

POLICY *focus*

RECIPES FOR RATIONAL GOVERNMENT

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Unintended Consequences of Restorative Justice

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Introduction

Much ink is spilled on academic achievement in our education system. But more rudimentary even than what students learn is the fundamental promise to parents that when they send their children to school, their children will be safe.

Regrettably, for millions of American families, even this basic guarantee is violated. Polling shows that as many as one in three parents **fears** for their child's safety at school.

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In the aftermath of the tragic shooting in Parkland, Florida, that claimed 17 lives, the nation descended into its usual debate over guns. But an important underlying factor in Parkland went mostly unexamined: how was the shooter, who had brought weapons to school and made threats on multiple occasions—criminal acts—able to keep a clean record with which to pass a background check to buy guns in the first place?

Few parents in America may have heard the phrase “**restorative justice**,” but this new fad in school discipline is sweeping through districts, replacing more traditional practices like suspension, expulsion, and referral to law enforcement with a focus on “talking through” serious infractions and even criminal acts on campus.

Restorative justice is a well-intentioned experiment, and it may sound compassionate, but early results have given parents serious reason to doubt its effectiveness and safety. Only empowering parents with educational freedom will restore their ability to decide whether their children will be the subjects of experimental discipline projects, sometimes jeopardizing their safety.

Why You Should Care

No student should ever be forced to attend an unsafe school. While districts should be free to experiment with their discipline policies, parents' permission is a necessity when those policies have the potential for student harm. Here are some problems with restorative justice:

- **Lack of Parental Consent:** Until recently, school districts were encouraged, or even forced, to adopt these policies by the federal government. Parents and local communities often get the run-around when restorative justice policies are implemented through investigation agreement or administrative policy, without the consent or even knowledge of the school board or PTA groups.
- **Decreased Academic Achievement:** Discipline leniency is associated with drops in academic achievement, particularly for low-income students and students of color, who often attend schools with the highest rates of violent incidents.
- **Decreased Safety:** Student and teacher surveys both report lower levels of safety in schools after implementing discipline reform, and overwhelmingly, teachers do not believe that restorative justice strategies work to curb disorderly conduct and violence. Troublingly, restorative justice policies and incentives that do not punish or report seriously violent behavior have been connected to a number of high-profile tragedies, including the school shooting in Parkland, Florida.

Background

What is Restorative Justice?

Restorative justice (RJ) is discipline technique designed to resolve conflict or bad behavior by repairing the relationship between the victim and the aggressor, sometimes involving a sit-down about “root causes.” This process usually takes the place of more traditional consequences, like suspension, expulsion, or referral to law enforcement.

While a few districts—including Broward County, Florida, which houses Parkland—led the way by implementing RJ on their own, many more were coerced by Obama-era guidance (issued without a formal rulemaking in the form of a “Dear Colleague” letter) from the Department of Education (DOEd) in 2014, followed by federal **civil rights investigations** into districts based on racial disparities in discipline numbers.

Prior to 2014, the Department would investigate individual allegations of discrimination. Then the Department flipped this procedure on its head, instead assuming that if the overall discipline numbers showed racial disparities, the cause was discrimination.

Investigations across America, including in Los Angeles, Philadelphia, New York, Seattle and more, resulted with the conclusion that district policies—even if facially neutral and applied without regard to race—ran afoul of the Department’s newly-defined interpretation of the law. Districts saw the writing on the wall, and many rushed to replace their discipline structures with RJ policies.

In pushing RJ on hundreds of school districts and millions of students, the Obama administration had good intentions; Secretary of Education Arne Duncan and others wanted to ensure that students of color were being treated fairly and to reduce the so-called “school to prison pipeline.” But the best of intentions sometimes result in unintended, and in this case tragic, consequences.

Unintended Consequences of Restorative Justice on Academic Performance

Student surveys of school climate and safety, where available, can give us insight into how school culture and the lives of students change after traditional discipline is swept aside in favor of RJ policies. Suspension rates might go down in official reports, but students often report that they are less likely to feel safe and respected at school. And, contra the intentions of discipline reformers, those negative consequences were actually **more severe** at schools that serve low-income students and students of color, which deal with serious infractions more frequently than suburban schools.

When disruptive students are not removed from the classroom, it’s most often their fellow students who suffer as teachers spend more time controlling an unruly classroom and less time actually teaching. “A significant portion of the achievement gap is actually a time-on-task gap, and much of that time-on-task gap is caused by disruptive classroom behavior,” **says** Robert Pondiscio, advisor to a high-performing charter network and a classroom teacher. According to a poll from the American Federation of Teachers, nearly four out of ten teachers report losing 2-4+ hours a week of instruction time to disruptive behavior, and those losses are worse in urban schools.

This has serious consequences for student academic achievement.

In Philadelphia, math and reading achievement dropped after RJ-style discipline policies were implemented. In California, student achievement in math dropped from the 50th percentile to the 32nd after implementation.

Schools in Los Angeles that implemented suspension bans lost an average of one fifth of a year of learning. In schools that, prior to the reforms, had more than 10 suspensions annually—schools already struggling with discipline problems—students lost a full third of a year of learning. A study of Pittsburgh’s RJ reforms not only found that academic achievement dropped in response, but also that the impact of those falling scores disproportionately hit minority students. The average black student scoring in the 50th percentile in a school that changed its policies saw his scores drop to the 44th percentile as a **result**.

Student Safety

Beyond these unacceptable academic losses, students across the country also reported feeling less safe after discipline changes were made. Not every school gathers school climate data, but in those that do, the data tell a story of escalating fighting, bullying, fear, and violence.

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In New York City, after Mayor DeBlasio required an application to a central office for nonviolent suspensions, student surveys saw an increase in fights, disrespect, drug and gang activity.

On the other side of the country, students in Reno and Seattle, where an increased proportion of students were attending schools with RJ-style policies, said they felt unsafe and that teachers were not protecting them from bullies.

Unfortunately, the lax policies at times have had the exact opposite of their intended effect. Despite the attempt to drive down suspensions, sometimes school climates get so out of control, more suspensions and expulsions are actually necessary to combat increased levels of violence. In Philadelphia, for example, African-American students ended up spending *more* time out of school after implementation because of the rise in “serious” incidents.

Teacher Safety

National teachers’ unions officially endorse RJ discipline, but **reports** from teachers on the ground, usually conducted by local union chapters, tell a different story than the one more-politically active national organizations are pushing.

In Syracuse, two thirds of teachers worry about their own safety on campus. In Jackson, 65 percent reported that classrooms and hallways feel “out of control,” and in Santa Ana, the same proportion say that the implemented reforms flat-out “don’t work.”

By comparison, traditional discipline practices get much more support from teachers. In Oklahoma City, 65 percent of teachers say more suspensions would help school safety and climate. “We had more fights in the first nine weeks than we had the last five years,” reported one teacher after RJ reforms.

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Teachers are also calling out administrators’ creative discipline metrics. In Buffalo, four-fifths of teachers say the administration under-reports misbehavior, making “numbers” look good while the on-the-ground situation deteriorates.

Tragedies

Sometimes, the general climate of disorder that’s produced by RJ policies has tragic results. In Broward County, Florida, site of the deadly Parkland school shooting in 2018, RJ policies **contributed** to the shooter’s ability to stay off law enforcement’s radar. The shooter had previously brought weapons to school and made criminal threats to his fellow students, but instead of referral to law enforcement he was redirected into the PROMISE program, the district’s RJ alternative. A **fellow student** he had once injured in the cafeteria was even brought in to tutor him as part of the RJ method, where he subjected her to additional verbal abuse and sexual harassment.

The Broward County experiment with discipline, which failed so spectacularly and tragically to protect students, was hailed as the model for the policies encouraged by the 2014 DOEd guidance.

Other **violent consequences** have not made national headlines. In San Diego, a teacher's aide caught a developmentally disabled boy raping his classmate, who was severely disabled and barely verbal, in the bathroom. The felony was downgraded to an "obscene act"—a category that did not require expulsion—and the victim's mother didn't even find out the extent of the crime until a full year later.

In New York, a student **stabbed** two of his classmates, killing one and leaving the other with serious injuries requiring hospitalization. A school safety officer later told *The New York Post* that it was no longer the policy to document students bringing box cutters, razor blades, and other weapons to school in juvenile criminal reports. In some cases, the weapons were even returned to the students to avoid reporting the incident by administrators fearing "bad numbers."

Solution: Information and Choice for Parents

Today, incentives are fundamentally misaligned in the education system, in which serious policy decisions like discipline reform can be made by unelected administrators, or even by federal bureaucrats.

Parents too often become aware of the consequences of RJ discipline reforms before they're aware of the reforms' existence, and the financial reality for many families is that removing their children from unsafe schools is not a possibility.

Sometimes even school boards are not informed about DOE investigations, let alone the families of the students impacted. Robbed democratic accountability and even pertinent information about their own children, how are parents supposed to keep their families safe?

In some states, school choice programs—which enable parents to take a portion of the state dollars spent on their child's education and apply them to a chosen educational environment—are granting parents the ability to choose safer schools. Four rigorous **studies** have found positive effects of choice on school safety. Parents are more likely to report that their children are in "very safe" schools, lower levels of safety problems, and to "strongly agree" that their children are safe at school.

Florida has even applied the school choice concept directly to the problem of school safety, providing **scholarships** to students who are the victims of bullying, harassment, or violence at school that allow them to move to a different, safer environment.

There is evidence that RJ discipline comes with harmful unintended consequences. At minimum, parents have the right to be informed about policies that can seriously impact their children's safety. But in order to ensure real policy change, parents need control over the dollars invested in their children's education. This would force the system to take their voices more seriously than those of federal bureaucrats, and would result in safer, better schools for all.

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What You Can Do

Get Informed

Learn more about the dangers of restorative justice policies and school safety. Visit:

- Max Eden, *The 74* (School safety maps for **New York, Philadelphia, and Los Angeles**)
- South Florida Sun Sentinel's Pulitzer Prize-winning **reporting** on the Parkland shooting
- Andrew Pollack, *The Wall Street Journal*

Talk to Your Friends

Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved.

Become a Leader in the Community

Get a group together each month to talk about a political/policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. Go to rallies. Better yet, organize rallies! A few motivated people can change the world.

Remain Engaged Politically

Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

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