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Restorative Justice: Transforming Escalating Conflict into a Positive Outcome¹

BY JOHN SARBANES

The topic of restorative justice is a very timely one because it is a way out of stress and pressure. Towards the end of my eight years working with the school system, we began to see the emergence of this restorative justice approach. It made a huge impression on me because we began to realize that it is not just about the discipline. It is not just about a choice as to whether a child should be put out of school or kept in school as a response to a discipline issue. It is about what you did with the whole experience and whether you could bring all parties to a place of reconciliation that actually strengthens the school environment.

That is the principle behind restorative justice—the notion that those who have caused harm are going to be held accountable. You find ways to adjust this approach to restore dignity and empower those who have been harmed. And from that place, you can take the entire climate to a higher level.

In places like Baltimore City, the need for this approach is particularly intense because you have a dynamic of potentially escalating violence. Things happen in a school, then get carried outside of the school into the surrounding community. They intensify and escalate there, and then they are brought back into the school. And so you get this kind of cycle of escalating violence and conflict and tension that you cannot solve simply by disciplining somebody or separating people. You have to find a way to break that escalating cycle of tension and conflict. And that is exactly the idea behind restorative justice. I am incredibly excited at the idea that restorative justice as an approach is really moving into the center of our thinking and getting the kind of attention that it really deserves.

There was some really groundbreaking guidance that was issued back in 2014 under President Barack Obama. The Department of Education and the Department of Justice released a joint legal guidance, along with a resource guide, basically indicating to school officials that there would be potential violations of the law if discipline rates were disproportionately high for students in one racial group within schools. This called attention to the need for different interventions, for having a higher level of awareness of the impact of mere implementation without a thoughtful approach.

Certain kinds of discipline in schools across the country can lead to a deeper conversation about the kinds of approaches that can make a positive difference. You can argue that the guidance issued by the Obama administration broadened the space for the kinds of conversations that are going to happen here today, particularly around this notion of restorative justice. There are [also] critics who say that if you take a more expansive view on how to respond to school discipline, it can create a chilling effect on discipline and on reporting to law enforcement.

Overview

Restorative Practices and the Urban Child: Rethinking School Discipline

Restorative practices are utilized in schools today to replace antiquated and harsh school discipline practices, paving the way to strengthen relationships between adults and students.

In this issue, we examine these restorative practices and the move to implement them as an alternative to harsh school disciplinary methods. That was the focus of the “Tenth Annual Urban Child Symposium,” sponsored on April 4 by the Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC) of the University of Baltimore School of Law in partnership with the Open Society Institute-Baltimore.

- **Rep. John Sarbanes, D-Md.**, who represents Maryland’s Third Congressional District offers a keynote speech on restorative justice.
- **Karen E. Webber, J.D.**, the director of the Education and Youth Development program at Open Society Institute-Baltimore, writes about the implementation of restorative practices in the Baltimore City Public School System.
- **Monique L. Dixon, Esq.**, the deputy director of policy and senior counsel at the NAACP Legal Defense and Educational Fund, Inc., writes about eliminating racial disparities in school discipline through the enforcement of federal civil rights laws.
- **Frank J. Kros, MSW, J.D.**, president of The Transformation Education Institute, executive vice president of The Children’s Guild, and director of the National At-Risk Education Network (NAREN), discusses the limitations of punishment in school discipline and how responsive guidance is the best path to behavioral change.

[U.S.] Education Secretary [Betsy] DeVos has been appointed by President Trump to lead the new commission on school safety that sprung up in the wake of the Parkland shooting and other mass shootings at schools across the country. But we need to be very careful that this conversation does not end up in a place where the response to some of these violent incidents in our schools becomes another excuse or opportunity for certain kinds of profiling or leaning harder on certain groups of students in our schools because then we start to move back in the wrong direction. It is something for us to be vigilant about.

We need to assemble people to do as much research and collect as much data as possible to show the benefits of a more balanced approach to school climate issues. It is not just on the horizon—that debate is here in a new and intense way. So, the timing of this symposium is really critical because you are in a position to be part of the advocacy movement that can say “Let’s look at these issues in a sensible way.”

I do want to emphasize that there are ramifications for approaches like restorative justice that are coming out of this gun safety debate and how it impacts our schools. Attention is obviously focused on school security, but the more you focus on that, the more you are inviting schools to maybe share information and adapt a harder edge with respect to the student population than is useful or constructive, in terms of addressing these issues that are at the center of the symposium today [April 4].

So, there could not be a more timely opportunity to focus on this. I would be remiss if I didn’t acknowledge that today [April 4, date of symposium] is the 50th anniversary of Dr. Martin Luther King’s assassination. I consider myself one of the people personally affected by Dr. King, which is an absurd proposition because I was six years old at the time of his death. But he affected me because you cannot escape that impact if you just start reading his speeches, listening to them, watching his example and understanding the impact that he had on the country. Increasingly, sadly but also inspirationally, I think many of us find ourselves, in response to the events occurring with each passing day, asking, “What would Dr. King do?” And if you have spent any time paying attention to his life and his legacy, it is a rhetorical question because you know what he would do.

As a champion of civil rights, he would be marching with the victims of police brutality. Today, he would be marching against the militias in Charlottesville and elsewhere. As a man of humanity, Dr. King would be heartbroken that there are 60 million refugees wandering the face of the globe who are homeless and without hope right now. And as a man of nonviolence, you know he would be sitting in and marching arm in arm with these young people across the country who are speaking out against gun violence and demanding the most reasonable set of measures to improve gun safety in this country. So, we know what he would do. None of us, no individual here, certainly not myself, has the courage of Dr. King. The question is, do we together collectively have the courage to carry his legacy forward, lift up his vision and progress a little bit closer to the promised land that he talked about in that final Mountaintop speech? And I think we do, even in these toughest of times.

And it is worth saying, if you think about it, Dr. King’s whole approach and the whole idea of nonviolence is really about restorative justice. When he spoke in his “I Have A Dream” speech of the day when the children of former slaves and the children of former slave owners

would sit together at the table of brotherhood, he was really talking about restorative justice. I do not think he envisioned they would just sit there without bringing baggage. They would come to that table with the understanding that there needed to be accountability for the harm inflicted and they would look for ways to restore the dignity of the people sitting across the table from them; and the children of former slaves would have to come to that table ready to forgive. This is what happens in a restorative justice circle.

So, this is what Dr. King was talking about his whole life and, in that respect, the timing of this symposium could not be better. Obviously, we feel pain as we remember Dr. King’s death but, when we celebrate his life and his legacy, it guides us. It tells us what we can do, and you can do a lot today to advance his legacy, his commitment to nonviolence, and his commitment to the notion of restorative justice.

NOTE: This is a transcript of selected remarks made by Rep. John Sarbanes, D-Md., during his keynote address at the Tenth Annual Urban Child Symposium, “Restorative Practices and the Urban Child: Rethinking School Discipline” on April 4.



Congressman John Sarbanes has represented Maryland’s Third Congressional District in the U.S. Congress since 2007. He serves on the House Committee on Energy and Commerce, the Subcommittee on Health and the Subcommittee on Energy and Power and chairs the Democracy Reform Task Force. Before Congress, Rep. Sarbanes served for seven years in the Maryland State Department of Education and practiced law for 18 years.

District-wide Implementation of Restorative Practices: Baltimore City Public Schools

BY KAREN E. WEBBER

Many schools around the world and right here in Baltimore City are using restorative practices to create positive school communities – clearly a worthwhile endeavor.

RESTORATIVE PRACTICES

The most widely used restorative practices (RP) involve the use of restorative circles. Restorative circles can be used to achieve a variety of school climate goals, including developing healthy relationships among adults and students; preventing, de-escalating and resolving conflicts; and enhancing instruction and deepening student learning.

The restorative circle process is simple—participants sit in a circle with a trained facilitator who, in a school setting, is most often a class-



room teacher. An open-ended question or topic of interest is selected for everyone to respond to and a talking stick or other object is passed from person to person, as each one in the circle takes a turn speaking (To see restorative practices in action, view this video by Wide Angle Youth Media: <https://vimeo.com/205263529>). Despite the seeming simplicity of restorative circles, schools that regularly implement these practices are reporting reductions in suspensions and chronic absences, greater teacher job satisfaction, improved academic outcomes, and frequent dramatic increases in enrollment as these schools become popular and desirable among students and their families.

HISTORY IN BALTIMORE CITY

Baltimore City Public Schools' (City Schools) relationship with restorative practices dates back to the 1990s, when an Open Society Institute (OSI) Fellow began a local non-profit, the Community Conferencing Center, now known as Restorative Response Baltimore. The Center introduced the practice as a non-punitive means of resolving student conflicts through a restorative process. Later, OSI provided a grant to the Baltimore Curriculum Project, a local charter operator, to create schools that would utilize a restorative approach to teaching, learning, relationship-building and student discipline (also known as a whole-school approach). Training and coaching for this endeavor was provided by the International Institute of Restorative Practices (IIRP); and, after more than 10 years, both schools, City Springs Elementary/Middle School and Hampstead Hill Academy Elementary/Middle, have sustained this whole-school practice and serve as models of implementation for other schools.

WHOLE SCHOOL IMPLEMENTATION

Often introduced as an alternative to suspension, restorative practices have proven to be most effective when used as a whole-school approach. With whole-school implementation, all staff in a school attend intensive trainings at which they are provided specific tools to help build positive relationships with students and one another—which in turn builds a positive school community. The training encourages school-based personnel to do things *with* students rather than *to* or *for* students, which shifts the adult role from that of “*sole authority*” to a role that is more akin to *facilitator* in the teaching and learning process.

When the entire school implements restorative practices, time for restorative circles is built into the school schedule with sufficient frequency to enable students and teachers to get to know one another. In relation to student conflict, restorative practices require participants to shift their mindset from one that is punitive and blaming to one that is reflective and inclusive. When using restorative practices, all parties involved in a conflict talk through and resolve the matter and make recommendations to repair any harm suffered, which culminates in a written agreement that all parties sign and follow.

DISTRICT-WIDE IMPLEMENTATION

Spurred on by advocacy from OSI-Baltimore and a coalition of funders, education advocacy groups, and school service providers (The Baltimore School Climate Collaborative), in the spring of 2016, the Baltimore City Board of School Commissioners pledged to make City Schools a restorative practices district.

Soon after, the school district's newly appointed Chief Executive Officer Sonja Santelises embraced the school board's pledge. Before engaging in district-wide restorative practices implementation, OSI-

Baltimore partnered with City Schools to create the *Baltimore City Public Schools Restorative Practices Report* (report) (<https://www.osibaltimore.org/wp-content/uploads/RP-plan-and-appendix.pdf>).

The report, released on April 4, 2018, is comprised of a research review prepared by Johns Hopkins Institute of Education Policy. It highlights recorded feedback from some 400 stakeholders, and a robust collection of recommendations for implementation derived from Hopkins' research and stakeholder feedback. The report's appendices also include the materials used for focus groups and presentations, instruments created to document stakeholder feedback, a developing video library (online version has a growing list of additional videos and resources), as well as a robust bibliography to direct readers to additional materials on the subject.

On the same date in April, the University of Baltimore School of Law and OSI-Baltimore co-sponsored the 2018 Urban Child Symposium titled, “Restorative Practices and the Urban Child: Rethinking School Discipline.” The symposium included a keynote by Rep. John Sarbanes and brought together national and local experts to discuss restorative practices as a community building practice and alternative to punitive school discipline.

BLUEPRINT FOR SUCCESS AND THE RESTORATIVE PRACTICES REPORT

While the *Restorative Practices Report* was being drafted, City Schools released its *Blueprint for Success*, which outlines three priority areas of focus in the district: student wholeness, literacy, and leadership. Restorative practices are being adopted under the student wholeness priority.

In January 2018, 14 schools were selected to receive intensive training and coaching in restorative practices through a selection process devised by City Schools which required each school's commitment to effective and consistent implementation of the practice. Implementation of restorative practices across a school district is a long-term endeavor.

PREPARING FOR IMPLEMENTATION

In preparation for district-wide adoption of restorative practices, City Schools has made great strides in creating a solid foundation upon which this transformative practice may grow.

More than 50 schools already have received some training in restorative practices, which has created a sizeable core of teachers and principals trained in, and using, restorative practices to varying degrees. These schools provide accessible models from which staff, parents, and students can experience the benefits of the practice and debunk commonly held opinions that this approach will not work in an urban school district.

A growing body of central office staff have received restorative practices training as well, including the entire Baltimore City Schools Police force. School-based student arrests have already seen a dramatic decline after officers were trained in this process. Over the past three years, City School police have seen a 74 percent reduction in school-based student arrests.

OSI-Baltimore also sponsored a comprehensive restorative practices training for area community partners and practitioners in June 2017 to ensure that an adequate cadre of providers exists to meet the increasing restorative practices training needs of City Schools. These are but a few of the efforts underway that will enable City Schools to bring restorative practices to all schools, offices and programs in the coming years.

MOVING FORWARD

The recommendations below reflect the main points conveyed in the research and stakeholder feedback captured in the *Restorative Practices Report*:

1. Implement whole-school approaches where *all* adults in a school community are trained in restorative practices and provide ongoing coaching and support. At least one school-based staff person must also be trained as a restorative practices trainer so that each school can sustain the practice over time.
2. Shifting the attitudes and sensibilities of all school and district personnel may require three to five years. City Schools should operate according to this timeline, in which training must be embedded in school-based and city-wide professional development calendars.
3. Restorative practices should be woven into everything that is done in a school. It should not be used solely as a conflict resolution tool, as 80 percent of restorative practices should focus on proactive community building. Restorative practices may also be used for instruction and student reentry following sustained absences, such as incarceration or suspensions, to welcome students back to school. Additionally, these practices can and should be combined with complementary existing practices.
4. Implementation of restorative practices will require school and district leadership to be trained in restorative practices and to communicate a strong and consistent restorative vision. Time must be devoted to aligning the practice with City Schools' *Blueprint for Success* and other district mandates and practices.
5. Restorative practices should be introduced to students before being used in schools. Students should be fully engaged as thought partners in the implementation process, which may include being trained to lead circles.
6. Schools should familiarize parents with restorative practices through meetings, materials, and, when feasible, training.

Baltimore City is bravely embarking on a process that, as one principal stated, “has the potential to change an entire generation of children.” As momentum builds for implementation of this potentially transformational practice, City Schools can become the district in which all stakeholder voices are heard, relationships and strong connections are valued, and conflicts that arise are resolved through fair and transparent processes.

Despite the challenges of adopting restorative practices across the school district, the possibilities for changing the culture and climate of our schools, offices and programs, and thereby the trajectories of our students' lives, make restorative practices implementation efforts entirely worthwhile.



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Eliminating Racial Disparities in School Discipline Through the Enforcement of Federal Civil Rights Law

BY MONIQUE L. DIXON

Linda Brown Thompson was in the third grade when her father, Reverend Oliver Brown, asked the NAACP Legal Defense and Educational Fund, Inc. (LDF) to represent him in a lawsuit against the Board of Education of Topeka, Kansas, in 1951. When Rev. Brown tried to enroll little Linda in an all-white elementary school four blocks from her home, school officials instructed her to attend the all-black school two miles away.

Using social science data that showed segregated schools damaged the mental and social development of both black and white students, LDF litigated and won several cases collectively known as *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), in which a unanimous U.S. Supreme Court held that racially segregated schools violated the 14th Amendment of the U.S. Constitution and ordered the desegregation of our nation's schools.

Brown Thompson died earlier this year at age 75. Her passing reminds us of the courageous work she undertook in her lifetime to ensure equity in education. Sadly, today, 64 years after the *Brown* decision, racial inequities in the United States' public school systems continue and are particularly persistent in the administration of school discipline.

Now more than ever, federal, state, and local educational agencies must address racial bias in school discipline through the vigorous enforcement of nondiscrimination laws and policies and the widespread implementation of promising and evidence-based programs in schools, such as restorative practices.

In response to massive resistance to the *Brown* decision, Prince Edward County, Virginia, closed its entire public school system to avoid desegregation. The U.S. Congress passed the Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion, sex or national origin in public accommodations, education, and employment. Title VI of the Act prohibits recipients of federal funds, including public school systems, from discriminating based on race, national origin and ethnicity in the delivery of programs and activities. Schools or districts that violate Title VI risk losing federal assistance unless they take corrective actions.

The U.S. Department of Justice (DOJ) and U.S. Department of Education (ED) are required to enforce Title VI and its implementing regulations by investigating complaints of school practices that intentionally discriminate or have an unwarranted discriminatory effect or disparate impact. Former President John F. Kennedy underscored the need for Title VI when he commented that:

“Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.”

U.S. Dep’t of Justice Civil Rights Div., Title VI Legal Manual, § II at 1, <https://www.justice.gov/crt/case-document/file/934826/download>

Evidence of racial discrimination in school discipline has been well documented for decades. In 1975, the Children’s Defense Fund released a report detailing its review of data collected by ED and in student surveys, which revealed that schools excessively and disproportionately suspended and expelled students of color. Most recently, the ED Office for Civil Rights released its *2015-16 Civil Rights Data Collection School Climate and Safety (2015-16 CRDC)* report that revealed persistent racial disparities in school discipline. For example, black male students represented 8 percent of the nation’s student enrollment but comprised 25 percent of students who received out-of-school suspensions and 23 percent of students expelled from school with or without educational services. Exclusionary discipline practices have resulted in negative consequences for students academically and socially. Students who have been suspended or expelled have been more likely to experience failing grades and drop out of school.

In response to mass school shootings over the past several decades, the number of police assigned to schools has increased, and police have been called upon to manage student misbehavior that should have been addressed by school staff. The increased presence of police in schools has contributed to widening racial disparities in school referrals to law enforcement. According to the *2015-16 CRDC* report, black students represented 15 percent of the student population, but 31 percent of students referred to law enforcement or arrested—a 16-percentage point disparity that was even higher than the 11-percentage point disparity of the previous school year.

While the *2015-16 CRDC* report did not indicate the reasons for school referrals to law enforcement and arrests, research and anecdotal experiences in communities of color have shown that many students, particularly students of color, have been arrested for minor school infractions. For example, in 2013, LDF filed an administrative complaint with the ED Office for Civil Rights that challenged the Bryan, Texas, Independent School District’s practice by school police to issue misdemeanor tickets to high school students for disorderly conduct, such as swearing. Although black students comprised only 21% of the school district’s population, 46 percent of them received misdemeanor tickets. Criminalizing typical student misbehavior has had serious consequences, such as increasing student anxiety, diminishing students’ faith in authority figures, and needless engagement of students in the juvenile justice system. Additionally, psychologists have noted that racial disparities in school discipline, including law enforcement referrals and arrests, were due, in part, to stereotyping or bias on the part of school staff, which is often unaddressed.

Parents and education advocates have long relied on the federal government to investigate and address allegations of racial discrimination in school discipline under Title VI. In 2016, the ED Office for Civil Rights resolved a complaint filed against the Lodi, California, Unified School District after finding that the district’s school discipline policy, while neutral on its face, violated Title VI because it had a disproportionate impact on black students and was not necessary to meet the school district’s educational goals. Additionally, this year, ED resolved a complaint against Durham, North Carolina, Public Schools, alleging that the school district’s school disciplinary practices, including referrals to law enforcement, discriminated against black students and students with disabilities.

Despite the clear need for continued enforcement of Title VI to address racial discrimination in school discipline, the Trump administration is taking steps to roll back ED’s enforcement activities. For example, in the aftermath of the mass school shooting in Parkland, Florida, the Administration established the Federal Commission on School Safety to study and recommend the repeal of the previous administration’s ‘Rethink School Discipline’ policies, including the Departments’ *2014 Joint Dear Colleague Letter on Nondiscriminatory Administration of School Discipline*. This school discipline guidance summarized school districts’ Title VI obligations and listed programs, such as restorative practices, which school districts could use to appropriately and fairly address student misbehavior. Repeal would send the message to school districts that DOJ and ED are not committed to enforcing Title VI.

LDF, parents, students and civil rights advocates across the country have submitted written and oral testimony to DOJ and ED opposing any efforts to repeal or revise the school discipline guidance. The federal government must continue to protect students by ensuring that school districts do not violate federal nondiscrimination laws. It must support funding for school staff, such as counselors and mental health professionals, who are trained to address problem behavior. Also, it should learn from school districts across the country that have adopted restorative practices, such as peer mediation and restorative circles, and have seen improvements in school climates and student academic achievement.

To be clear, if the administration of President Donald Trump repeals the *2014 Joint Dear Colleague Letter*, DOJ’s and ED’s legal obligation to enforce Title VI remains. Lawyers and education advocates who care about the civil rights of students must hold DOJ and ED accountable by filing administrative and federal court racial discrimination complaints on behalf of aggrieved public school students. The trailblazing work of Linda Brown Thompson demands nothing less.



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Redesigning School Discipline: Matching Our Beliefs with Our Practice

BY FRANK J. KROS

Many school discipline models are rooted in the theory of change known as punishment. The school sets rules and identifies the consequence (punishment) meted out when a student violates a rule. The approach is simple, clear and, if applied consistently, fair to all.

This discipline model has powerful assumptions, however, that are increasingly coming into question. The first is that all students think and behave the same way. Particularly in adolescence, this assumption is faulty at best, false at worst. The second assumption is that adults fairly apply these established rules and consequences to all groups of students.

Data, however, demonstrate that there are stunning disparities in how consequences are delivered to identified groups of students. Many communities and faculties now recognize that each student is unique in the behavior supports he/she needs and that punishment models have substantial limitations and risks. While our collective beliefs about school discipline are changing, our consequence-based school discipline practices remain entrenched.

The time is right to redesign school discipline so that our practices match our beliefs.

IT STARTS WITH BELIEFS

Designing any approach to helping young people develop healthy behavioral skills begins with identifying the fundamental beliefs one holds about the reasons youth engage in challenging behavior. This is because our beliefs as adults about why students behave the way they do shape our thinking and our thinking determines our systemic approach to student discipline (i.e., our own behavior).

One enduring belief about why youth behave the way they do is that students, especially adolescents, logically analyze social situations and intentionally choose to behave in a specific way because of that analysis. Because the student logically and intentionally chooses to use a problem behavior in a given situation, addressing that behavior with a punishment makes sense.

The student will not choose to use that behavior again in the same context because the youth knows that adults will respond with a negative consequence. Many school discipline systems are built on the fundamental belief that punishment is the best way to respond to troubling behavior.

An alternative belief about why youth behave the way they do has been succinctly summarized by Ross Greene: “Kids do well if they can, not if they want to.” (Greene, R. W. (2008). *Lost at school: Why our kids with behavioral challenges are falling through the cracks and how we can help them*. New York: Scribner). This belief sees problem behavior to be a result of a youth lacking cognitive skills, emotional skills and/or proper awareness of the social context.

In this approach, adults respond by providing the youth with social and emotional guidance coupled with concrete skills the youth can use in a variety of social contexts. From this viewpoint, if the student has

the appropriate behavioral skill and correctly identifies the social context, she/he will almost always choose to use the appropriate behavior. School discipline systems built on this foundation provide “responsive guidance” to equip and empower youth to learn from behavioral errors.

WHAT’S YOUR THEORY OF CHANGE?

Identifying one’s beliefs about youth behavior is critical for designing a comprehensive, ethical and ultimately successful school discipline model. It also prevents implementation of an approach that is simply inherited from past administrations and/or is a cobbled-together mosaic of numerous behavioral interventions without integration or alignment.

Most important, a school’s deliberate theory of change harnesses both the emotional commitment and technical expertise required to provide efficacious behavioral support to the unique students it serves. Without an explicit theory of change, schools may struggle with alignment, disparity, faculty engagement, and effectiveness. Redesign begins and ends with each school examining its beliefs about why students behave the way they do, where change is needed, and how to best bring about that change.

NEGATIVE CONSEQUENCES AS THE BEST PATH TO BEHAVIORAL CHANGE

The belief that youth consciously and intentionally choose behavior that violates expectations, norms or rules results in adopting the application of punishment as the theory of change. Punishment is any change implemented by adults following a specific behavior, the application of which reduces the likelihood that that behavior will occur again in the future (Skinner, B. F. (1953). *Science and human behavior*. New York: Macmillan.) There are two generally accepted types of punishment.

Positive punishment involves presenting an aversive stimulus after a behavior has occurred. For example, when a student talks out of turn in the middle of class, the teacher might scold the child for interrupting her. The second type of punishment is negative punishment¹. Negative punishment involves taking away a desirable stimulus after a behavior has occurred. For example, when the student from the previous example talks out again, the teacher tells the child that he will miss recess because of his misbehavior. More significant levels of punishment include suspension and expulsion.

Punishment has limitations. The most problematic is the disparate application of punishment based on race, gender and other forms of unconscious and conscious bias (Skiba, R. J., Horner, R. H., Chung, C., Karega Rausch, M., May, S. L., & Tobin, T. (2011)). Race is not neutral: A national investigation of African American and Latino disproportionality in school discipline. (*School Psychology Review*, 40(1), 85-107; U.S. Department of Education Office for Civil Rights. (2014). *Civil rights data collection data snapshot: School discipline*. <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.)

In addition, punishment appears to have a strong temporal requirement in its application. In other words, the application of the aversive stimulus or the removal of access to a pleasant stimulus must be immediate to be most effective (Martin, G., & Pear, J. (1999). *Behavior modification: What it is and how to do it*. Upper Saddle River, N.J: Prentice Hall). Punishment must also be consistently applied to the behavior each time it occurs. This can be very difficult to carry out in school environments in which multiple adults may have varied perceptions and tolerances for youth behavior.

Another limitation is that behavior changes resulting from punishment are often temporary. “Punished behavior is likely to reappear after the punitive consequences are withdrawn,” B.F. Skinner explained in his book, *About Behaviorism*. (Skinner, B. F. (1974). New York: Knopf) Punishment may also not generalize beyond the punisher.

Another prominent drawback of punishment is that it does not actually offer the youth any information about what would constitute more appropriate or desired behaviors: “The reason reward and punishment strategies haven’t helped is because they won’t teach your child the skills he’s lacking or solve the problems that are contributing to challenging episodes.” (Ross W. Greene, *The Explosive Child: A New Approach for Understanding and Parenting Easily Frustrated, Chronically Inflexible Children*) While negative consequences might teach a youth not to engage in certain actions, students often do not learn about what they should be doing instead.

Punishment as the primary theory of change also makes two major assumptions about youth that are questionable in their application. First, punishment theory assumes that youth logically analyze a social situation and consciously choose to behave in a way that they know is unacceptable or otherwise inappropriate. Second, it assumes that all youth use this “analyze and choose” process uniformly, i.e., without consideration of background, experience and development.

The trajectory of adolescent decision making does not always follow a linear path of analysis and logical choice. Adolescent development begins with massive changes in brain architecture and an influx of powerful, body-changing hormones. (Medina, J. (2018). *Attack of the teenage brain: understanding and supporting the weird and wonderful adolescent learner*. Alexandria, VA: ASCD Press)

These changes result in a brain that is exquisitely sensitive to social reward and social stress. Initially, the adolescent brain is anything but logical and is powerfully driven to seek the acceptance of peers and avoid the stresses of social exclusion, isolation, and shame labeling. Combined with the lack of life experience, the adolescent brain is quite poor at spontaneous decision making. Impulsivity rules during much of adolescence, not the logical analysis and considered choice assumed by the reasoned choice belief. Therefore, a punishment response may not work and may, in fact, erode a youth’s behavioral capacity, resilience, self-esteem and mental health.

Youth arrive at school with a variety of experiences, including the development of an emotional temperament, varied ability to attach to adults, and the relative sensitivity of the stress and reward systems. Youth are far from uniform in the brains they bring to the school house door. Youth with adverse childhood experiences have uniquely shaped behavioral wiring often characterized by suspicion, hypervigilance, and avoidance. The inflexibility that characterizes punishment can be not only ineffective for these youth, but also harmful and debilitating.

RESPONSIVE GUIDANCE AS THE BEST PATH TO BEHAVIORAL CHANGE

“Responsive guidance” is the term I use to refer to adult interventions that are rooted first in the assessment of student needs, responsive in their focus on meeting those needs, and dedicated to guiding and educating students to recognize social contexts and expanding concrete behavior skills.

A responsive guidance approach recognizes that youth present with a wide variety of needs based on environmental experiences. Thus, a commitment to assessment of student need is a primary pillar of responsive guidance. Responsive guidance also recognizes that the behavioral learning process requires students to learn how to accurately identify social contexts, develop a large array of concrete behavioral choices and select the right behavior in the right context, all under the guidance of a committed and caring adult.

Responsive guidance is an enormously flexible approach in that it allows for schools to select from a wide variety of evidence-based programs and innovative strategies to meet their students’ needs. Some of the more prominent programs include Restorative Justice Practices, Positive Behavior Interventions and Supports (PBIS), and Trauma-Informed Schools. (See <https://traumaawareschools.org/traumainschools>) Innovative practices with exciting results include Multi-Sensory De-escalation Rooms and Student Support Centers. (These practices are used in the Monarch Academy Public Charter Schools in Maryland, the Children’s Guild’s Nonpublic School programs in Baltimore and Prince George’s County, Maryland, and the Children’s Guild District of Columbia Public Charter School.)

WORTH THE EFFORT

In my work with schools across the country, I am convinced that education professionals believe that a responsive guidance model best meets the needs of most students.

School discipline systems, however, have been built for decades on the behavior-punishment model. In 19 U.S. states, corporal punishment in schools remains legal. (Broad, A.S. (April 21, 2018) Spanking still allowed in Georgia, US schools. *Atlanta Journal Constitution*. Retrieved from <https://www.ajc.com/news/local-education/spanking-still-allowed-georgia-schools/>)

Punishment practices can be so entrenched in how a school operates that redesigning for student need may initially appear a formidable task. Complicating matters is the fact that, in some cases, a simple rules-consequences structure works for some minor problem behaviors.

There is, however, tremendous power in redesigning school discipline systems that are consistent with the real beliefs held by the staff and community. An aligned, well-integrated system of assessment and targeted supports provide every student with what they need to succeed. The result is empowerment not judgment, inclusion not exclusion, and capacity not condescension. We believe it, the kids deserve it, and the effort is worth it.



Frank J. Kros, M.S.W., J.D., is a career child advocate who has served as a childcare worker, child abuse investigator, children’s home administrator, consultant, college professor, attorney, writer and speaker. He currently serves as president of The Transformation Education Institute, executive vice president of The Children’s Guild, and director of the National At-Risk Education Network (NAREN).

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