Title: Managing Our Blind Spot: The Role of Bias in the School-to-Prison Pipeline

Abstract
For decades, we have witnessed the increased criminalization of our nation’s youth, especially youth of color and students with disabilities, through the implementation of “zero tolerance” school discipline practices enacted after high-profile tragic school shootings. Instead of improving school safety, these practices have blurred the lines between school discipline and school safety, pushing students out of school and into the juvenile justice system, particularly through increased reliance on police in schools to handle routine discipline matters. Research shows that increased police presence in schools results in more school-based arrests and referrals to the juvenile justice system. Increased police presence in schools has disproportionately affected the number of students of color and students with disabilities being referred to the juvenile justice system. For instance, black students represent 16 percent of national enrollment, but 27 percent of students referred by schools to law enforcement and 31 percent of students subjected to a school-related arrest in the 2011-2012 school year. Perhaps most troubling and relevant are the concerns expressed post-Ferguson regarding the allegations of inappropriate and excessive use of force by school police on students. In schools all over the nation, school police carry and use tasers and pepper spray in situations that do not call for this type of weaponry. Each school year brings a new series of local news articles highlighting students tased or pepper-sprayed for little more than “clinching their fists” or “taking an aggressive stance.” Some students have been tased or pepper-sprayed and mistaken for an aggressor, when they were, in fact, attempting to break up a fight. These types of overly harsh school disciplinary practices and excessive use of force are imposed more frequently on African American and Latino students, than their white peers. This disparity is largely due to the failure to address the influence of explicit and implicit biases in school disciplinary decisions and the continued use of draconian school disciplinary practices.

This paper will highlight the intersection of explicit and implicit bias and the school-to-prison pipeline and propose the adoption of a Federal School Disciplinary Law to address the racial disparities in school disciplinary sanctions. Part I will discuss the national trend of racial disparities in school disciplinary sanctions. Part II will discuss the evolution of the school-to-prison pipeline (e.g. zero tolerance policies, criminalizing normal adolescent behavior, lack of youth developmental competence among school resource officers, militarization of schools). Part III will provide an overview of the role of explicit and implicit bias in the development and perpetuation of the school-to-prison pipeline. Part IV will highlight the ineffective legal remedies available to address the school-to-prison pipeline with a particular emphasis on Title VI. Part V will conclude with the proposal of a Federal School Disciplinary Law designed to eradicate the school-to-prison pipeline through a tiered system of evidenced based school disciplinary
practices, a school-community task force, mandatory implicit bias training for all school personnel, and various other targeted interventions.

Outline

I. Introduction
   A. Discuss the Disparate Impact of School Disciplinary Policies on Students of Color.
      i. Office of Civil Rights National Data
   B. Highlight current nationwide trend of funneling poor and minority children out of education system into the criminal justice system.

II. Evolution of School-to-Prison Pipeline
   A. Adoption of Get Tough on Crime Rhetoric Promoted by Reagan Administration
   B. Criminalizing Normal Adolescent Behavior
      1. Enactment of Gun-Free School Zone Act of 1994
      2. Zero Tolerance Policies - Created a direct track into the juvenile and criminal justice system.
      3. Over Reliance on Referrals to Law Enforcement for Minor School Disciplinary Infractions
   C. Reactionary Response to Highly Publicized Mass School Shootings
      i. Expanding Role of Law Enforcement Measures In Schools
         1. Drastic Increase in the number of school resource officers (SROs).
            a. Federally Funded Grant Programs to fund SRO’s
      ii. Ineffectiveness of Increased Police Presence in Schools
         1. Increased Police Presence - More Harm than Good
            (Highlight empirical studies on the harmful effects of SRO’s in schools)
            a. Lack of Training - Utilizing Adult Policing Practices on Youth
            b. Lack of Developmental Competence Among School Resource Officers
   D. Draconian Approach to School Discipline
      i. Failure to Implement Evidenced - Based Practices for Addressing Student Misbehavior
         ii. Examples of Under Utilized School Discipline Best Practices
            1. Positive Behavioral Intervention and Supports (PBIS)
            2. Restorative Justice

III. The Role of Explicit and Implicit Bias in the School-to-Prison Pipeline
   A. Explicit Bias
      i. Debunking the Myths of Post-Racial Society: Trayvon Martin and Beyond.
         1. Recent Examples of Teachers Disciplined for Racist Comments to Students.
B. Implicit Bias
   i. What is Implicit Bias?
      1. Cognitive and Behavioral Bias
      2. Measure Bias-Implicit Association Test (IAT)
   ii. Role of Implicit Bias in the Differential Treatment of Children of Color in the School Disciplinary Context
C. Psychology-Based Interventions for Minimizing Implicit Racial Bias
   (Once you identify school personnel with an implicit bias, then what?)
   Ground-breaking research in the field of psychology reveal a de-biasing intervention)
   i. Discuss Empirical Research Studies-Illustrate De-Biasing (i.e. Reducing the effects of unconscious racial bias) through Implicit Bias Training/Intervention.
   ii. Examples of De-Biasing Intervention (Empirical Studies)
      1. Police Officers
      2. Judges
   iii. Multi-Faceted Habit Breaking Intervention-Developed by Dr. Patricia Devine (Psychologist & Expert in Implicit Bias)
   iv. De-Biasing Interventions in K-12 Schooling Environments
      1. Can De-Biasing Interventions with School Staff Reduce Racial Disparities in School Disciplinary Sanctions?
IV. Ineffective Legal Remedies to Addressing the School-to-Prison Pipeline
A. Equal Protection Clause
B. Title VI Disparate Impact Complaints-Office of Civil Rights (OCR)
C. State & Local School Disciplinary Law & Policy
   i. California School Disciplinary Bill AB420
   ii. Los Angeles School District-Banned student suspension for willful defiance (Note: LASD is the only school district in the country that has issued this ban in an effort to address racial disparities in school discipline).
V. Equal Opportunity Federal School Disciplinary Law
A. Legislative Purpose and Core Components of Proposed Law
   i. Mandatory Implicit Bias Training for All School Personnel
   ii. Pre-Screening Process for Teachers with Racial Animus
      1. Extensive Character Evaluation
      2. Mandatory Polygraph Test for Teacher Candidates
      a. Discuss examples of police departments utilizing polygraph tests to target racist applicants.
   iii. Tiered Disciplinary Sanctions for Non-Violent Offenses
      1. Positive Behavioral Intervention Support (PBIS)
   iv. Moratorium on Out of School Suspensions for Non-Violent Offenses in all Title I funded K-12 Schools.
   v. Community Accountability Board
      1. Require school districts to establish discipline oversight committees to handle complaints about school discipline practices and review discipline and arrest statistics to
ensure that discipline is meted out in a fair, nondiscriminatory manner.

B. Funding and Enforcement
   i. Title I Funding

C. Discuss Limitations of Proposed Law

VI. Conclusion