support the adverse impact doctrine. First, when focusing on consequences instead of intent, the doctrine scrutinizes actions that may indicate intentional discrimination even when intent is difficult or impossible to prove. Second, given the history of

race discrimination in the United States, the adverse impact doctrine states that regardless of intent, actions that result in additional disadvantages on historically oppressed groups of people should not be legal unless supported by a compelling justification (The Civil Rights Project, 2000). In the past, plaintiffs have found relief by citing disparate impact; however, the U.S. Supreme Court put a stop to disparate impact claims under Title VI, as will be revealed in *Alexander v. Sandoval* (2001).

In the context of education and school discipline, plaintiffs may claim that school discipline procedures result in the disparate treatment of minority students. In this case, the court has held that disparate treatment under Title VI is similar to race discrimination as recognized by the Equal Protection Clause. However, the plaintiff must be able to provide evidence that school officials acted with discriminatory intent, which can be either direct or circumstantial. The Office for Civil Rights (OCR) of the U.S. Department of Education is responsible for enforcing Title VI (The Civil Rights Project, 2000).

***Historically significant supreme court decisions surrounding Title VI of the Civil Rights Act of 1964.***

*Alexander v. Sandoval* (2001). *Alexander v. Sandoval* (2001) is one of the more recent, and commonly referred to U.S. Supreme Court decisions surrounding Title VI of the Civil Rights Act of 1964. In an amendment to its constitution, Alabama added English as its official state language. In response to the amendment, The Director of the Alabama Department of Safety, Alexander, declared the Alabama driver's license test to be given in English only. Sandoval, an Alabama resident who was not a fluent English speaker, sued Alexander on the premise that the English-only test policy was discriminatory and resulted in disparate impact. In her claim,

Sandoval argued that the policy had a disparate impact on those born outside the United States because it denied non-English speakers – who are mostly born outside the United States – an equal opportunity to receive a driver’s license. The lower court and the United States Court of Appeals for the Eleventh Circuit agreed with Sandoval and enjoined the policy (*Alexander v. Sandoval*, 2001).

On appeal, the U.S. Supreme Court had a different opinion of *Alexander v. Sandoval* (2001); stating that Section 601 of the Civil Rights Act of 1964 prohibits only intentional discrimination, not actions that result in a disparate impact on certain groups of people. The court also held that an “implied private right of action” was not applicable to disparate impact claims under Title VI of the Civil Rights Act of 1964 (*Alexander v. Sandoval*, 2001).

As stated earlier, this case holds significance because it marks the end of plaintiffs’ ability to claim disparate impact lawsuits under the regulations of Title VI instead of claiming discriminatory intent by the substantive provisions of Title VI (Skiba, et al., 2009/10).

## **Zero Tolerance**

The term “zero tolerance” received national attention as the title of a 1986 program that impounded seagoing vessels carrying any amount of illicit drugs. The program became a national policy when U.S. Attorney General Edwin Meese III ordered customs to seize the vehicles and property of anyone crossing the border with even trace amounts of illegal drugs and try the individuals in federal court. Although the program was eventually phased out, the term “zero tolerance” soon became applied to other areas of governmental interest such as education (Zweifler & De Beers, 2002).

The early 1990s brought times of heightened awareness surrounding public school safety, as the media reported increased violence and crime within the nation's schools. In response to the climate of fear, policies were implemented in effort to neutralize the public's perception of, and concern for, their children's safety while in school. These policies were often referred to as zero tolerance policies because they reflected a "one strike you're out" or "take-no-prisoners" mentality and approach to school discipline (The Civil Rights Project, 2000, p. V).

Zero tolerance policies were instituted by the federal and state governments and local school districts in response to the climate of fear. The Gun-Free Schools Act (GFSA) of 1994 provided that in order for schools to receive federal education funds through the Elementary and Secondary Education Act of 1965, each state must have a discipline policy allowing for the expulsion of a student for up to a year if the student possesses a weapon on school property. As explained in U.S.C. Section 921 of the GFSA, a weapon is defined as a "firearm" or gun, bomb, grenade, rocket, missile, or mine. The GFSA also required schools to refer to the criminal justice system any student who is in possession of a weapon on school property. In 1997, the Act was amended to include all weapons and drugs in addition to firearms (Gordon, Della Piana, & Keleher, 2001).

Although the GFSA allows for state and local educational agencies to determine the length of expulsion on a case-by-case basis (some states have opted to not handle expulsion on a case by case basis), and is therefore not considered by definition a zero tolerance policy, many state and local agencies have looked to the GFSA as the "floor" and have implemented zero tolerance policies of their own in regards to weapons and drugs (The Civil Rights Project, 2000). Some states, such as California, Kentucky and New York, implemented zero tolerance policies mandating expulsion for gang-related activity (Zweifler & De Beers, 2002).

Shortly after federal and state zero tolerance policies were implemented, and in the wake of several school shootings across the nation in the mid to late 1990s, school districts amped up the development of their own versions of zero tolerance policies. During this time, it appeared as though school principals were eager to implement zero tolerance policies because it was a way to attach clear and consistent punishments to adverse and unwanted school behaviors.

Additionally, because *Goss v. Lopez* (1975) only established a floor for short-term suspension due process requirements, the due process requirements for expulsion were left open-ended and up for interpretation (the use of *Dixon v. Alabama State Board of Education* (1961) is limited, as will be explained later) (Fultz, 2002). School districts and principals had the ability to develop and implement these policies at will, as federal and state disciplinary laws permit school officials to use their discretion when assigning punishments – suspension or expulsion (The Civil Rights Project, 2000).

School districts often included in their zero tolerance policies anything that could be used as a weapon, in addition to any drug - sometimes even including medications. Some policies included minor fights, threats and other behaviors that posed little risk to school safety (Schwartz & Rieser, 2001). The most recent data from the National Center for Education Statistics states that 75 percent of all schools have adopted zero tolerance policies, with 94 percent of those reporting policies for firearms and 91 percent for weapons other than firearms. Slightly less than 90 percent have zero tolerance policies for drugs and alcohol; while 79 percent have policies for violence and 79 percent for the use of tobacco (National Center for Education Statistics, 2012). Further, as example, Chicago Public Schools adopted a uniform discipline code allowing schools to discipline children for up to five days for repeated violations of infractions such as “failing to abide by school rules” and “defying the authority of school personnel” (Michie, 2001, p. 9).

Furthermore, in Colorado, students can be expelled for willful disobedience, persistent defiance of authority or the destruction or defacement of school property (Skiba, et al., 2009/10).

## **Special Education**

Special education and its relationship with race discrimination and disproportionality in school discipline is a topic that must be studied independently in order to give it full consideration. However, it is important to note within this study that a relationship does exist and that the overrepresentation of African American students in special education likely influences the disproportionality of African American students who receive disciplinary action.

Since the *Brown v. Board* (1954) decision was handed down, African American students have continued to face segregation in a variety of ways. The U.S. Office of Civil Rights reported an overrepresentation of minority children in special education categories since the 1970s, while Ferri and Connor (2004) suggest that one of the biggest criticisms of special education programs is the disproportionate numbers of African American students receiving special education services. Although the Individuals with Disabilities Education Act (IDEA) amendments in 1997 required states to begin collecting and reporting data on race and disability classification, the problem persists (Ferri & Connor, 2004). In *Larry P. v. Riles*, the court declared that the overrepresentation of minority students in special education was largely the result of teacher bias (Vallas, 2009).

Ferri and Connor (2004) state, “Of course, special education is always embedded within the larger education system in which we continue to find racial disparities in areas such as drop-out rates, juvenile justice referrals, academic tracking, and suspensions” (p. 2). Further, Skiba et al. (2002) suggest that the discriminatory treatment of African American students in the context

of school discipline is linked to the overrepresentation of African American students in special education programs.

### **Federal and State Court Decisions Regarding Race Discrimination and Disproportionality in School Discipline**

***Hawkins v. Coleman (1974).*** In the case *Hawkins v. Coleman* (1974), the plaintiff, Hawkins, plead for permanent injunctive relief after two years of litigation and two appeals to the Fifth Circuit. The original case was filed in April of 1972 after Hawkins, on behalf of himself and a class of African American students within the Dallas Independent School District (DISD), contested his suspension based on race discrimination, the denial of equal protection, and the denial of both substantive and procedural due process. In May of 1972, a preliminary injunction was ordered and the immediate reinstatement of Hawkins was declared while the defendants (Coleman, principal of the school Hawkins attended, amongst other DISD representatives) were restrained from enforcing the DISD suspension policies and procedures. An appeal was remanded to the United States District Court for the Northern District of Texas, Dallas Division; resulting in *Hawkins v. Coleman* (1974).

*Hawkins v. Coleman* (1974) involved substantially the same complaint and focus on student suspension procedures as the original 1972 case. It was brought to the court's attention that the DISD began a program of student re-assignment in 1971 following the case, *Tasby v. Estes* (1971). The DISD's program of student re-assignment resulted in a large amount of African American students being transferred from schools in which African American students were the majority demographic to schools in which African American students were the minority



demographic. Subsequently, an educational environment emerged in which many believed resulted in the unequal treatment of African American students.

Although the defendants presented the face value of the student suspension procedures that were restructured following the original case in 1972, the plaintiffs concentrated on the application and enforcement of those procedures. The plaintiff's testimony consisted of (1) DISD student data, (2) an analysis of the data by an expert witness and, (3) an evaluation of the meaning of the analysis (*Hawkins v. Coleman*, 1974).

During the 1972-1973 school year, African American students consisted of 38.7 percent of the total district enrollment, yet they received 60.5 percent of the total number of suspensions. In contrast, White students consisted of 50.4 percent of the total district enrollment, yet they received 30.2 percent of the total number of suspensions. The data was further broken down into high school data and junior high school data, with results that were nearly identical to the district data. Similar district data continues during the Fall semester of the 1973-1974 school year. African American students consisted of 40.9 percent of the total district enrollment, yet they received 59.4 percent of the total number of suspensions. White students consisted of 47.2 percent of the total district enrollment, yet they received 31.4 percent of the total number of suspensions. This data proved to the court that there existed a clear disproportionate suspension ratio between African American and White students. Data on corporal punishment was also submitted, which revealed less of a disproportionate ratio, but rather a similar disparity. Finally, when the data was broken down by individual schools, the figures reported that schools in which White students outnumbered African American students had an even greater disproportionality in the frequency of suspensions and incidents of corporal punishment (*Hawkins v. Coleman*, 1974).

In addition to the presentation of the data, an expert witness, Dr. Kestler, was summoned to analyze whether the frequency of African American student suspensions over White student suspensions was significantly different from their racial composition within the district. After conducting several statistical analyses, Dr. Kestler concluded the following:

- (1) Black students *are* being suspended from school significantly more frequently than are White students.
- (2) Black students *are* being suspended from elementary schools significantly more frequently than are White students.
- (3) Black students *are* being suspended from junior high schools significantly more frequently than are White students.
- (4) Black students *are* being suspended from senior high schools significantly more frequently than are White students.
- (5) Black students receive “more-than-3-day” suspensions significantly more frequently than do White students. (*Hawkins v. Coleman*, 1974, p. 1335)

In addition to his data analysis, Dr. Kestler determined that 60 percent of the suspensions and incidents of corporal punishment were for offenses such as truancy, class cutting, talking back to the teacher, or other non-violent conduct (*Hawkins v. Coleman*, 1974).

Dr. Kestler expanded his investigation by visiting six of the DISD schools in which White students outnumbered African American students. Through his visitations, he concluded that the DISD applied discipline in a racially biased manner. The court documents state,

Dr. Kestler noted there was a substantial reliance upon non-violent “offenses” as a justification for suspensions when, in fact, such conduct may be a pivotal ethnic

characteristic. The primary reasons, he said, for student suspensions are ones that are highly susceptible of selective perception and selective prosecution. (*Hawkins v. Coleman*, 1974, p. 1335)

In conclusion, Dr. Kestler posited that there are two possible reasons for the disproportionate student suspension and corporal punishment statistics. One reason was racial bias in the administration of student discipline procedures and policies (one that he was sure existed), the other was increased “suspendable conduct” on the part of African American students (*Hawkins v. Coleman*, 1974).

Dr. McDaniel, an expert on institutional racism, evaluated the meaning of Dr. Kestler’s conclusions. He found that the “DISD fit into an existing national pattern of race discrimination in that the DISD is a ‘white controlled institution’ with ‘institutional racism’ existing in the operation of its discipline procedures” (*Hawkins v. Coleman*, 1974, p. 1336). The court documents further address this evaluation:

A “white controlled institution” occurs, testified Dr. McDaniel, when a large majority of the decisions about resource distribution is made by white administrators. “Institutional racism” exists, according to Dr. McDaniel, when the standard operating procedures of an institution are prejudiced against, derogatory to, or unresponsive to the needs of a particular racial group. This is distinguished from “personal racism” which exists within a given individual and do not become involved in the administration of an institution’s normal operations. (*Hawkins v. Coleman*, 1974, p. 1336)

Dr. McDaniel suggested that due to the existence of institutional racism, African American students would often become more frustrated as their needs and ambitions were not

met by the institution. This frustration would manifest itself through either increased passivity or increased hostility. Increased hostility would result in an increase in “suspendable behavior.”

Dr. McDaniel further testified,

...in a school district in which there is institutional racism toward the Blacks conduct by black students that would not be “unusual” or “offensive” in a black environment becomes to teachers “disruptive” or “suspendable conduct.” To teachers unfamiliar with Blacks, this conduct, that is non-violent and characteristic of the black race, stands out and becomes thereby subject to selective prosecution. To a teacher unfamiliar with the subtle nuances of this type of conduct, a touch or slap by one black student on another black student may be interpreted as a hostile act when in fact it was a friends act. Therefore, this teacher may recommend disciplinary action when it is unjustified. (*Hawkins v. Coleman*, 1974, p. 1336)

In conclusion, Dr. McDaniel stated that to African American students and parents, the DISD was a racist institution (*Hawkins v. Coleman*, 1974).

Parents also testified; contending that their children either became withdrawn or combative after transferring to predominantly White schools. Further, the superintendent of the DISD confirmed that the district was a White controlled institution and a racist institution. The defendants presented no information to rebut any of the witness’ testimonies (*Hawkins v. Coleman*, 1974).

Dr. McDaniel also testified what was needed to overcome the problem of institutional racism within the DISD. He claimed that districts that had overcome this issue did so on four levels:

First, they had acted in terms of institutional and structural changes. Secondly, they had reacted in terms of training teachers and counselors. Thirdly, they reacted in terms of the training of students to deal with institutionalized racism. Fourth, they had been active in terms of their community or their environment in attempting to push programs of affirmative action. (*Hawkins v. Coleman*, 1974, p. 1337)

In addition to the four levels of change, Dr. McDaniel suggested that institutions must hold personnel accountable for decreasing racism, while offering training that would make teachers and administrators better understand their feelings and reactions to minority students. Further, he recommended that White teachers need to have a better understanding of and appreciation for the African American culture (*Hawkins v. Coleman*, 1974).

In its opinion, the court stated that any current programs the DISD introduced to combat institutional racism were not sufficiently effective. Although the court would not detail the program to be implemented within the DISD, it suggested that the program involve all four levels of change as introduced by Dr. McDaniel. In short, the court decided, “While not attempting to dictate the details of an affirmative program this Court does direct the DISD to review its present program and to put into effect an affirmative program aimed at materially lessening “white institutional racism” (*Hawkins v. Coleman*, 1974).

The court; however, would not interfere with school officials’ discretion when disciplining students. The court stated that it “has no intention of taking from the School Board or the Superintendent and other school officials the running of the schools” (Skiba, et al., 2009/10, p. 1093). To further emphasize the distinction between ordering the development of new disciplinary measures and stripping school officials of their expertise, the court declared,

No court can decree a change in attitude. That is something within the individual. Put briefly, there must be a real effort on the part of everyone involved to accentuate the positive while at the same time eliminating the negative effects of 'white institutional racism.' (Skiba, et al., 2009/10, p. 1093)

***Sweet v. Childs (1975).*** *Sweet v. Childs* (1975) was held in the United States Court of Appeals for the Fifth District based on the dismissal of the appellants' claims at the district court. This case involves appellant, Sweet, who brought suit on behalf of himself and other African American students who attended public school in Jackson County, Florida. The defendants were the employees and school board members of the Jackson County public school system. In addition, the sheriff and prosecutor of Jackson County, along with the Chief of Police of the City of Marianna, were also made defendants. The appellants argued that the defendants carried out disciplinary actions that were discriminatory and therefore brought action under the Fourteenth Amendment and Sections 1981 and 1983.

In general, the disciplinary actions that were under question were related to incidents that occurred within the two years following court ordered desegregation in Jackson County. However, two specific incidents that occurred on January 3<sup>rd</sup> and 6<sup>th</sup> of 1972, and the resulting disciplinary action, ultimately became the catalyst for the suit against the defendants (*Sweet v. Childs*, 1975).

The first incident involved four students who were recommended for expulsion due to their behaviors following an interracial fight that occurred on January 3<sup>rd</sup>, 1972. Appellant Small ignored the demands of the school principal to cease fighting and continued to provoke violence. Appellant Long threatened an administrator with a stool after being asked to cease fighting. And

appellants Nance and Heatrice confronted a teacher, verbally abused him and physically threatened him. Further, Nance was said to have a piece of broken concrete in his hand as if he was going to hit the teacher. On January 10th, the parents were notified of a hearing in which their students may be expelled, and on January 20th, the hearings resulted in the expulsion of Small, Long, Nance and Heatrice (*Sweet v. Childs*, 1975).

The second incident occurred on January 6th when a group of African American students staged a sitdown in the hallways of Marianna High. The principal instructed the students that they could either return to class or leave the school grounds, resulting in a zero for the day. The students chose to leave and while doing so, they provoked other students to leave class and join them in their walk-out. The principal then declared via a local radio broadcast that all students who left school grounds for the day had received a ten day suspension. This group included 124 students, including appellants Pittman, Sweet and Smith (*Sweet v. Childs*, 1975).

The parents of the students who had been suspended on January 6<sup>th</sup> were notified and allowed conferences with school officials starting on January 10th. Several conferences were held, which ultimately resulted in all suspensions being lifted. However, appellant Pittman was expelled on January 20th, along with the four previously mentioned appellants, due to his conduct on January 6th and several other incidents of misconduct occurring between October 1971 and January 1972. The original expulsions of Small, Long, Nance, Heatrice and Pittman were permanent; however, the district court ordered the school board to limit the period of expulsion to the 1971-1972 school year (*Sweet v. Childs*, 1975).

The appellants sought the discontinuation of discriminatory discipline procedures along with a proposal of new rules governing student misconduct and punishment. The appellants also

asked that the county officials expunge the records of the African American students who were adversely affected by the disciplinary actions. However, the district court granted the school board members and employees of the Jackson County public school system a summary judgment and dismissed the claims against the county officials (*Sweet v. Childs*, 1975).

On appeal, the appellants again alleged that the January 3rd and 6th disciplinary action was part of a larger pattern of race discrimination and that more African American students had been disciplined than White students. Yet, the court of appeals upheld the dismissal of claims against the county officials and found that there was no factual evidence to suggest that there were arbitrary suspensions or expulsions of African American students or that White students were not equally disciplined for similar conduct (*Sweet v. Childs*, 1975).

***Tasby v. Estes (1981).*** *Tasby v. Estes* (1981) involves another set of legal proceedings against the Dallas Independent School District (DISD). The plaintiffs, parents of African American students who attended school in the DISD claimed that the DISD's discipline procedures were discriminatory against African American students and that they violated due process rights.

Following a 1976 remand from the United States Court of Appeals, Fifth Circuit, the court addressed student disciplinary procedures by stating the following:

Good order and discipline are essential to good education and to the implementation of this plan. The DISD, in concert with teachers, principals and parents shall develop a clear and simply-stated policy on student discipline, including provision for due process procedures. All parents and students shall be fully advised by the DISD of these rules and regulations governing student conduct in the classroom, in the school, and on the



campus. These rules, regulations, and due process procedures shall be applied uniformly and fairly without discrimination. (*Tasby v. Estes*, 1981, p. 1104-1105)

However, in 1979, the plaintiffs initiated the suit against the DISD stating that the DISD had not developed a clear discipline policy, that parents were not involved in the development of the policy, that students were not afforded their due process rights and that the DISD had administered school discipline in a racially biased manner. Therefore, the plaintiffs sought a specialist to help the DISD develop the discipline policy, a preliminary injunction prohibiting the suspension of African American students at a rate much higher than that of their White peers, and a policy requiring the DISD to produce monthly data on student discipline. Although the district court found the plaintiffs' proof to be legally insufficient and granted the DISD with the motion for dismissal, the plaintiffs appealed the verdict and the case was further tried in the United States Court of Appeals, Fifth Circuit, in 1981 (*Tasby v. Estes*, 1981).

During the appeal, the plaintiffs claimed that the DISD's discipline policy unconstitutionally discriminated against African American students and that their submitted evidence would prove unequal treatment. Expert witnesses for the plaintiffs focused on three perspectives/findings. First, they looked at the percentage of disciplinary cases for each race in comparison to the percentage of that race's enrollment in the district in the hopes that it would prove that African American students were disciplined in a disproportionate manner. Second, the data suggested that African American students received a disproportionately high percentage of the most extreme forms of punishment, which would suggest that African American students were disciplined more severely than other students in the district. Third, the data revealed that the disparity between the frequency in which African American and White students were

disciplined was greatest in the schools that had a greater percentage of White faculty members and a greater percentage of White students (*Tasby v. Estes*, 1981).

Ultimately, the court of appeals affirmed the district court's finding that the statistical evidence was not enough to prove that there was a case of race discrimination on the part of the DISD. The court stated,

Official conduct is not unconstitutional merely because it produces a disproportionately adverse effect upon a racial minority. The decisions of the Supreme Court in many contexts reiterate the basic equal protection principle that the uneven consequences of governmental action claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose. (*Tasby v. Estes*, 1981, p. 1108)

However, the court noted that the plaintiffs' evidence of disparate racial impact may provide an "important starting point" (*Tasby v. Estes*, 1981, p. 1108). The court postured,

If the record in this case contained proof that black students received more severe punishment than white students for the same disciplinary offenses when all other factors were virtually equal, a prima facie case of race discrimination might have been made. The record does not establish this state of affairs, however, for the statistics offered are based upon a breakdown of offenses far too general to prove disproportionate severity in punishment. (*Tasby v. Estes*, 1981, p. 1107)

In addition, the court noted,

But statistical proof that black students are disciplined more frequently and more severely than white and Mexican-American students has limited probative value. Student

discipline is fundamentally unlike student assignment and transfer, faculty hiring and discharge, the allocation of economic resources, and the like. In those cases, decisions by school officials which bear more heavily on one race than another may reflect disparate treatment that cannot be explained on grounds other than race. It is therefore appropriate in these cases to place the burden on the defendant to show that the disproportionate racial consequences of the decision were not the product of a racially discriminatory purpose. (*Tasby v. Estes*, 1981, p. 1108)

The court further stated,

...no inference of discriminatory intent is warranted from the facts presented by the plaintiffs, for their statistical evidence fails to account for the many variables at work in the process of disciplining school children. Too many legitimate, non-racial factors are involved to permit an inference of discriminatory purpose from a showing of disproportionate impact, even when it occurs in the context of on-going desegregation efforts. Black and white students in the DISD may not commit disciplinary infractions at the same rate or of the same seriousness, and this differential may be accounted for in non-racial terms. In addition, school administrators and teachers are properly concerned with balancing numerous competing considerations when deciding how properly to discipline a student, including the personal history and individual needs of a student, the flagrancy of his offense, and the effect that the misconduct may have on other students. Thus, the aggregate effect of individual disciplinary decisions independently made is not as convincing as the disparate racial impact that results from decisions rendered by a single governing body. Accordingly, absent a showing of arbitrary disciplinary practices, undeserved or unreasonable punishment of black students, or failure to discipline white

students for similar misconduct, the plaintiffs have not satisfied their burden of proving that the disproportionate punishment of black students in the DISD is the product of a racially discriminatory purpose. (*Tasby v. Estes*, 1981, p. 1108)

Incidentally, the court also found that the plaintiffs' claim that parents were not involved in the development of the discipline policy was not substantial enough to allege non-compliance by the DISD. The court further asserted that the focus of the court order was the development of a discipline policy and not the participation of the parents. Finally, the court found that the plaintiffs' allegations against the DISD for failure to ensure proper due process rights were unfounded (*Tasby v. Estes*, 1981).

***Coleman v. Franklin Parish School District (1983).*** This case involves an African American six-year-old first grader who was struck in the head with a coffee cup by a teacher during an altercation the student had with a White peer. The White peer in this incident was not disciplined and the parents of the African American student claimed intent and purpose to racially discriminate. Although the district court dismissed alternate claims that the student's due process rights were violated, the United States Court of Appeals remanded for further proceedings on the claim that the student's rights were violated under the Equal Protection Clause and Sections 1981 and 1983.

The district court did not originally address the plaintiff's claims that the student's equal protection rights had been violated. In addition, the United States Court of Appeals stated that "The equal protection clause is not violated solely because an action has a racially disproportionate impact if it is not motivated by a racially discriminatory purpose" (*Coleman v. Franklin Parish School District*, 1983, p. 77). However, in this case, the plaintiffs pleaded intent

and purpose to discriminate; therefore, the United States Court of Appeals found that the district court had improperly dismissed the plaintiffs' claims for violation of equal protection rights. The case was remanded to the district court (*Coleman v. Franklin Parish School District*, 1983).

***Sherpell v. Humnoke School District No. 5 of Lonoke County (1985).*** In 1984, Sherpell, on behalf of herself and other African American parents, filed a race discrimination suit against Humnoke School District No. 5 of Lonoke County on the basis that African American students were treated differently than their White peers.

Background information provided to the court determined that prior to Lonoke County's integration in 1968, African American students received an education that was widely recognized as separate but not equal. Following integration, racial tension persisted and the environment had an adverse impact on African American students; resulting in an inferiority complex and a level of frustration that impeded African American students' ability to learn and strive for academic success (*Sherpell v. Humnoke School District No. 5 of Lonoke County*, 1985).

Humnoke School District adopted the "assertive discipline" concept during the early 1980s after the program received nationwide attention in the 1970s. The assertive discipline concept included "six basic school wide rules" and not more than "two classroom rules" implemented by individual teachers. In addition, there was a set of "severe clause rules" which required a student to report directly to the school principal for punishment (*Sherpell v. Humnoke School District No. 5 of Lonoke County*, 1985).

The plaintiffs argued that the assertive discipline concept should be declared unconstitutional because the concept had been implemented discriminatorily. The court declared that the subjectivity in the procedures likely arose from the frustration the teachers felt due to a

lack of uniformity across the school. Because teachers developed their own two classroom rules, what was acceptable to one teacher may not have been to another. The court stated,

Because of the subjective elements in defendants' assertive discipline procedure, those teachers and administrative personnel who possess the disposition to use assertive discipline to shield any racial bias in imposing a discipline against a black child, when in fact there may be insufficient reasons, or no reason at all to discipline the child, assertive discipline currently affords a protective cover for such unconstitutional conduct. Consequently, black students are disciplined for certain behavior while similarly situated white students are not. (*Sherpell v. Humnoke School District No. 5 of Lonoke County*, 1985, p. 677)

Overall, the court found that many educational opportunities were afforded to White students, but not African American students. Additionally, a former White teacher testified that she witnessed the discipline of an African American student which resulted in broken skin and blood. The teacher stated that no White students had ever been subjected to such treatment (*Sherpell v. Humnoke School District No. 5 of Lonoke County*, 1985).

More specifically, the court found the occurrence of both disparate treatment and disparate impact concerning the assertive discipline procedure. Therefore, the court decided that the defendants must revise their discipline procedure so that all subjective criteria are removed and that uniform and objective guidelines be established to eliminate discriminatory disciplinary action. Further, the court ordered a bi-racial committee to be formed and to provide input on the revisions of the district's assertive discipline procedure (*Sherpell v. Humnoke School District No. 5 of Lonoke County*, 1985).

***Parker v. Trinity High School (1993).*** *Parker v. Trinity High School* (1993) was heard by the United States District Court for the Northern District of Illinois, Eastern Division, on the basis that several students claimed they were denied equal protection under Section 1981. The plaintiffs, sisters who attended Trinity High School (a private Catholic school for girls), engaged in a fight with a White peer – ultimately resulting in the sisters’ expulsions for the remainder of the school year.

The plaintiffs claimed they had unblemished records, that the school rules did not state that fighting is grounds for expulsion, that the school rules outline a program of progressive discipline, and that white students have engaged in the same conduct – or more severe conduct – without being expelled. However, the defendants denied that the disciplinary action was racially motivated or more severe than what had been imposed on white students who engaged in similar conduct (*Parker v. Trinity High School*, 1993).

Testimony revealed that the fight that took place involved the plaintiffs and another White student. Several teachers tried to intervene and were mildly hurt during the altercation. Further, the plaintiffs continued to verbally attack the other student after being detained in the principal’s office. The plaintiffs’ mother was eventually called and the girls were sent home. Later that evening, the plaintiffs’ mother required the girls to apologize through letters to the school and faculty (*Parker v. Trinity High School*, 1993).

Trinity High School regularly employed methods of student discipline that included counseling, probation and suspension from school or from activities. Further, the student handbook for 1992-1993 listed distribution of illegal drugs and theft as grounds for dismissal, but not fighting. Student conduct and discipline was discussed; one statement read, “Students

are expected to treat faculty, staff and other students with courtesy and respect at all times. Therefore, fighting, stealing, loud or abusive language in school, on school property, or on the bus will not be tolerated” (*Parker v. Trinity High School*, 1993, p. 515). Further, the student handbook states that a student’s actions are subject to review by the Trinity Discipline Advisory Committee and that the committee may recommend one of four forms of discipline: suspension, removal from a class, probation or dismissal (*Parker v. Trinity High School*, 1993).

Court documents revealed that the student population at Trinity High School was 68 percent White, 18 percent African American, 10.8 percent Spanish-American and 3.2 percent Asian-American. The faculty at Trinity High School was entirely White. Discipline records for students who had left the school were not retained. One witness testified that during her administration, there were about 40 to 60 dismissals and that five to seven of those students were African-American. The plaintiffs testified that during the last four years, there had been no expulsions (*Parker v. Trinity High School*, 1993).

The plaintiffs further testified that African American students had been given more severe punishments for talking in the library as opposed to their White peers. However, the plaintiffs were not able to provide any evidence of fighting amongst White students that amounted to the level of severity as the fight the plaintiffs took part in (*Parker v. Trinity High School*, 1993).

The court concluded that only intentional and purposeful discrimination constitutes a violation of Section 1981 despite the plaintiffs’ claims that only a general intent to act was sufficient. Further, the plaintiffs argued that if race subconsciously and unintentionally affected the school’s disciplinary decision that a violation of Section 1981 occurred. However, the court



found neither argument to be a statement of the law; a defendant without a conscious intent will not be held liable for subconscious intent (*Parker v. Trinity High School*, 1993).

The court claimed that discriminatory intent or motive may in fact be inferred from empirical evidence which shows that minority students are disciplined more severely than their White peers for similar conduct. However, due to the unavailability of empirical evidence and the inconclusive testimonies by the plaintiffs, the court was unable to draw the inference suggested by the plaintiffs. Further, because the plaintiffs' rendition of the fight was nearly identical to the disciplinarian's rendition, the testimony did not support that racially motivated discipline occurred or that racially biased accounts of the fight were integral in the assigning of discipline (*Parker v. Trinity High School*, 1993).

Overall, the court found that the plaintiffs did not have proper rights to an injunction since neither was deprived of the opportunity to receive a diploma. In addition, by allowing the students to return to school, the "perception and certainty of teacher authority" would be held in question (*Parker v. Trinity High School*, 1993, p. 521). Finally, in terms of due process concerns, the court declared,

The system of...education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators...and [the civil rights acts were] not intended to be a vehicle for federal court correction of errors in the exercise of that discretion which do not rise to the level of violations of specific constitutional guarantees. (*Parker v. Trinity High School*, 1993, p. 520)

***Dornes v. Lindsey (1998).*** The plaintiff in this case, Dornes, was recommended for expulsion from her middle school in 1995 by principal, Lindsey, for bringing marijuana to

school. In Lindsey's recommendation for expulsion, Lindsey stated that two students were willing to testify under oath concerning Dornes' guilt.

An expulsion hearing was held before a three-person panel, in which Lindsey was not a part of. The hearing panel further recommended that Dornes be expelled for the remainder of the current semester and the semester of the following school year. After the recommendation was accepted and Dornes was expelled, Dornes appealed to the San Bernardino Board of Education, which remanded the case due to a tape recorder malfunction. On remand, a different three-person hearing panel was conducted and concluded that there was insufficient evidence to expel Dornes. Dornes was then allowed re-entry to her school (*Dornes v. Lindsey*, 1998).

Although Dornes was allowed to return to school, she claimed that her equal protection rights and due process rights were violated. However, the court found that the plaintiff did not provide evidence that either of those rights were violated. Although Dornes claimed race discrimination because she was the only African American student in her school, the court stated that she provided no evidence that she was treated differently based on her race, nor did she provide any evidence of a pattern or practice of race discrimination in the administration of discipline at the school. Further, testimony from both the plaintiff and defendant revealed that Dornes' due process rights were not violated as Dornes received both prior notice and a hearing (*Dornes v. Lindsey*, 1998).

***Fuller v. Decatur Public School Board of Education School District 61 (2001).*** This case involved six high school students who were expelled for two years from their schools (three high schools were represented) following a fight at a school-sponsored event. The students argued that the Decatur Public School Board of Education School District 61 denied the students

of their constitutional rights under Section 1983 by punishing them as a group and in a racially motivated manner. The students also argued that they were stereotyped as gang members and were racially profiled. They further argued that because the fight was relatively short in duration and that no weapons or drugs were involved, no expulsion was warranted. The case was held in the United States District Court for the Central District of Illinois, Danville/Urbana Division in December of 1999.

Witnesses testified that the fight that occurred in September of 1999 was brutal and that it cleared the stadium stands as the fight moved from the north end of the stands to the south. Given the violent nature of the incident, an investigation was begun by the administration at each school and each student was suspended for 10 days pending further action from the school board. All three principals recommended that the six students be expelled for two years given the extreme and violent nature of the fight (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

The superintendent of the schools for the district followed the suspensions with a letter home stating that a hearing had been set before a hearing officer. Families were notified of the date, time and location of the hearing and parents were invited to attend along with an attorney and witnesses if they wished. The letter also listed the provisions of the district's student discipline policy and procedures that each student was charged with violating. Each student was charged with violating: Rule 10, Gang-Like Activities; Rule 13, Physical Confrontation/Physical Violence with Staff or Students; and Rule 28, Any Other Acts That Endanger the Well-Being of Students, Teachers, or Any School Employee(s). A copy of the provisions was included in the letter home. The letter also indicated that the administration was recommending expulsion for two years and that the final decision would be made by the school board. The letter included the

date and time of the school board meeting in which the expulsions would be considered. Evidence showed that each parent/guardian received the letter prior to the students' hearings (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

Several witnesses testified at the students' hearings and accident reports that were filed following the incident were made part of the record. Three of the six students did not attend their hearings, nor had a representative attend in their absence. The hearing officer found all six students to have a significant role in the incident and that the three provisions in question were indeed violated by the students. The hearing officer recommended the six students be expelled for two years (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

Following the hearing, the school board held two different special meetings to address the expulsions of the six students. In one case, the school board allowed one of the students to withdraw, as he had requested. The school board expelled the other five students for the recommended two years (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

After the school board's decision to expel the students, the case gained national attention and the involvement of equal rights advocates such as Jesse Jackson and the Rainbow/PUSH Coalition. Several meetings were held between the school board and the advocates; one result being that the length of the expulsion was reduced from two years to the remainder of the 1999-2000 school year. The students were also given the opportunity to attend an alternative education program during their suspensions from their home schools (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

The students argued that their procedural due process rights had been violated because several of the students' mothers had been told prior to the hearing that their students would indeed be expelled for two years. Because the parents felt that the expulsion was a "foregone conclusion" they felt they "were discouraged in pursuing the due process proceeding for their children" (*Fuller v. Decatur Public School Board of Education School District 61*, 2001, p. 823). The students also argued that they were not made aware of the appeal process available to them following their expulsion hearings. Finally, the students claimed that the school board's "no tolerance/zero tolerance policy for violence" violated their procedural and substantive due process rights (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

The students also alleged race discrimination and a violation of their equal protection rights. They further argued that the district implemented a "policy and practice of arbitrary and disparate expulsions with regard to African-American students" (*Fuller v. Decatur Public School Board of Education School District 61*, 2001, p. 823). At the students' request, the district was required to provide school records around student expulsions. The records showed that 82 percent of students expelled from 1996-1999 were African American. The remaining 18 percent of the students expelled were White. During this time, school records showed that the population in the district comprised of roughly 46-48 percent African American students. The students asserted that a "valid inference can be raised by large statistical disparities in racial situations including discipline that a given school district and/or school board has discriminated intentionally" (*Fuller v. Decatur Public School Board of Education School District 61*, 2001, p. 825).

The court declared that it had a limited role because it was a federal court. It declared, "the right to an education [is] not guaranteed, either explicitly or implicitly, by the Constitution,

and therefore could not constitute a fundamental right” (*Fuller v. Decatur Public School Board of Education School District 61*, 2001, p. 822). Therefore, a “successful substantive due process claim requires an ‘extraordinary departure from established norms,’” and “a court must look for an abuse of power that ‘shocks the conscience’” (*Fuller v. Decatur Public School Board of Education School District 61*, 2001, p. 822).

The court emphasized the violent nature of the fight and that it occurred in the stands among a captive audience of fans at a high school game football game. Seven spectators filed accident reports following the incident, and the portion of the fight caught on videotape showed students punching and kicking each other with no regard for the spectators’ safety. In addition, all six plaintiffs admitted to their participation in the incident. Given these facts, the court was not impressed with the students’ position that no weapons were used during the fight or that the fight was not of “significant length” (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

The court stated that its decision could have been different if the school board had not decided to reduce the length of the students’ expulsions. At the time of the trial, all five students were enrolled in the alternative education program and two of the students, who were seniors, were close to graduation and were already given permission to walk with their home school’s class. In addition, the students’ transcripts were not going to reflect the expulsion or that they attended an alternative education program (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

The court declared that citizens and students of Decatur should be able to go to a high school football game without worrying about an incident erupting in the stands and potentially

causing injury. Further, the court suggested that if the school board had neglected to take action against the students, citizens and students may be lead to believe that the school board was unable to control conduct within the schools (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

In reference to the claim that the students' due process rights had been violated, the courts found that each student received notice of a hearing before an independent hearing officer and before the school board. In addition, each student received a separate hearing before the hearing officer and had an opportunity to address the school board. The court, therefore, declared that the school principals, the superintendent and the school board followed due process procedures and that the students' rights were not violated (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

The court also concluded that the school board did not use race as a motivation in their decision to expel the six students. Although the students brought forward what they thought was statistical evidence of race-based discrimination, the court determined that the statistics failed to show that any similarly situated White students were treated less harshly. The court stated,

This court notes that the statistics produced during trial could lead a reasonable person to speculate that the School Board's expulsion action was based upon the race of the students. However, this court cannot make its decision solely upon statistical speculation. The court's findings must be based upon the solid foundation of evidence and the law that applies to this case. (*Fuller v. Decatur Public School Board of Education School District 61*, 2001, p. 824)

Further, the law states that a claim of race discrimination and violation of equal protection cannot be based upon mere statistics standing alone. And although one of the African American members of the school board was called to the stand as a witness by the students, he could not testify that race was a determinant in the decision to expel. In fact, his testimony claimed that most school board decisions were based upon the recommendation of the hearing officer and that race was often not made clear on discipline records. Testimony confirmed that White students were in fact expelled for fighting, with length of expulsions ranging from a period of five months to a period of one year, three months. Finally, the court found that none of the White students previously expelled for fighting could be considered “similarly situated” since no other fight documented came close to the magnitude of the September, 1999, fight (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

Further, the court concluded that the students failed to show that the school board had a “zero tolerance policy.” In August of 1998, the school board adopted a resolution which declared a “no-tolerance position on school violence,” yet the students’ own witnesses failed to show that this resolution had any impact on student discipline (*Fuller v. Decatur Public School Board of Education School District 61*, 2001, p. 815). In review of the six students’ discipline documents involving this incident, no mention of “zero tolerance” was found (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

Lastly, the court determined that the students could not challenge the vagueness and use of the term “gang-like activity.” Evidence brought forth did show that the fight originated between two members of opposing gangs, which violated the school board rule prohibiting “gang-like activity.” Further, the court noted, “given the school’s need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational



process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions” (*Fuller v. Decatur Public School Board of Education School District 61*, 2001, p. 826).

Finally, the court also found that the students were in violation of two other rules: “...the rule prohibiting physical confrontation or violence and the rule prohibiting acts that endanger the well-being of students, teachers or other school employees” (*Fuller v. Decatur Public School Board of Education School District 61*, 2001, p. 816). The court determined that the violation of those two rules alone would form a sufficient basis for the expulsion of the students, regardless of the court’s decision on the “gang-like activity” provision (*Fuller v. Decatur Public School Board of Education School District 61*, 2001).

## CHAPTER 3

### AN ANALYSIS OF LEGAL POLICY REGARDING RACE DISCRIMINATION AND DISPROPORTIONALITY IN SCHOOL DISCIPLINE

#### **Introduction**

This chapter presents an analysis of legal policy as it applies to federal and state court cases surrounding race discrimination and disproportionality in school discipline. The purpose of a legal policy analysis is to review the current status of the law, the current intended and/or unintended effects of the law and the likely future effects of the law. This analysis will aid in answering the following research questions:

- 1) What is the current status of due process law and equal protection law regarding race discrimination and disproportionality in school discipline in the United States?
- 2) Based on an analysis of the current status of case law, what recommendations can be made for policy reformation and school leader and teacher practice?

There are eight federal and state court decisions addressing African American students and race discrimination and disproportionality in school discipline reviewed in Chapter Two. A synthesis of these decisions will help provide the information needed for drawing conclusions on the current status of the law and its intended and/or unintended effects in this chapter. In addition, the synthesis of court decisions will help render informed policy reformation suggestions and school leader and teacher practice recommendations in Chapter Four.

## **Due Process of Law**

### **The Current Status**

Although due process of law is not as central to this study as equal protection of the law, it is important to analyze the impact on race discrimination and disproportionality in school discipline as research shows that African American students are often denied due process rights in student discipline. In addition, several of the cases outlined in Chapter Two consist of due process claims brought forth by students, indicating that there is - at least - a perceived violation of due process rights committed by school officials in U.S. schools.

Policies that outline the grounds for student discipline must align with the Due Process Clause of the Fourteenth Amendment. The substantive due process component of the Due Process Clause requires that the government's action is reasonable and that it is related to the property interest of receiving an education, while the procedural due process component ensures that fair procedures are followed when a student receives disciplinary action. In general, courts have been found to uphold school officials' actions in student disciplinary cases as long as they satisfy the requirements of the Fourteenth Amendment (Skiba, et al., 2009/10).

Substantive due process requires that government actions must be fundamentally fair, supported by a reasonable justification, and must not unjustly intrude on protected liberties. Dayton (2012a) states, "Actions that are prohibited by substantive due process requirements include rules beyond the scope of legitimate government regulation; arbitrary or grossly disproportionate sanctions; evident conflicts of interests by adjudicators; and other government actions so inconsistent with basic fairness as to deny fundamental liberties" (p. 241).

The procedural due process component involves issues such as the type of hearing that is required before a disciplinary action can take place, whether the student has a right to counsel and what evidence can be considered. Different procedures are required for different lengths and types of suspension or expulsion. Procedures that are required for shorter suspensions do not typically involve a formal hearing and the presence of a parent or counsel. Additionally, although the Due Process Clause does not require states to adopt and apply mandatory punishments for student behaviors, it does require school districts to uphold individualized consideration when assigning disciplinary action in districts when state law or school board policy allows for case-by-case determinations of discipline. This allows for school boards to take into consideration a student's age, school records, past behavior and any other factors deemed relative to the case (The Civil Rights Project, 2000).

*Goss v. Lopez* (1975) set the standard for the constitutional requirements surrounding students who are suspended for ten days or less and the corresponding due process rights. In its decision, the court stated that students must be given oral and/or written notice of the charges. In the event that the student denies the charges, school officials must present an explanation of the charges and allow the student an opportunity to express his/her side of the story. Since *Goss v. Lopez* (1975), school officials have only had to prove that the above "fair" procedures were utilized in order to fulfill the constitutional requirement of procedural due process rights (Skiba, et al., 2009/10).

In instances of longer suspensions or expulsions, courts sometimes cite *Dixon v. Alabama State Board of Education* (1961), a college student discipline case that declared that more due process requirements were needed for more serious offenses. Presently, courts may consider the following factors when determining whether a student was afforded their procedural due process

rights when facing expulsions: 1) notice of charges, 2) a hearing before an impartial tribunal, 3) the right to counsel, 4) the right to present witnesses, and 5) the right to cross examine (Skiba, et al., 2009/10).

The substantive due process component provides protection to students in two ways: 1) schools must inform students of the behaviors that are prohibited in schools and 2) students are protected from “irrational” disciplinary action. The latter of the two protections typically results in courts upholding school officials’ decisions, as the legal standard generally prohibits only the disciplinary actions that are “grossly disproportionate” to the offense or where the disparity between the offense and the punishment is “shocking” (The Civil Rights Project, 2000).

As previously discussed in Chapter Two, the United States has adopted the “in loco parentis” doctrine; essentially affording school officials the right to exercise their custodial powers by intervening when students present a danger to themselves or others or compromise the school environment (Skiba et al., 2009/10). Because school officials have the responsibility to promote safe and effective learning environments, courts typically award them autonomy in proceeding as government actors and deferential treatment in the substantive due process component, as well as the procedural due process component as set forth by *Goss v. Lopez* (1975) and *Dixon v. Alabama State Board of Education* (1961).

The court cases reviewed in Chapter Two showed that students were unsuccessful in challenging the violation of their due process rights. In fact, in all of the cases in which due process rights were considered, the courts gave little attention to the students’ due process claims as they found it immediately apparent that the students were both disruptive to the school environment (meeting the substantive due process component), and awarded fair procedures

during the disciplinary process (meeting the procedural due process component). Attempts by students to show that the level of disciplinary action did not match the level of behavior committed were not effective. In their decisions, the courts overwhelmingly decided in favor of the professional discretion of the school officials and their responsibility to uphold a safe and effective learning environment.

### **The Current and Future Effects**

Removing students from the educational setting has great implications, most of which will be discussed in Chapter Four. Although research (Akom, 2001; Mendez & Knoff, 2003; Noguera, 2003; Roderick, 2003; Skiba et al., 2002) suggests that African American students are disproportionately removed from the educational setting, the Due Process Clause does not automatically permit students the right to remain in school when they believe they have been unfairly targeted and treated by school officials.

The most current use of due process claims in race discrimination and disproportionality in school discipline cases has proven to be a dead end for students unless the proposed violation is egregious. Because the courts award school officials the authority to act in what they see is the best interest of their schools, it appears as though the courts are not easily swayed by student testimonies that suggest their suspension or expulsion was unfounded based on their behavior or discriminatorily handed down based on their race. In addition, students who attempt to prove that the procedural component of due process was violated in their case, need to prove that the due process requirements were inordinately ignored (such as the case in *Goss v. Lopez* (1975) and *Dixon v. Alabama State Board of Education* (1961)). Subsequently, it appears as though a violation of either the substantive due process component and/or the procedural due process

component is very difficult for students to prove and likely not an avenue worth investigating in efforts to address the occurrence of race discrimination and disproportionality in school discipline in the future.

## **Equal Protection of Law**

### **The Current Status**

Because there is a wide range of discipline laws and policies implemented and carried out at the state and local levels, one could assume that the inconsistent application of disciplinary action would result in a “perfect storm” for student lawsuits. However, as detailed in the description of cases in Chapter Two, students rarely succeed in proving race discrimination (and the resulting disproportionality) in school discipline in court (Skiba, et al., 2009/10). The synthesis of the cases detailed in Chapter Two illustrated that students likely incur such difficulties due to the courts’ interpretations of equal protection laws, and general deference by judges to school officials absent extreme misconduct by the State.

In review, the Equal Protection Clause of the Fourteenth Amendment protects the right to not be discriminated against on the basis of race, color or national origin. Further, Section 601 of Title VI of the Civil Rights Act of 1964 explicitly prohibits discrimination on the basis of race, color or national origin in federally funded programs and activities. Finally, Section 1981 of the Civil Rights Act of 1866 and Section 1983 of the Civil Rights Act of 1871 prohibit race discrimination in both the right to engage in legal action and the right to a contract and the right to collect civil remedies when civil rights violations occur, respectively. Generally speaking, a school official’s disciplinary action is likely to be found constitutional as long as it is rationally

related to a legitimate state purpose and it is generally evenly applied to students regardless of race, color or national origin.

When addressing whether or not school officials responded rationally to a legitimate state purpose, courts apply a rational basis test, as discussed in Chapter Two. This test assists courts in determining whether school officials acted in a reasonable manner. This test most likely results in deferential treatment towards school officials with judges deferring to the educational expertise of school officials. In short, and similar to how courts interpret due process of law in the context of education, as long as there is a reasonable basis for a decision, courts typically choose not to interfere with school officials' decisions.

In some instances, courts may find that school officials were motivated by racial animus, which violates a student's equal protection rights. In these instances, school officials must provide compelling evidence that their actions were narrowly tailored to a legitimate state purpose. Courts refer to this as "heightened scrutiny". Heightened scrutiny, however, does not apply if non-racially motivated actions result in a disparate impact. In other words, if African American students were disciplined at a higher rate than their White peers, but the school officials' actions were not found to be racially motivated, the courts would determine the outcome "an unfortunate result of the application of legitimate decision making by educational officials" (Skiba, et al., 2009/10, p. 1090). Smith (2009) states, "Policies that explicitly classify persons on the basis of race are presumed to be intentionally discriminatory. Conversely, facially race-neutral measures do not give rise to a presumption of discriminatory intent" (p. 6). Because student discipline policies and codes are racially neutral in their written formats, students must prove that the policies were carried out with discriminatory intent.



Similar to a disparate impact claim made under the Equal Protection Clause of the Fourteenth Amendment, students may file an adverse impact claim under Title VI of the Civil Rights Act of 1964. The U.S. Supreme Court has held that an adverse impact claim under Title VI is similar to disparate impact in that students must demonstrate that school officials acted with discriminatory intent. Because students must prove discriminatory intent, it is difficult to bring successful Title VI actions (Skiba et al., 2009/10). Skiba et al. (2009/10) also state that the Harvard Civil Rights Project and the Advancement Project report that Title VI has been “ineffective and [is] rarely enforced” in discipline cases (p. 1091).

Prior to *Alexander v. Sandoval* (2001), students were more successful in filing adverse impact claims under Title VI. During this time, the U.S. Supreme Court found that Title VI’s accompanying regulations allowed for a broader interpretation of law; therefore, students were able to bring successful claims under adverse impact without having to prove discriminatory intent. However, as stated in Chapter Two, the court decided in *Alexander v. Sandoval* (2001) that Sandoval did not have a private right of action, and since then, courts have found that adverse impact claims must be accompanied by proof of discriminatory intent (Skiba, et al., 2009/10). The consequences of this change in interpretation of adverse impact on cases related to race discrimination and disproportionality in school discipline has yet to be seen. However, Skiba (R. Skiba, personal communication, June 4, 2012) suspects it may be one contributing factor in the decline of race discrimination and disproportionality in school discipline cases brought to court by students.

As depicted in the court documents surrounding *Hawkins v. Coleman* (1974), the court was willing to acknowledge institutional racism occurred based on empirical evidence brought forth by the students. However, it did not acknowledge personal racism on the part of the school

officials. More specifically, the expert witness's analysis of DISD's discipline data along with the testimonies he gave regarding his visits to six of the district's schools were enough for the court to determine that DISD was a "white controlled institution" that exhibited institutional racism, but that no one person was to blame in the implementation and execution of disciplinary action. The court, therefore, addressed the need to correct the issue of the institutional racism, but did not address the individuals who would do so.

Similar to *Hawkins v. Coleman* (1974), the court found in *Tasby v. Estes* (1981) that the empirical evidence presented was not enough to interfere with school officials' discretion when disciplining students. In *Tasby v. Estes* (1981), the court found the breakdown of data to be too general to prove discrimination, and although the court acknowledged a "starting point" for a disparate impact claim, it ultimately decided that the data did not prove discriminatory intent because it did not reveal specific examples in which African American students received harsher punishments than White students in instances where all factors were equal among the students. The court stated,

The statistics offered are based upon a breakdown of offenses far too general to prove disproportionate severity in punishment. The statistical list of offenses includes cutting class, disobedience, profanity, fighting, and throwing objects. But these categories do not sufficiently permit comparison of the severity of any particular instance of misconduct with that of any other...the statistics do not reflect other relevant circumstances surrounding each individual case of punishment for the general infractions. (*Tasby v. Estes*, 1981, p. 1107)

The court further explained its position by stating that there are too many variables that school officials take into consideration when disciplining students and that generalized data does not depict a clear picture of discipline policies and their use (*Tasby v. Estes*, 1981).

The decision in *Fuller v. Decatur Public School Board of Education School District 61* (2001) has similarities to *Hawkins v. Coleman* (1974) and *Tasby v. Estes* (1981) in that the court did acknowledge that the original punishment handed down to the students involved would have likely shown disparate treatment based on the district's discipline data presented in court. However, since the school board reduced the length of expulsion, the court did not find any incidences where White students took part in offenses as violent as the ones in question. Therefore, the court did not find any intent to discriminate on the part of the school officials.

In *Parker v. Trinity High School* (1993), the students provided anecdotal evidence of African American students receiving harsher punishments than White students, but the students were not able to produce empirical data that depicted discrimination. In addition, the students did not report instances where White students took place in incidences as severe as the one in question. In this case, the court declared that only intentional and purposeful discrimination violates Section 1981. Further, the court noted that the defendants would not be prosecuted for subconscious intent.

In other cases reviewed in Chapter Two, courts have decided in favor of school officials even when actions have shown that African American students received harsher punishments than their White peers. The decision handed down in *Coleman v. Franklin School* (1983) proved that the court was not willing to interpret the Equal Protection Clause as being violated even when a direct action had a racially disproportionate impact. If the student cannot prove intent to

discriminate, there are no grounds for a violation of the Equal Protection Clause (Skiba, et al. 2009/10).

In *Sherpell v. Humnoke School District No. 5 of Lonoke County* (1985), the court did protect the equal protection rights of students by striking down the assertive discipline policy that allowed teachers to develop and implement their own discipline policies within their classrooms. The Education Rights Center (2008) offers explanation as to why such a policy may lead to intentional discrimination:

The vagueness of certain educational legislation and/or discipline codes may leave room for too much discretion in teacher referrals, thereby enabling teachers to refer students to the office based on social misunderstandings, misplaced racial bias or simple unwillingness to confront the problem personally. (para. 10)

In this case, the subjective measures carried out through the district's discipline policy led the courts to believe both disparate treatment and disparate impact were taking place. The court did not, however, prosecute the school officials who implemented and supported the school-wide initiative.

In *Fuller v. Decatur Public School Board of Education 61* (2001), the students declared that their constitutional rights were violated under Section 1983 because they were disciplined as a group in a racially motivated manner and that they were racially profiled as gang members. The court disagreed. *Wood v. Strickland* (1975), which was cited in the *Fuller v. Decatur Public School Board of Education 61* (2001) decision states that Section 1983:

Does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The

system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board members. (*Wood v. Strickland*, 1975, p. 326).

### **The Current and Future Effects**

There are perhaps too many intended and unintended effects of the status of equal protection laws on race discrimination and disproportionality in school discipline cases to be effectively discussed in this study. Several of these effects, however, will be discussed in Chapter Four. In general, it is clear that whether the effect was intended or unintended, African American students, as of late, have “shied away” from filing formal complaints against school officials surrounding issues of race discrimination and disproportionality in school discipline. One would suspect this is due to the overwhelming deferential treatment given to school officials, the difficulties of legally proving racial discrimination, and the lack of useful judicial precedents supporting plaintiffs in this area of litigation.

**Using data and the complexity of discrimination and disproportionality.** The court cases reviewed in Chapter Two show how difficult it is for students to prove intentional discrimination. The Civil Rights Project (2000) suggests that although data and anecdotal evidence suggest that intentional discrimination (including unconscious stereotyping or profiling) may be widespread, it is often too difficult to prove to the courts that intentional discrimination was carried out.

One example of the disconnect between empirical data and intentional discrimination in school discipline involves the initial referral of students for disciplinary action. If teachers are prone to picking out behaviors committed by African American students and therefore

disproportionately refer these students for disciplinary action, it becomes difficult to prove that these students' White peers were similarly situated since they were never identified and referred to the office by a teacher to begin with. In these instances, the data cannot prove that intentional discrimination is taking place because the data is "face value" and does not represent to the court the whole picture, as evidenced by *Tasby v. Estes* (1981).

In addition, Skiba et al. (2002) suggest that courts are likely to air on the side of caution, as demonstrating that disproportionality represents discrimination or bias is extremely complex. They posit,

A direct survey of racial attitudes will probably fail to capture bias, since self-reports about disciplinary practices involving race or gender would likely be highly influenced by social acceptability. Thus, determining whether a finding of disproportionality constitutes bias is likely a matter of ruling out alternative hypotheses that might account for overrepresentation. (p. 321)

Further, Eitle and Eitle (2004) suggest that there exists no straightforward method to accurately measure student behavior and whether or not discrimination is at play when administering discipline. For instance, the same biased manner in which students were administered discipline may be the same biased manner in which behavior instances were reported. Further, there has been general concern surrounding the validity and reliability of reporting discipline.

Finally, Skiba et al. (2002) contend that although there are analysis models frequently observed by the courts, there appears to be no single criterion for determining how large a discrepancy constitutes an over- or underrepresentation in school discipline. In other words,

statistical analyses performed by various “experts” in a trial may yield alternate or opposing conclusions in terms of disproportionality. These analyses have the potential to hold great weight in the eyes of the court, as data and statistical analyses are often viewed as factual and irrefutable evidence. However, because there is such a fluctuation in criteria, there has been no established precedence in court.

**Understanding colorblind constitutionalism.** One intended effect of the status of both the due process of law and the equal protection of law is the colorblind interpretation of the constitution. As illustrated in Chapter Two, although several of the laws discussed in this study were written for the protection of minority groups, the courts since refuse to take race into account when interpreting the use of such laws.

Skiba et al. (2009/10) suggest that the colorblind interpretation of the constitution has impacted the outcomes of the cases reviewed in Chapter Two by noting the discrepancies in data that reveals race discrimination and the courts’ willingness to take race into account when interpreting the laws. They (Skiba et al., 2009/10) posit, “A similar analysis in the area of racial disparities in discipline shows a distinct gap between the scientific knowledge base regarding racial disparities in discipline and the absence of legal strategy accepted by the courts to address such disparities” (p. 1074). However, as Skiba et al. (2009/10) state, there is no other recourse for students other than due process and equal protection rights.

Cobb (2009) declares that the adherence to the colorblind interpretation of the constitution in these cases is perhaps due to the notion that courts neglected to discuss race when deciding the criminal procedure cases during the Civil Rights Era. Consequently, she (Cobb, 2009) posits, legislatures and school boards lack the drive to address the disparate impact of

school discipline policies even when race continues to be a determinate factor in the discipline of students.

Further, Schmidt (2008) suggests that although the colorblind interpretation of the constitution inspired the National Associate for the Advancement of Colored People in the struggle against school segregation, perhaps elements of the history of the civil rights struggle should now be integrated into the interpretation of the constitution. However, he (Schmidt, 2008) recognizes that states do not have authority under the Equal Protection Clause of the Fourteenth Amendment to use race as a factor in affording educational opportunities. Ultimately it is this rule that prevails.

### **An Analysis of Zero Tolerance Policies**

Despite the fact that some courts may refer to *Dixon v. Alabama State Board of Education* (1961), many courts and school districts do not require formal due process procedures for expulsions and zero tolerance policies. Zweifer and De Beers (2002) suggest that overall, due process protections that correspond to the gravity of the penalties are lacking. They (Zweifer & De Beers, 2002) further suggest

The lack of clear due process protections leads to casual and capricious decisions to expel. There is no requirement for vigorous scrutiny of evidence before making the life-affecting decision to expel a student. School administrators fail to assess individual acts for intent or potential danger. District personnel act as investigator, prosecutor, judge and jury. (p. 11)

Further, Fultz (2002) states that many districts in the United States confuse undifferentiated application of zero tolerance policies with fairness, which may lead one to



believe that the courts may also have the same approach when interpreting the application of these policies. In general, courts rarely strike down zero tolerance policies, as they typically side with school officials whose purpose is to protect students from weapons, drugs and other serious offenses/behaviors that impose great risk upon the learning environment. *Fuller v. Decatur Public School Board of Education District 61* (2001) is the only case outlined in Chapter Two that addresses the usage of zero tolerance policies.

Skiba, et al. (2002) posit that although schools and school boards have the right and responsibility to implement zero tolerance policies in the wake of school violence across the nation, that the disciplinary actions originally handed down in *Fuller v. Decatur Public School Board of Education District 61* (2001) were harsh and likely worthy of investigation. In a district in which weapons violations received a one year expulsion punishment, a two year expulsion punishment for a fistfight without weapons appeared to be unfair and racially motivated. However, because the school board reduced the length of expulsion, the courts did not find the disciplinary action to be inconsistent with the level of behavior. Additionally, the courts did not find any evidence that suggested “zero tolerance” language was involved in any of the students disciplinary cases, resulting in the court’s decision to dismiss the claims.

Interestingly enough, during the time in which *Fuller v. Decatur Public School Board of Education District 61* (2001) was being tried, there were efforts to link disproportionality in zero tolerance punishments to socio-economic status. In 2000, the National Association of Secondary School Principals argued that disproportionality is not linked to racial bias or discrimination and disparate treatment because it is solely an issue of socioeconomic status. However, studies noted by Skiba et al. (2002) indicate that during this time, regression models which controlled for socioeconomic status indicated that race contributed to disproportionalities in school discipline

independent of socioeconomic status. It is not noted, however, if this national “discussion” around zero tolerance policies and race had any impact on the court’s decision in 2001.

## CHAPTER 4

### SUMMARY, FINDINGS AND CONCLUSIONS

The main purpose of this study was to investigate the current status of due process and equal protection laws regarding race discrimination and disproportionality in school discipline. This issue is important as educational attorneys rank school discipline as the third most relevant school law concern behind freedom of expression and special education (Skiba, et al., 2009/10). A better understanding of how the courts interpret due process and equal protection laws in the context of this topic will aid policy makers and educators in reducing the occurrence of discriminatory discipline and the impact of the overrepresentation of African American students being suspended in U.S. schools.

The majority of the research dedicated to race discrimination and disproportionality in school discipline centers around the causes and implications of the issue. Without a better understanding of how the laws are interpreted around the topic, it is impossible to make sound legislative and policy recommendations. Further, it would remain difficult to appropriately instruct educators, students and parents on how to best handle issues of race discrimination and disproportionality in school discipline. Therefore, it is important to add to the body of social science research by completing a legal review of the court cases surrounding the issue of race discrimination and disproportionality in school discipline.

#### **Summary of the Study**

This study utilized legal research. All federal and state cases pertaining to African American students and race discrimination and disproportionality in school discipline were analyzed for the purposes of this study. In addition, sources such as The United States

Constitution and federal zero tolerance policies were reviewed in effort to gain a better understanding of the pieces of the law that help determine the outcomes of the cases used in the study. Finally, a meta-analysis of the literature surrounding race discrimination and disproportionality in school discipline, in conjunction with the review of the cases, allowed for a more thorough investigation of the issue; resulting in a more comprehensive approach to recommendations for moving forward.

### **Findings**

Eight federal and state cases addressing African American students and race discrimination and disproportionality in school discipline were analyzed for this study. For the purposes of this section, mention will be made of eight student plaintiffs even though each student may have represented one or more additional students in each case. Of the eight cases reviewed:

- 1) Six students (75%) brought due process claims.
- 2) None of these students (0%) were able to establish that their procedural and/or substantive due process rights had been violated.
- 3) Eight students (100%) brought equal protection claims.
- 4) One of eight students (12.5%) was successful in showing that disparate treatment and disparate impact had occurred.
- 5) Four students (50%) brought forth Section 1981 of the Civil Rights Act of 1866 claims.
- 6) None of these students (0%) were able to prove that their rights under Section 1981 had been violated.

- 7) Five students (62.5%) brought forth Section 1983 of the Civil Rights Act of 1871 claims.
- 8) None of these students (0%) were able to prove that their rights under Section 1983 had been violated.
- 9) One student (12.5%) brought forth a claim under Title VI of the Civil Rights Act of 1964.
- 10) That student (0%) failed to prove that his rights under Title VI had been violated.
- 11) Two of eight cases (25%) resulted in the court addressing the structure of the discipline policy and/or the institutional racism within the district.
- 12) One of eight cases (12.5%) resulted in the court addressing the way school officials discriminatorily implemented discipline policies.
- 13) Three of eight cases (37.5%) were able to show through empirical data that African American students were disproportionately disciplined.
- 14) The courts did not decide in favor of the students in any of the cases (0%) in which empirical data was reviewed.
- 15) One student (12.5%) claimed that zero tolerance policies were thought to contribute to disproportionate disciplinary action.
- 16) The court declared in this case that zero tolerance policies were a nonfactor (0%).

### **Conclusion and Discussion**

The results of this study indicate that federal and state courts look for extremely strong and specific evidence before they are willing to determine that intentional discrimination has taken place. However, even when students have brought forth empirical evidence that depicts

race discrimination and disproportionalities in school discipline, courts state that data alone cannot prove intent to discriminate.

Further, the results indicate that courts consistently afford school officials professional discretion while trusting that discipline procedures are fairly and equally implemented in schools without racial bias. School officials are also given broad discretion in carrying out due process procedures.

Current and future effects of both the due process of law and equal protection of law suggest there is little legal remedy for student plaintiffs concerning race discrimination and disproportionality in school discipline, yet data reveals that trends continue to show disparities in school discipline. In one study of four schools in Georgia, research showed that African American students were 1.3-2 times as likely to have higher disciplinary referrals as compared to their White peers (Jordan & Anil, 2009).

In addition, data shows that zero tolerance policies are largely ineffective even though they are consistently protected in court. These policies, at their inception, were partly designed to ensure that that any student, regardless of race, would receive the same disciplinary action for the same behavior. However, Akom (2001) found that since the inception of zero tolerance policies, African American students at surveyed schools were expelled or suspended three to five times more often than their White peers.

## **Implications**

Policies that limit educational opportunities for certain groups of students increase the probability that a student within that group will engage in activities that are detrimental to their educational and lifelong success. In addition, these policies are often found to have negative

effects on the school environment. In terms of discipline policies, Skiba et al. (2009/10) suggest that out-of-school suspensions and school expulsions are not effective strategies for reducing future behavioral incidents and often lead to grave circumstances.

Race discrimination and disproportionality in school discipline can be potentially devastating for those affected, especially if a cycle of continued behaviors develops and the student perceives to be living in what Freire (2004) calls a “closed world”. Repeated suspensions and expulsions induce several implications for students: increased likelihood of being suspended and/or expelled again, loss of instructional time, potential academic failure, negative school attitudes, lower self-efficacy, increased likelihood of dropping out of school, increased likelihood of becoming a parent at a young age, higher rates of future antisocial behavior, possible loss of human and cultural capital and increased likelihood of becoming a juvenile or adult delinquent (Davis, 2006; Iselin, 2010; Jordan & Anil, 2009; Mendez & Knoff, 2003; Skiba, et al., 2002).

Further, research suggests that race discrimination and disproportionality in school discipline exasperates the “school to prison pipeline” issue in U.S. schools. The school to prison pipeline is a term often used to depict the frustratingly seamless transition some students make from dropping out of school to becoming a youth detention or prison inmate. Davis (2006) states that students who drop out of high school are four times more likely than high school graduates to be arrested, while 82 percent of the prison population never finished high school. Noguera (2003) suggests that school leaders often play a significant role in the matriculation from school to prison.

Skiba, Simmons, Ritter, Kohler, Henderson, & Wu (2006) suggest that race discrimination and disproportionality in school discipline also has implications for teachers, school leaders and policy. These authors found that the majority of disciplinary actions originated at the classroom level, suggesting that teachers rely too heavily on negative and punitive discipline. Further, when school leaders are unable to recognize the discrimination on the part of the teachers and the inability to implement policies in an equitable way, they are reinforcing institutionalized norms of racism and perpetuating stereotypes. Skiba et al. (2002) attributes this lack of recognition to continued institutional racism and structural inequity in U.S. schools, which in turn, creates a socially unjust school environment. Gregory, Skiba and Noguera (2010) stress that disproportionalities in school discipline contribute to the achievement gap between African American students and their White peers, as African American students are more frequently removed from the learning environment. Finally, at least one author (Howarth, 2008) believes that disproportionalities in school discipline contribute to second generation segregation within schools.

## **Recommendations**

The issue of race discrimination and disproportionality in school discipline is complex in that educators facing this issue often ask the question, “What if African American students actually commit adverse behaviors at a rate disproportionate to their White peers?” Although it may be difficult to sort out the many variables that contribute to behaviors and whether or not they occur, why they occur, who deems them as adverse, etc., it is apparent through research (Akom, 2001; Monroe, 2005; Noguera, 2003; Skiba, et al., 2002) that behaviors often occur due to discrimination at the hands of teachers and school leaders; adding to the overarching issue of race discrimination and disproportionality in school discipline.



The review of cases in this study has shown it is difficult to prove discriminatory action by teachers or school leaders when assigning a disciplinary action. Additionally, it would likely be difficult to prove in court that a behavior was caused by a discriminatory act by a teacher or school leader. These assertions provide evidence for making recommendations that address the need to implement policies and practices that both reduce the likelihood of adverse behaviors occurring and the likelihood of discriminatory disciplinary action occurring.

**Legislation and federal policy.** Taylor and Foster (1986) suggest that public policy has become the new mechanism for suppressing racial minorities. For public policy to serve its intended purpose, they suggest,

The rationale for policy making is not that procedures will serve the best interests of the policy makers, but that the policies are expected to be utilitarian by facilitating the equitable distribution of services to those affected by the policy. (p. 498)

It is highly unlikely that the federal government will overturn zero tolerance policies or that judicial officials will begin to interpret the laws through a lens that is not colorblind or strip school officials of their professional discretion. The potential fallout from eliminating such policies and practices is far too great. Instead, any potential federal policy that addresses the issue of race discrimination and disproportionality in school discipline should be addressed through the Office of Civil Rights (OCR) within the U.S. Department of Education.

Not only is the OCR responsible for enforcing Title VI of the Civil Rights Act of 1964, it is also responsible for the collection and analysis of school discipline data across all states in the nation. The OCR mission statement is as follows, “The mission of the Office for Civil Rights is

to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights” (Office of Civil Rights, n.d., para. 1).

As of now, the OCR has not required states to disaggregate discipline data by type of specific offense and race. Therefore, it is impossible to see disparities in discipline (especially for specific behaviors that are often subjectively identified) without spending further time analyzing data. It is unknown, yet plausible, that that this lack of disaggregated data has contributed to the issue of race discrimination and disproportionality in school discipline by failure to identify a problem.

Some states and local districts (e.g., Florida and St. Paul Public Schools, Minnesota) have established policies that require schools to report disciplinary data by race and type of behavioral offense (i.e., instead of reporting “insubordination,” a school must report a specific offense such as “refusal to remove coat while in class”). It seems reasonable to believe that if the OCR required this type of disaggregated data, trends would become clearer and the OCR would have grounds for further investigation and action.

In addition, because traditional legal routes of seeking relief from race discrimination and disproportionality in school discipline do not appear to provide fruitful results, students and parents should consider filing discrimination complaints through the OCR. It seems likely that a large number of complaints would prompt a proper level of investigation and follow through – not just on the specific complaint filed – but across the nation’s schools as a whole.

In addition to the involvement of the OCR, every district and state should have policies similar to what is suggested above. Without descriptive data, it is difficult to identify a problem and move forward with solutions. Policies that require schools and districts to report discipline

by race and specific behavioral offense are needed in order to paint a clear picture of what is occurring in U.S. schools.

In terms of interpretation of the laws, Smith (2009) suggests that equal protection should be evaluated through a “structural racism” approach in effort to take into account the historical experiences and not the current norms. He (Smith, 2009) states, “From a structural racism perspective, the cumulative effect of past and current inequities across domains provides the proper basis for determining whether the Equal Protection Clause’s mandate is satisfied” (p. 8). Ultimately, in using a structural racism approach, discriminatory intent does not need to be proven as past and present institutional imbalances would provide evidence of a violation of equal rights.

**Educational practices and programs.** Given the lack of legal remedy and applicable policy surrounding the issue of race discrimination and disproportionality in school discipline on a federal, state or even local level, it appears as though educators must be the impetus for change. Educators ought to address the culture of school buildings and educational programs, the beliefs and practices of teachers and school leaders and individual school building policies in efforts to decrease the occurrence of race discrimination and disproportionality in school discipline.

Ladson-Billings’ (2006) idea of the educational debt sheds light on the issue of race discrimination and disproportionality in school discipline by drawing attention to what may be the underlying issues that cause the overrepresentation of groups of students who receive school disciplinary action (i.e. African Americans). For instance, in the case of the achievement gap, educators often look for clear cut, “face value” ways to increase the test scores of subgroups and level out the disparity in achievement. Matters of race discrimination and disproportionality in

school discipline are often handled the same way: how can we, as educators, improve the behavior of these behavioral problem students? Instead, through her introduction of a debt concept, Ladson-Billings is asking educators to dig deeper and to uncover the underlying issues that have stemmed from years of establishing an economic debt, moral debt, and sociopolitical debt that has created disparities such as the overwhelming overrepresentation of African American students receiving disciplinary action. By doing so, perhaps the long-term concern of the educational debt will decrease and its subsequent issues will follow suit.

Although several pointed recommendations can be made concerning ways in which disproportionality in school discipline can be reduced, it is imperative that educators look at the bigger picture and ask questions about perceptions and attitudes within our nation's school buildings. Noguera (2002) discusses the concepts of "structural explanations" versus "cultural explanations". The structural explanation perspective presents the idea that individuals are a product of their environment and that changes in individual behavior are made possible by changes in the structure of opportunity. On the other hand, the cultural explanation perspective is much like that of "deficit thinking," which places the blame on the individual. For the purposes of this paper, all emphasis will be placed on the structural explanation perspective.

### ***Cultural and Psychological Barriers to Educational Achievement and Success.***

I have long suspected a particular culprit -- a culprit that can undermine black achievement as effectively as a lock on a schoolhouse door. The culprit I see is stigma, the endemic devaluation many blacks face in our society and schools. This status is its own condition of life, different from class, money, culture. It is capable, in the words of the late sociologist Erving Goffman, of "breaking the claim" that one's human attributes

have on people. I believe that its connection to school achievement among black Americans has been vastly underappreciated. (Steele, 1992, para. 4)

Ritter and Skiba (2006) contend that “cultural competence is a developmental process through which a set of congruent behaviors, attitudes, and policies come together to form a system which works effectively across cultures” (p. 1). Statewide policies that address cultural competence within public schools may help limit disproportionalities in school discipline by decreasing race discrimination within schools. Indiana Public Law 221 states that “schools must develop strategies to meet the needs of all students and that these strategies must be culturally competent” (Ritter & Skiba, 2006, p. 1).

Noguera (2002) suggests that in order to help African American students succeed, there must be more dedicated efforts towards supporting their resistance to negative stereotypes and school sorting practices. In addition, in order to alter school environments and programs to be more inclusive of African American students, it is imperative that educators seek to understand how various students develop identities. Eitle and Eitle (2004) posit, “social construction processes, emanating from school authorities’ meanings of proper student behavior, explain best the overrepresentation of black student among those suspended” (p. 272).

Toldson’s (2008) research suggests that educational policies would best serve African American students by allowing them to become a critical voice in the “concept” of school. He states, “Helping students to be interested in school by finding their class work meaningful for their current and future lives is important for black males to cultivate a perspective of school that is consistent with high achieving” (Toldson, 2008, p. 45). Similarly, Noguera (2002) suggests

that teachers and school leaders must become more dedicated to understanding how African American students respond to their social and cultural environments.

Steele (2003) defines stereotype threat as “the threat of being viewed through the lens of a negative stereotype or the fear of doing something that would inadvertently confirm that stereotype” (p. 253). Although Steele (2003) does not address school discipline in relation to stereotype threat, many parallels can be drawn. Noguera (2003) suggests that teacher expectations based on stereotypes may influence whether students are selected for disciplinary action. Although there are many variables that attribute to the overrepresentation of African American students receiving disciplinary action, it is important to give proper attention to the psychological effects stigma has on African American students and their behaviors.

School leaders should emphasize to African American students the importance of peer relationships in schools. Toldson (2008) suggests that peer support networks can be an integral component to academic success and can even work to supplement the role of a teacher in the classroom. Steele (2002) and Wong, Eccles and Sameroff (2003) both suggest intergroup connectedness as a means to overcome the psychological effects of stigma. Finally, in regards to issues such as stereotype threat, Steele (1999) suggests building a school environment that fosters social and racial trust in students; including explicit conversations about cultural barriers within schools.

### ***Teachers.***

Educational equity will exist for all students when teachers become sensitive to the cultural diversity in their class-rooms, vary their teaching styles so as to appeal to a diverse student population, and modify their curricula to include ethnic content. This is a

tall but essential order in an ethnically and racially diverse nation that is wasting so much of its human potential. (Banks, 1988, p. 466)

The role of teachers' preconceived notions and stereotypic perceptions of African American students has an impact on teachers' expectations of student achievement, the African American student's own expectation of performance and on the quality and evaluation of the student's academic success (Rowser, 1994). Rowser (1994) addresses the "key determinants of the quality of the academic experience":

The effectiveness of the teacher in motivating and involving students in the learning process; the willingness of the teacher to recognize, address, and respect the cultural differences among students; the behavior of the teacher in the classroom interactions with students; and the communication, both verbal and non-verbal, of the teacher in manifesting his/her attitudes, beliefs, and expectations for student achievement. The students' academic experiences are framed by the teacher-student interactions and the teachers' ability to project positive expectations of student success. (p. 82)

Banks (1988) suggests that teachers use a variety of teaching styles in an effort to "reach" African American students and increase educational performance and success. Not only do teaching strategies need to be refocused on how African American students make sense of their lives, but they need to be centered on how African American students make sense of their relation to the school culture. Further, Davis (2001) suggests that teachers need to seek "non-traditional gender" projects and interventions that promote academic achievement, talents and behaviors. Davis (2001) also suggests that while teachers are responsible and accountable for structuring students' learning opportunities, they must also be responsible for taking an active

role in developing social lessons that promote an appreciation for the variety of ways in which boys versus girls behave at school. Finally, teachers must select content from relevant and current sources so students can see reflections of themselves in their curriculum (Kunjufu, 1985, 1995).

School leaders must re-examine teachers' interactions with African American students and look to a more equitable instructional process (i.e., timely and appropriate feedback for all students, praising all students) (Rowser, 1994). Banks (1988) contends that teachers must convey to all students that they are expected to be successful. Furthermore, teachers must help minority students see the relationship between their effort and academic performance, as Banks (1988) suggests that minority students are often not as "internal" as their White peers. Roderick (2003) recommends developing what she calls an "effective personal environment" (p. 580). This environment would create a system of support through the implementation of individualized attention and monitoring of student progress, opportunities for students to develop caring relationships with adults, and safe and orderly learning environments that produce common and consistent expectations for behavior.

Kunjufu (1995) recommends that all college education departments offer a course on understanding African American students (he emphasizes African American males). Further, in order for teachers to implement classroom practices that support educational equity, school leaders need to provide commitment and support to the ongoing development and implementation of such practices. Staff development and university sponsored programs that provide information on the unique needs of African American students (and other minority students) and the most effective teaching skills to enhance their academic performance must be valued and offered on a continuous basis (Rowser, 1994).



Further, Theoharis (2007) found that principals who supported increased social justice within their schools, resisted the idea that traditional teacher preparation programs were sufficient in preparing teachers for culturally diverse classrooms. The principals Theoharis interviewed increased the staff capacity by addressing issues of race, providing ongoing staff development focused on building equity, developing staff investment in social justice, hiring and supervising for social justice and empowering staff. Roderick (2003) suggests the use of data during professional development to aid in teachers' understanding of the disparities that exist in schools. In addition, Skiba et al. (2002) contends that teacher training in culturally competent methods of classroom management is perhaps the most imminent need in addressing disproportionalities in school discipline.

### ***School leaders.***

Current theories in sociology, anthropology, and education strongly indicate that the most prevalent issues of racial discrimination today tend not to result from intentional or blatant racism. Rather, disparate outcomes appear to be shaped by individuals within institutions, participating in habitual patterns of action. (Skiba, et al., 2009/10, p. 1107)

*Cultural competencies in education.* One reoccurring concern in regards to leadership practice is the idea that school leaders commonly feel as though race discrimination and disproportionality in school discipline is “out of their hands” (Mendez & Knoff, 2003). Mendez and Knoff (2003) suggest applying an ecological approach to issues such as overrepresentation. In other words, if it is thought that African American students are indeed participating in more infractions, the principal needs to investigate what is missing in the school environment and in the students' experiences. Perhaps the curriculum and instructional materials are not culturally

relevant to some students or perhaps there are not enough culturally relevant role models in the school. If it is determined that the overrepresentation is caused by a lack of cultural competencies, professional development in diversity and multicultural training is needed along with a closer look at current school discipline policies.

Another common theme utilized when confronting issues of disparity among students is “displaced blame”. Displaced blame is a commonly used way for school leaders to ignore institutional norms while attempting to address the issues around African American students. Evans (2007) states,

The idea is that academic problems can be explained by the fact that African American students generally lack certain “things” (i.e., fathers, role models, mentors, etc.) that place them “at risk” of failure. Placing blame on students, their backgrounds, families, and/or communities effectively negates the impact of structural inequality of students of color and their schools and communities. (p. 17)

Displaced blame is similar to deficit thinking (previously introduced). Both practices ignore the responsibilities of the school and transfer the responsibilities to the student, parents, and community. In effort to appropriately address the issue of race discrimination and disproportionality in school discipline, school leaders must reflect on their own, and the teachers’, cultural competencies.

*Sensemaking.* School leaders formulate ideas and make decisions based on input from a variety of contexts and stakeholders, including their very own history and background. Evans (2007) states, “the meanings they make of educational issues and situations determine how they define and respond to them via their actions and decisions on school programs, policies, and

practices” (p. 160). Further, schools, through school leaders and teachers, normalize actions, beliefs, and behaviors and cast away the students who do not conform to those norms.

Unfortunately, school leaders are not trained on how to deal with sociopolitical or sociocultural issues, nor are they always aware of how their decisions impact and influence subgroups of students (Evans, 2007).

Evans (2007) posits, “Socially constructed conceptions of race impose differential identities and images based on social status, power, and the cultural, physical, and intellectual attributes assigned to racial or ethnic groups” (p. 164). America’s school leaders – largely a white population – often lack the understanding of the various manifestations of institutional racism and the consequences it has (Evans, 2007). In studies cited by Evans (2007), school leaders were often reactionary and not proactive in terms of addressing racial conflict in schools. Additionally, most school leaders focus on the overt and blatant forms of racism and struggle to recognize the more covert, unintentional and underlying forms.

Evans (2007) concluded that school leaders defined and made sense of situations and issues that they thought reflected the organizational ideology and values. Further, Evans found that the local context played a salient role in the school leaders’ sensemaking (identity construction). She states, “The degree to which school and community history, organizational norms, values, and beliefs reflect a commitment to racial change and diversity might well determine how school leaders construct meanings, actions, and behaviors around matters of race and demographic change” (p. 184).

Evans (2007) suggests that school leaders recognize the impact they have on the ways teachers process events that happen in the school in regards to race. She advocates for school

leaders to forego “colorblind” approaches to students, as to deny students of their histories and cultural background is merely another method of institutionalizing racism. Additionally, by ignoring students’ unique needs, school leaders are avoiding addressing diversity in the instructional, academic and social needs of the school.

Evans (2007) further suggests that school leaders must “recognize their own (or a group’s) dominance and marginalization of others” (p. 184). School leaders must also develop clear personal and professional ideologies that support diversity, equity, and inclusiveness. By doing this, they are better equipped to tackle old institutional norms and, in turn, develop and implement new policies that are “socially, academically, and politically inclusive of all groups” (Evans, 2007, p. 185). Finally, Rowser (1994) suggests that school leaders deal directly with the problems where they find them.

*Leadership for social justice.* Dantley and Tillman (2009) state, “Leadership for social justice investigates and poses solutions for issues that generate and reproduce societal inequities” (p. 20). Further, “social justice in educational leadership is about recognizing the multiple contexts within which education and educational leadership exist” (p. 22). Finally, “Social justice demands deconstructing those realities in order to disclose the multiple ways schools and their leadership reproduce marginalizing and inequitable treatment of individuals because their identities are outside the celebrated dominant culture” (p. 22).

Starratt (1994) suggests an ethical framework for school leadership for social justice – one where “care, justice, and critique combine to form a human, ethical response to unethical and challenging environments and situations that many school leaders face” (as cited in Dantley & Tillman, 2009, p. 20). Further, Starratt contends that school leaders give consideration to the

ways in which various students (especially marginalized students) are socialized in school settings (as cited in Dantley & Tillman, 2009).

In order to do this, Freire (2004) believes that leadership for social justice can only be reached through reflection and action. Further, he believes that the only method for humanizing pedagogy is when the leadership constitutes an ongoing dialogue with the oppressed. He states,

The correct method for a revolutionary leadership to employ in the task of liberation is, therefore, *not* “libertarian propaganda.” Nor can the leadership merely “implant” in the oppressed a belief in freedom, thus thinking to win their trust. The correct method lies in dialogue. (p. 67)

In addition, Larson and Murtadha (2003) suggest schools leaders for social justice must deconstruct existing logics of leadership, portray alternative perspectives of leadership, and construct theories, systems, and processes for social justice (as cited in Dantley & Tillman, 2009). Dantley and Tillman (2009) suggest that leaders for social justice have to be willing to engage in critical self-reflection, as well as to critically “interrogate” schools, in order to uncover institutionalized norms that perpetuate oppression.

In his study, Theoharis (2007) identified school principals who exemplified his definition of leadership for social justice, “these principals make issues of race, class, gender, disability, sexual orientation, and other historically and currently marginalizing conditions in the United States central to their advocacy, leadership practice, and vision” (p. 223). The leaders Theoharis identified created better school environments by committing their efforts to the following: raising student achievement, improving school structures, recentering and enhancing staff capacity and strengthening the school culture and community. Similarly, McKenzie, et al. (2008) posit that

leaders for social justice must center their efforts on three goals: (a) raising student achievement, (b) preparing students to live as critical citizens and (c) assigning students to inclusive and heterogeneous classes.

Theoharis (2007) attributed the increase in student achievement to the increase in academic rigor and access to educational opportunities. Teachers who previously had low expectations surrounding course content, broadened their offerings, and in turn, increased their self-efficacy and their expectations of students. In addition, formative assessments were utilized to inform the teacher of student progress and to further aid the teacher in differentiating instruction.

Successful leaders for social justice sought to improve staff development by addressing issues of race, focusing on building equity, developing staff investment in social justice, hiring and supervising for social justice and empowering staff. There was also emphasis put on hiring teachers who not only had strong pedagogical skills, but also held a commitment to educational equity. In addition, teachers were given professional freedom and were included in the decision-making processes. Principals engaged teachers in conversations around issues of race, injustice and historical inequities related to schools and learning.

The leaders identified in this study (Theoharis, 2007) also worked at strengthening the school culture and community. Principals did this by reaching out to families and community members, building relationships with students and further building relationships with teachers by becoming more present and visible in the school. Some principals reached out specifically to marginalized families, which resulted in greater student achievement and transformed

assumptions of these families by teachers and the more affluent and traditionally present White families.

Theoharis (2007) discovered that the leaders he identified were successful in part due to their ability to engage in proactive strategies when faced with resistance. These leaders communicated purposefully and authentically, developed a supportive administrative network, worked together for change, stayed focused on the end result, prioritized and participated in professional development and strengthening relationships. All of the principals studied reported that building relationships was the key to developing a greater capacity to enact social justice; stronger relationships meant more authentic and honest conversations and shared beliefs and goals.

Bogotch (2002) describes the results of leadership for social justice as the establishment of an environment that (a) promotes new programs based on the diverse beliefs and needs of others and (b) new and different conditions arise that allow a school leader to remain true to the underlying ideologies that the programs were based upon (as cited in Dantley & Tillman, 2009). Further, Dantley and Tillman (2009) affirm the development of a democratic society through leadership for social justice.

*School leader preparation programs.* “Moral transformative leadership” is defined by Dantley and Tillman (2009) as “leaders as transformative or public intellectuals who serve as social activists who are committed to seeing a greater degree of democracy practiced in schools as well as in the larger society” (p. 19). Dantley and Tillman (2009) suggest that moral transformative leadership can be obtained and sustained through the practice of leadership for

social justice and through the “praxis” of leadership for social justice, which is the development of school leaders for social justice within school leader preparation programs.

Leadership for social justice is not simply “good leadership” (Theoharis, 2007). Leadership for social justice takes more than what has traditionally been viewed as good leadership, as it has been years of good leadership that has developed unjust and inequitable schools. Some scholars (Dantley & Tillman, 2009; McKenzie, et al., 2008; Theoharis, 2007) believe that traditional school leader preparation programs do not adequately prepare school leaders for social justice leadership – they only prepare school leaders to be what has historically been known as good.

Theoharis (2007) suggests preparation programs teach future school leaders to not only enact leadership for social justice, but to have the skills to combat the resistance to this kind of leadership. He states, “With this social justice purpose clearly in mind, enacting resistance requires that future administrators develop a reflective consciousness centered on social justice and a broader knowledge and skill base” (Theoharis, 2007, p. 250). Theoharis (2007) further argues that an effective knowledge base includes proficiency in topics such as special education, curriculum, differentiation, using data, race, poverty, working with diverse families, and taking a global perspective.

McKenzie, et al. (2008) propose that the leadership curriculum involve the following components: critical consciousness, proactive systems of support and inclusive education instructional supervision that moves beyond what is traditionally know as “instructional supervision” and a meaningful induction period.



Critical consciousness allows leaders to engage students and teachers in critical conversations while linking academic achievement to activism. It also promotes a safe school environment, as leaders identify and address issues of racism, sexism, classism, homophobia and other prejudices. The school leader preparation program should help future school leaders develop their commitment to social justice while reflecting on their ethical core. Additionally, the school leader preparation program should teach school leaders how to build a critical consciousness capacity within their staff and students. McKenzie, et al. (2008) suggest the use of book groups in professional development as a way to allow staff to reflect on their ethical core and develop their critical consciousness.

School leader preparation programs ought to prepare school leaders for social justice for the development and implementation of proactive systems of support for students. School leaders must develop the capacity to identify students' various learning needs and the instructional tools that can be utilized to meet those needs, while also understanding how to structure the educational day so that all students learn with their peers. School leaders must also develop a more encompassing teacher supervision program and learn how to effectively retain teachers (McKenzie, et al., 2008).

McKenzie, et al. (2008) advise school leaders to identify sound instructional behaviors and to ensure that these behaviors are modeled by all teachers, for all students. Further, what does instruction look like for groups of marginalized students or for the students whose home language is not English? To help sharpen prospective school leaders' skills in this field, the authors propose that school leader preparation programs allow prospective school leaders to engage in difficult conversations with teachers and hold classroom observations. Finally, a longer and more thorough induction period should be utilized so that prospective school leaders

can build self-efficacy and further develop their leadership for social justice competencies (McKenzie, et al., 2008).

Dantley and Tillman (2009) advocate for the use of socially just leadership frameworks in school leader preparation programs. They refer to Dantley's own use of Staratt's (1994) Multi-Dimensional Ethical Framework, which provides guidance in the use of "the ethics of care, justice and critique to analyze situations and to develop leadership plans" (Dantley & Tillman, 2009, p. 28). Graduate students who are preparing to become school leaders are given assignments based on the framework and professors provide guidance on the students' use of critical reflection based on the outcomes of their assignments (Dantley & Tillman, 2009).

Theoharis (2007) found that principals who were successful in decreasing the effects of social injustice within schools made a point to strengthen the school culture, while also reaching out to the community and marginalized families. These principals found that not only did their commitment to strengthen the school/community relationship increase student achievement; it also helped to transform the White community's assumptions about the marginalized groups. Finally, these principals found that teachers responded positively to reaching out to families in ways dissimilar to the traditional parent-teacher organizations.

### ***School policies.***

One of the most important contributions of this work is the understanding that inequitable outcomes are not merely the result of deficiencies in the students, nor the communities from which they come, as was often assumed to be the case. Instead, inequitable outcomes often result from systemic organizational practices and policies endemic to

schools and administrator practice that have not been analyzed or acted on with respect to their impact on nonmainstream students. (Marshall & Oliva, 2009, p. 7)

The literature and research presented on the educational debt, race discrimination and disproportionality in school discipline, teacher preparation and support, cultural competencies and leadership practice thus begs the question, “How can policy reformation, development and implementation positively affect the overrepresentation of African American students receiving disciplinary action?” The answer(s) to this question must be found by looking at both discipline policies and pedagogical policies.

*Discipline Policies.* Suspensions “usually occur in the absence of additional interventions that focus on teaching or reinforcing students’ more prosocial or appropriate responses to difficult situations” (Mendez & Knoff, 2003, p. 31). Mendez and Knoff (2003) concluded from their studies that large numbers of suspensions given for infractions such as disobedience and insubordination indicate both a lack of behavior management strategies in the classroom and a lack of school-wide behavioral supports. Further, they found in previous studies of African American students who had either been suspended or were suspended on a regular basis that most did not learn from their suspension(s) and thought they would likely be suspended again. Therefore, they suggest that, “a tremendous shift in attention and resources away from the punishment-oriented model of intervention toward a prosocial, positive behavioral support model” is needed in schools (Mendez & Knoff, 2003, p. 48).

As previously stated, Dantley and Tillman (2009) suggest the use of an ethical framework (such as Starratt’s (1994)) for approaching and dealing with issues surrounding leadership for social justice. Using an ethical framework to approach the reformation, development and

implementation of school discipline policies would allow school leaders to position their ideologies and their actions around the notion that individual students perhaps deserve different treatment.

Mendez and Knoff (2003) advocate for a more proactive approach to combating behavioral issues during the elementary years – prior to adolescence, as the results of their study indicated that disciplinary action increased from elementary school to middle school and then decreased from middle school to high school. They believe this is due to a myriad of issues that students face during their middle school years: forming an identity separate from parents, facing peer pressure and being presented with drugs, alcohol and sexual relationships for the first time, just to name a few. Mendez and Knoff (2003) suggest that elementary schools develop policies (ex. peer mediation, teacher training on developing appropriate social skills) that could potentially aid students in handling some of these concerns and provide them with skills that could follow them to the middle schools.

Furthermore, Mendez and Knoff (2003) suggest using a functional analysis or “intensive tertiary prevention strategies” to combat the behaviors presented by students who receive multiple suspensions. This would involve identifying any underlying issues that a student may be encountering, determining the function or purpose of the chronic behavior and identifying any missing components of the relationship between the student and teacher(s) involved. Subsequent involvement with support services such as a school counselor and/or psychologist, in addition to constant involvement and communication with the student’s family would be necessary after performing the functional analysis.

Finally, Kunjufu (1985) and Mendez and Knoff (2003) both suggest the use of an in-school suspension program that is structured and allows students to receive instructional aide. Further, in-school suspension programs ought to include: (a) a rehabilitative component, (b) parent participation in the suspension process, and (c) links to other support services (school counselor, school psychologist) (Mendez & Knoff, 2003). Overall, appropriately used in-school suspension programs ought to deter future problem behaviors by using a prosocial approach to addressing behavior while alleviating lost instructional time and access to education.

*Pedagogical policies.* Some scholars (Davis, 2001; Freire, 2004; Kunjufu, 1995) believe that the school curriculum must be made more relevant to disadvantaged students. In fact, Ladson-Billings' (1995) idea of good teaching came in the form of a culturally relevant pedagogy. In essence, a curriculum that is more relevant and significant to disadvantaged students may serve the purpose of keeping the student more engaged. Further, a multicultural curriculum that depicts the true histories of oppressed peoples and tells stories of success that are relevant to minority students is critical in the pursuance of a greater identity and sense of self-efficacy as a student. Freire (2004) states,

We must never merely discourse on the present situation, must never provide the people with programs which have little or nothing to do with their own preoccupations, doubts, hopes, and fears-programs which at times in fact increase the fears of the oppressed consciousness. It is not our role to speak to people about their view on them, but rather to dialogue with the people about their view and ours. We must realize that their view of the world, manifested variously in their action, reflects their *situation* in the world. (p. 96)

Kunjufu (1985, 1995) stresses the importance of relaying the objective of the lesson to students before it is taught while also implementing a lesson that involves problem solving. Not only does this increase the level of perceived relevance and the likelihood of retaining the objective, but it also makes the lesson less analytical and rote. Freire (2004) posits,

In problem-posing education, men develop their power to perceive critically *the way they exist* in the world *with which* and *in which* they find themselves; they come to see the world not as a static reality, but as a reality in process, in transformation. (p. 70)

Finally, Dantley and Tillman (2009) suggest using an anti-oppressive framework to bring about change in schools. Kumashiro's (2000) anti-oppressive framework includes the following:

(1) Education of the other (focus on improving the experiences of students who are othered); (2) education about the other (focus on what all students – privileged and marginalized – know and should know about the other); (3) education that is critical of privileging and others (focus on examining not only how some groups and identities are othered but also how some groups are favored); and (4) education that changes students and society (focus on how oppression begins in discourses that frame how people think, feel, and interact). (as cited in Dantley & Tillman, 2009, p. 21)

*Inclusive education.* Schools that provide separate educational programs maintain unequal levels of instruction, marginalize particular groups of students and create a situation in which students receive an inferior level of education (Theoharis, 2007). McKenzie, et al. (2008) state, "These reactive systems of remediation that tend to spawn segregated programs, which in turn, perpetuate a caste system among students, teachers, and families and disempower teachers, students, and parents, are the most expensive, least effective ways to address student

achievement” (p. 127). Additionally, separate educational programs tend to track students of color, low-income students, English Language Learner students, and students with disabilities. These students typically need the most structure and routine, along with the most uninterrupted instructional time, however, this separation often results in a far more chaotic day, as these students are often traveling to and from pull-out programs (McKenzie, et al., 2008). Finally, Noguera (2003) states that students who are separated from their peers, go through a socialization process that is detrimental to their education. In effort to facilitate a healthy school socialization process, students must be placed with their peers in heterogeneous groups and avoid the negative aspects of stratification.

Sapon-Shevin (2003) stated, “Inclusion is not about disability...Inclusion is about social justice...By embracing inclusion as a model of social justice, we can create a world that fits for all of us” (as cited in Theoharis, 2007, p. 223). McKenzie, et al., (2008) and Theoharis (2007) include the identification and elimination of marginalization through segregated programs as a central concern in leadership for social justice. Proactive structures that support students rather than reactive structures that segregate students is a necessary step in ensuring inclusive education. Further, leaders for social justice must believe that all students, regardless of their learning needs, deserve the right to learn with their peers in heterogeneous environments.

Several of the principals Theoharis (2007) identified as having a strong conviction in social justice eliminated the use of pull-out programs for special education and English as a second language based on the idea that they thought it was discriminatory to segregate students in that manner. McKenzie, et al. (2008) assert, “In addition to serving as a prerequisite for academic achievement, heterogeneous classrooms and untracked schools are prerequisites for

preparing students to live as critical citizens by requiring students to learn in a community with peers who are different from themselves” (p. 117).

### **Recommendations for Future Studies**

Future studies of race discrimination and disproportionality in school discipline amongst African American students may lead to the topic of school segregation. Eitle and Eitle (2004) state that several scholars have suggested that disproportionality in school discipline is directly linked to school desegregation in U.S. schools and that the overrepresentation of disciplinary actions have been a type of resegregation in response to court orders. Skiba, et al. (2002) suggests that disproportionality in school discipline and the overrepresentation of African American students receiving disciplinary action increased immediately following desegregation. In addition, research (Anderson, 1988; Walker, 1996) on schools during the pre-desegregation era and immediately following desegregation suggest that African American students received disciplinary action at an alarming rate following desegregation.

The eight federal and state court decisions reviewed in Chapter Two were rendered throughout three decades, with a slight indication that there was more inclination to favor the student plaintiffs immediately following desegregation while later decisions tended to favor the school officials. One scholar (Brown, 2009) concludes that racial tensions were integral in some court decisions: “However, for the Goss dissenters, the ruling was a mistake that threatened to allow anxieties about lingering racial tensions in desegregating schools to undermine administrators' need to punish behavior that threatened the educational enterprise” (p. 15).

Such a trend may lead one to believe that courts were more sensitive to the issue of equal protection and race discrimination following *Brown v. Board of Education of Topeka* (1954) and



then subsequently less sensitive as the years progressed and racial tensions were less pronounced. Further research on the validity of this trend, in conjunction with the concept of colorblind interpretation of the Constitution, may provide further insight into how issues of civil rights should be handled both in terms of legislative interpretation and judicial decisions.

In addition, many recommendations were made surrounding school policies and improved teacher and school leader practice. Further research may address each recommendation and its effects on race discrimination and disproportionality in school discipline amongst African American students. Identifying the practices and policies that work best at decreasing the overrepresentation of African American students receiving disciplinary action ought to be useful to the OCR as well.

Finally, because the issue of race discrimination and disproportionality in school discipline is seemingly becoming more and more reported, realized by the public and educators, and under investigation by the OCR, further research on how the OCR addresses the issue in subsequent years is imperative. The OCR's actions ought to provide guidance for educators in how to decrease the occurrence of African American students receiving disciplinary action, while also holding educators and schools accountable for their actions. In other words, the OCR has reason and authority to "step in" when courts do not feel as though they can do so.

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