KEEPING OUR KIDS IN SCHOOL AND OUT OF COURT: ROOTING OUT SCHOOL SUSPENSION HEARINGS AND A NEW ALTERNATIVE

Rachel Klein*

I. INTRODUCTION

In today’s society, we often find ourselves focusing on reconstructing and reforming different programs for ourselves, our communities, and our nation as a whole. Education has become a focal point of our society, and some families focus solely on the public school systems when buying a house because a strong education is the foundation that allows one the opportunity to be successful in life. However, one of the most commonplace issues that deteriorates this educational foundation is student suspension.

Every student has a right to an equal education, and when a student is suspended or expelled from school, they are deprived of the basic education that they are guaranteed. In President Barack Obama’s 2014 State of the Union Address, he concluded his speech by saying:

The America we want for our kids . . . [w]here honest work is plentiful and communities are strong; where prosperity is widely shared . . . [n]one of it is easy. But if we work together; if we summon what is best in us, with our feet planted firmly in today but our eyes cast towards tomorrow—I know it’s within our reach.1

This raises the question of whether the implementation of strict “zero-tolerance rules” and the high number of school suspensions is the America that we want for our children.2 Under such rigid

* Articles Editor, Cardozo Journal for Conflict Resolution; J.D. Candidate, 2016, Benjamin N. Cardozo School of Law. The author would like to thank her husband, parents, in-laws, and siblings, especially Dr. Steven Klein, for their love, support, and encouragement.


2 See Nancy Heitzeg, Education or Incarceration, Zero Tolerance Policies And The School To Prison Pipeline, FORUM ON PUB. POL’Y, June 2009, at 1, 8 (“While there is no official definition of the term zero tolerance, generally the term means that a harsh predefined mandatory consequence is applied to a violation of school rules without regard to the seriousness of the behavior, mitigating circumstances, or the situational context.”); see also APA Zero Tolerance Task Force, Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and
policies, students who throw snowballs\(^3\) or peanuts,\(^4\) share cough drops,\(^5\) or forget to wear a tie to school\(^6\) can be removed from class. They may also be required to partake in school suspension hearings, which can lead to suspension from school.

Students who are suspended from school often interpret it as a punishment and therefore distance themselves from their education.\(^7\) Instead of prompting them to improve their behavior, these disciplinary actions have “[l]ittle, if any, positive impact” on their conduct.\(^8\) The more suspensions they receive, the more distanced they feel from school, and the more likely they are to drop out of school altogether.\(^9\) Such affected students often end up going to prison by following the school-to-prison pipeline\(^10\) or they resort to an education on the streets, such as joining gangs and doing drugs.\(^11\) These strict and harsh measures too often stunt a student’s ability to develop their educations to their fullest potentials.

Recommendations, 63 AM. PSYCHOLOGIST 9, 852–62, 854 (2008) (noting that it is difficult to argue that zero tolerance creates a positive school climate when it is associate with a negative context) [hereinafter Zero Tolerance Task Force].


4 Simone Marie Freeman, Upholding Students’ Due Process Rights: Why Students Are In Need Of Better Representation At, And Alternatives To, School Suspension Hearings, 45 FAM. CT. REV. 638 (2007).


9 Marsha Weissman, The School to Prison Pipeline and Criminalizing Youth: Costs, Consequences, and Alternatives, CHILD WELFARE LEAGUE AML; The Link Connecting Juv. Just. and Child Welfare, Vol. 6, No. 4, Spring 2008, at 6; see also Ending The School-To-Prison Pipeline before the Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights of the U.S. Senate, 112th Cong. 848 (2012) (statement of Laurel G. Bellows, President of the American Bar Ass’n) (stating that children who drop out of school are 3.5 times more likely to drop out. 82% of adult prisoners have not finished high school) [hereinafter Bellows].


It is becoming more and more apparent that discipline settled through school suspension hearings often creates even more opposition and hostility\textsuperscript{12} to the extent that it can breed resentment, leading these students to believe that they will spend the rest of their lives in the criminal justice system.\textsuperscript{13} Suspension can also make students feel that they are consistently targeted by their teachers; as one student stated, “[o]nce you’ve done one bad thing then you have got a name for yourself and then teachers look out for you and wait for you to put a foot wrong and then like pounce [on you].”\textsuperscript{14}

Many argue that school suspensions are largely inadequate because they do not teach students more effective ways to resolve conflict. Students get into trouble for a variety of reasons, many of which are not properly addressed by school suspension. These problems may stem from the home\textsuperscript{15} or come from mental conditions that have never been dealt with before.\textsuperscript{16} The disciplinary practices that are currently in place are not working and do not yield positive results for these students, but with the creation of a new technique, students will be provided with the motivation, the purpose, and the help that they need in order to succeed in school and in life.

This Note proposes an alternative model that can help a child improve his behavior in school, without removing the student from class. Section I of this Note examines the historical and legal context governing school suspension as a whole, specifically making reference to and analyzing New York State school suspension practices. Section II analyzes the effectiveness of school suspension and the methods used in New York to fix this system. In Section III, this Note proposes the use of arbitration as a superior mode of resolution and explains why Board of Education Arbitration is an effective model that helps students find the root of their problem by providing them with positive reinforcement that will lead them

\textsuperscript{12} See generally Freeman, supra note 4.

\textsuperscript{13} Id.

\textsuperscript{14} Rosemary Webb & Graham Vulliamy, Multi-Agency Approach to Reducing Disaffection and Exclusions from School, DEPT. EDUC. & SKILLS (2004).

\textsuperscript{15} See, e.g., Nancy Ginsburg, Symposium, Reimagining The Role Of Defense Counsel For Adolescents In The Adult Criminal Court System: Bringing The Community And Policymakers Into The Process To Achieve The Goals Of Gideon, 35 CARDOZO L. REV. 1117 (2014) (noting that some students often run away from abusive homes, or have been sexually abused by their parents).

\textsuperscript{16} Kent Gordon, Suspension Doesn’t Work; Parents Fear School Cuts Means Special Help Isn’t Available When Needed; Behavioural Problems, EDMONTON J., May 19, 1999, at A9.
to understand their actions and prevent them from becoming participants in the school-to-prison pipeline.

If this alternative is implemented, there is a possibility that this method of treatment will remove suspension and suspension hearings from school, which will allow students to remain in the classroom and off the streets. While this analysis is tailored to New York State law, advocates nationwide will be able to apply many of the principles and recommendations discussed herein.

II. BACKGROUND

A. Historical and Legal Context

In the United States, education is primarily a state and local responsibility.\textsuperscript{17} States and local governments began to implement school discipline policies such as suspension and expulsion in the 1980s as an approach to teach children that teachers and administrators would not tolerate certain behaviors, regardless of whether the infractions were major or minor.\textsuperscript{18} The Federal Government followed suit by implementing strict discipline policies for students such as the 1994 Gun-Free Schools Act, which required schools to suspend students who brought firearms to school for one year or else the school could lose all of its federal funding.\textsuperscript{19} Once the Gun-Free Schools Act was created, states applied similar policies, such as the zero-tolerance policy, extending it to students who are caught with alcohol, drugs, or using profane language.\textsuperscript{20}

With these strict policies in place, students continue to get suspended for minor infractions.\textsuperscript{21} Although the policy was initially created to increase discipline in schools, the American Psychologi-
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cal Association Task Force on Zero Tolerance found that the zero-tolerance policies that were enacted are ineffective.\textsuperscript{22} This is evident from the fact that instead of improving behavior, school violence and suspension numbers have remained stable since the 1980s.\textsuperscript{23} The American Bar Association also opposes these zero-tolerance rules\textsuperscript{24} and the United States Department of Education stated in a report that the zero-tolerance rules might cause a \textit{greater probability} of misbehavior, and doubts that the zero-tolerance rules have been or will be effective in the future.\textsuperscript{25}

While the zero-tolerance policy has increased the intensity of consequences for major offenses, many school administrators do not know how to implement these rules.\textsuperscript{26} One study in Michigan concluded that Administrators do not actually understand the zero-tolerance policies well and rely predominantly on the individual student’s characteristics.\textsuperscript{27} These schools look at the specific student’s age, whether the student has acted out before, and whether the student would have parental supervision at home before making a decision about how best to implement the rules.\textsuperscript{28} This shows that the zero-tolerance policy varies between states and schools and does not have clear and precise rules causing an improper balance between punishments.

The role of a school is to provide a positive support system for students by offering them a positive environment and by allowing them to be creative and think clearly.\textsuperscript{29} Aside from teaching, teachers and administrators are responsible for addressing problems and behaviors that may cause a disruption in the classrooms or hallways. While many teachers adopt their own zero-tolerance policies and believe that disruptive students should not be in class, there are often times when the “[t]roublemaker and the

\textsuperscript{22} Ward, \textit{supra} note 3.

\textsuperscript{23} \textit{Id}.

\textsuperscript{24} Bellows, \textit{supra} note 9, at 3 (noting that “exclusion as a means of punishment is ineffective in helping students change problematic behavior or in making schools safer.”).

\textsuperscript{25} Ward, \textit{supra} note 3 (emphasis added).


\textsuperscript{28} \textit{Id}.

kid who wants to learn just might be the same student.” However, these teachers fail to notice that their students are acting out because they have learning disabilities or do not understand the material. Further, teachers spend more time disciplining their students than actually teaching them, causing some students to lose out on their education. As a solution in New York, disruptive students are often taken out of class and sent to partake in intervention and prevention, such as meeting with school guidance as well as taking part in conflict resolution and peer mediation courses. These strategies can help the student resolve behavioral issues that may arise both in and out of class.

B. New York State School Suspension Practices

While the right to education does not stem from the federal constitution, states have compelling interests in educating children in order to prepare them effectively for the future. Despite the lack of constitutional requirement, students often feel that their constitutional rights in school and in the classroom are at times violated. In Goss v. Lopez, a class action ensued when students claimed that Due Process Rights were infringed upon when they were suspended from school without reason. The Supreme Court addressed the issue of whether students who were subjected to school suspensions were entitled to due process protections and held that even for short period suspensions, students are entitled to due process. The Court, quoting Tinker v. Des Moines School District, explained that students do not “shed their constitutional rights” at the school door and are therefore protected by the 14th

30 Sandy Banks, Troubled Youths Deserve More Effective Discipline than Suspension, L.A. TIMES, May 17, 2013, at A2. Unsure about how to pincite because its an online news article
31 Zero Tolerance Task Force, supra note 2.
32 See generally Lawrence T. Kajs et al., Commentary, The Use Of The Peer Mediation Program To Address Peer-to-Peer Student Conflict In Schools: A Case Study, 146 EDUC. LAW REP. 605 (2002); see also Matthew D. Decker, Commentary, Unexcused Absence: A Review Of The Need, Costs, And (Lack Of) State Support For Peer Mediation Programs In U.S. Schools, 2009 J. DISP. RESOL. 485 (2009).
33 See generally Logiodice v. Trustees of Main Cent. Inst., 296 F.3d 22 (1st Cir. 2002); see also Immediato v. Rye Neck Sch. Dist., 73 F.3d 454 (2d Cir. 1996).
34 See generally Freeman, supra note 4.
36 Id.
37 See id. at 585–87.
Amendment.38 At the very least, students are to be afforded some type of notice and hearing so that their points of view can be heard.39

Each state has its own school suspension regulations and each district has the power to implement rules and regulations from the state legislature.40 In particular, in New York, a student can be suspended only if he or she violated the New York City Department of Education’s Discipline Code.41 If a student violates the Code, his school can choose from a range of designated responses depending on the student’s age and the alleged offense. These responses range from a warning, to a yearlong suspension, and possibly expulsion.42

Within New York, the New York State Chancellor’s Regulation A-443 contains disciplinary procedures for all students and explains the penalties that students can get for their poor actions in school.43 If at any time a student misbehaves or is believed to have committed a crime, a parent or guardian must be contacted within twenty-four hours of the offense.44 One type of available suspension, known as a principal’s suspension, lasts no more than five school days.45 Under this suspension, the principal must schedule a conference with the student’s parent or guardian within five days of the parent receiving a suspension letter, which details the reason for the child’s suspension.46 At the meeting, the principal is required to tell the student what he is being accused of and the student has the ability to provide evidence in his defense. A principal’s suspension allows the student the opportunity to tell his

38 Id. at 574 (quoting Tinker v. De Moin Sch. Dist., 393 U.S. 503, 506 (1969)).
39 Id.
40 Brent E. Troyan, The Silent Treatment: Perpetual In-School Suspension and the Education rights of Students, 81 TEX. L. REV. 1637, 1639.
41 ADVOCATES FOR CHILDREN OF NEW YORK, AFC’S GUIDE TO SCHOOL SUSPENSIONS (Aug. 2012) [hereinafter GUIDE TO SCHOOL SUSPENSIONS], http://www.advocatesforchildren.org/sites/default/files/library/suspension_guide.pdf?pt=1; see also CITYWIDE STANDARDS OF INTERVENTION AND DISCIPLINE MEASURES, supra note 29 (for a list of infractions).
42 Id.
44 Goss v. Lopez, 419 U.S. 565, 567 (1975); see also Killion v. Franklin Reg’l Sch. Dist., 136 F. Supp. 2d 446 (W.D. Pa. 2001) (holding that a school’s failure to provide student and parents with written notification of suspension and the reasons for suspension prior to informal hearing was a violation of student’s due process rights).
46 Student Discipline Procedure, supra note 43.
side of the story and allows the student to challenge the suspension.\footnote{Id.} This conference also allows the principal and parent to work together to address the student’s behavior, creating a positive approach that will deter the student from committing such misconduct again.\footnote{Id.}

Another type of suspension used in New York, Superintendent’s suspension, is often sought when a child commits a more serious offense.\footnote{See generally N.Y.C. CHILDREN’S SERVICES DISCIPLINE/SUSPENSIONS, supra note 45.} This suspension can last from six days to up to one year,\footnote{Student Discipline Procedure, supra note 43.} but the length of suspension is not finalized until a formal hearing is held.\footnote{N.Y.C. School Discipline Policy–Chancellor’s Regulation A-443 in a Nutshell, ADVOC. FOR CHILD., http://www.advocatesforchildren.org/sites/default/files/library/discipline_policy_in_a_nutshell.pdf?pt=1 (last visited Feb. 12, 2015).} At the School Suspension Hearing, a Hearing Officer makes the decision of whether the child has committed the alleged action, and will decide the length and type of suspension that is appropriate.\footnote{Id.} Similar to a court trial, both the school and student may bring witnesses to the Hearing.\footnote{Id.} Opening statements are made and both the student and the school will have the opportunity to make their claims. During the Dispositional Phase, in which the hearing officer determines how long the suspension should last if the charges are sustained, the school will first request a certain amount of time that the student should be suspended from school by providing the Hearing Officer with “proof” such as grades and attendance records, which can greatly effect the type and duration of suspension.\footnote{GUIDE TO SCHOOL SUSPENSIONS, supra note 41.} If the charges are sustained, the Hearing Officer will decide an appropriate consequence, but if the charges are dismissed, the child is required to return to school immediately.\footnote{Id.}

While schools act as a social community for students, in which students learn, grow, and make friends, research shows that as a result of school suspensions, students begin to shy away from school.\footnote{Bellows, supra note 9.} Rather than mitigating the problem, school suspension hearings and out-of-school suspensions often make a student’s problems with his peers or teachers much worse upon the child’s...
return to school. When students do return to school, many begin to fall behind in class, leading to poor grades, more school absences, and psychological disorders. Students can begin to lose any positive connection to school, begin to roam the streets, causing them to commit further acts of delinquency rather than learning from their mistakes and returning to the classroom.

A solution must be proposed to fix these problems that keep students from this toxic cycle and can provide the proper intervention and rehabilitation to those students in need.

III. DISCUSSION

A. The Believers and Skeptics of School Suspension

School suspension has become a hotly debated topic since most schools adopted zero-tolerance policies in the early 1990s. As a result of this policy, students not only get suspended for serious offenses such as fighting, bullying, and destroying school property, but also get suspended for minor infractions such as wearing a hat in class and chewing gum. While student suspensions have declined slightly between 2011 and 2012, there have still been forty percent more suspensions in 2012 than there were in 2006.

Both supporters and opponents of school suspension have compelling arguments as to whether or not there should be school suspensions. Students are aware of the effects of School Suspension Hearings and understand that if a peer or administrator believes that they did something wrong, they will be required to take part in these hearings. Those who believe in school suspension feel that students have a voice at these hearings and are privileged

57 Freeman, supra note 4.
58 See Ginsburg, supra note 15; see also APA Zero Tolerance Task Force, supra note 2 (“Zero tolerance rules may create, enhance or accelerate negative mental health outcomes for youth by creating increases in student alienation, anxiety, rejection, and breaking of healthy adult bonds.”).
60 ZERO TOLERANCE, ZERO EVIDENCE, supra note 18.
61 Id.
63 Troyan, supra note 40 (describing that students learn that there are consequences for their actions and as a result of their misconduct, they will be punished).
to bring their own witnesses.64 Those students who did not do anything wrong will be able to prove that the school made an improper assessment and will not get punished for the alleged action.65 These proponents also feel that students who are a disruption to their class cause their peers to lose out on their education. By removing the students who interfere with class learning, the other students will be able to get the education that they need, want, and deserve.66 Likewise, teachers will be able to spend more time teaching and less time reprimanding students.67

However, research indicates that school suspension is an ineffective way of solving these issues.68 Increased levels of out-of-school suspension are correlated to a subpar school climate, a lower level of overall achievement, and high drop out rates.69 Those that oppose school suspension feel that when a student is so suspended from school, they lose all the benefits that school guarantees them.70 The ability to spend time with peers and adults is critical to every student’s growth, and a student who is removed from the classroom loses those peer interactions and adult relationships that are offered to him in school on a day-to-day basis.71 Furthermore, students who are removed from school might not have adult or parental supervision during the day, which they would normally have in school.72

Advocates to change zero tolerance rules and suspension practices believe that when students are suspended, they suffer emotional problems and begin to feel “[w]orried, anxious, as if they were treated unjustly, hurt, unheard, frustrated, blamed, targeted, annoyed, rebellious, depressed, shocked, and sad.”73 Their feelings

64 Banks, supra note 30 (Ms. LaMotte, a proponent of school suspension exclaimed, “[w]e love you . . . [b]ut there’s a path you have to walk”).
65 See generally Alabama & Coushatta Trib. of Tex. v. Trib. of Big Sandy Indep. Sch. Dist., 817 F. Supp. 1319 (E.D. Tex. 1993) (a student was allowed to return to classes because there was no evidence that the student or parent received notice of suspension).
66 Id.; see also Zero Tolerance Task Force, supra note 2.
67 Id.; but see Bellows, supra note 9, at 5 (“[w]e urge that in place of the criminalization of school-related conduct, schools should treat student behavior as an education issue and provide training to school personnel on a variety of topics, including a child and adolescent emotional and cognitive development and culturally responsive discipline.”).
68 Freeman, supra note 4.
69 Banks, supra note 30.
70 Ward, supra note 3.
71 Emily Scheie, Are School Suspensions Too Harsh and Over-used?, WORLD NEWS GROUP (Aug. 6, 2014), http://www.worldmag.com/2014/08/are_school_suspensions_too_harsh_and_over_used; see also Ward, supra note 3.
72 Id.
73 Michail, supra note 7, at 3.
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of isolation can cause them to fall behind in class.\footnote{Henri E. Cauvin, \textit{Help for District’s at risk students}, \textit{WASH. POST}, Nov. 30, 2010, at B.1.} Furthermore, opponents to school suspension believe that “[s]uspension has appropriately been termed the school-to-prison pipeline, as nearly all students that find their way into the criminal justice system have a history of suspension on their record” because students who are suspended feel that they are not wanted in school, ultimately causing them to drop out.\footnote{Talisha Lee et al., \textit{High Suspension Schools and Dropout Rates for Black and White Students}, \textit{43 EDUC. & TREATMENT CHILD.} 2, 169 (2011) (“[i]f a student had a prior history of suspension, it increased the likelihood of the student dropping out by 78%.”); see also Freeman, \textit{supra} note 4 (noting that almost all students that end up in the criminal justice system have been suspended from school).}

Attorney General Eric Holder stated at the Department of Justice and Department of Education School Discipline Guidance Rollout, “Effective discipline is, and always will be, a necessity. But a routine school discipline infraction should land a student in a principal’s office—\textit{not} in a police precinct” or out of school altogether.\footnote{Attorney General Eric Holder, Remarks at the Department of Justice and Department of Education School Discipline Guidance Rollout at Frederick Douglass High School, (Jan. 8, 2014), http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-department-justice-and-department-education.} It is imperative that students learn from their mistakes instead of getting punished for their actions.

While school suspension does, in fact, appear to benefit the remaining students in the classroom by allowing them to learn in a structured classroom setting without disruption, suspension does not address the roots of the problems behind the suspended students’ behaviors.\footnote{Michail, \textit{supra} note 7.} It also does not teach students how to improve their behaviors or stop them from repeating these acts in the future.\footnote{Ward, \textit{supra} note 3.} The overreliance on school suspension is a predictor that more and more students will drop out of school.\footnote{Deborah Gordon Klehr, \textit{Addressing The Unintended Consequences of No Child Left Behind and Zero Tolerance: Better Strategies For Safe Schools And Successful Students}, 16 GEO. J. POVERTY L. & POL’Y 585, 596 (2009); see also \textit{ADDRESSING THE OUT-OF-SCHOOL SUSPENSION CRISIS: A POLICY GUIDE FOR SCHOOL BOARD MEMBERS} (2013), http://www.nsba.org/sites/default/files/0413NSBA-Out-Of-School-Suspension-School-Board-Policy-Guide.pdf.} Instead of relying on suspension, schools should focus on rehabilitative strategies for preventing students from being removed from their classrooms and schools altogether.
B. Efforts in New York to Fix This System

The United States Department of Education (“DOE”) believes that a student’s removal from the classroom should be the last resort, as research shows that trying to maintain order in school through suspension does not actually improve school safety or learning in school, making it ineffective.\(^{80}\) As more and more students are being suspended, school administrators are beginning to develop conflict resolution strategies in order to solve issues thus avoiding school suspension hearings altogether.

In 2011, the DOE and the Department of Justice launched the Supportive School Discipline Initiative (“SSDI”) to support the use of school discipline practices that foster safe and productive learning environments while keeping students in school and avoiding the school-to-prison pipeline.\(^{81}\) In order to focus on the suspension and school-to-prison pipeline issues, the American Institute for Research (“AIR”) began to conduct research and build support for this program.\(^{82}\) As part of their study, they created youth roundtable sessions, in which those affected by suspension could speak in an open forum about the distrust they felt toward their schools and administrators.\(^{83}\) This new concept allowed educators to hear from the perspective of students who have gone through the school suspension process.\(^{84}\)

To date, SSDI has continued to spearhead efforts to improve education and rehabilitation programs. However, many schools still resort to suspension and expulsion as a disciplinary action because schools are more concerned about maintaining safety in schools and want students to understand that certain behaviors will not be tolerated.\(^{85}\)

Schools have made the effort to avoid suspending students from school entirely. They have created programs such as lunch suspension,\(^{86}\) after school community service,\(^{87}\) or requiring par-

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\(^{80}\) Freeman, supra note 4.

\(^{81}\) Roundtable, supra note 6.

\(^{82}\) Id. (the study included nineteen youths, most who had been at least suspended or expelled from school once. Ages of these students ranged from sixteen to twenty-three and came from diverse racial and ethnic backgrounds).

\(^{83}\) Id.

\(^{84}\) Id.


\(^{86}\) Gordon, supra note 16.
ents to join their children in class. Peer mediation has also become a new alternative, in which students try to resolve matters amongst themselves. With peer mediation, students work together and work out their differences “beyond the conflict so as to get along with others.” This process promotes communication, understanding other people’s feelings, and allows students not only to accept responsibility for their actions, but provides students with the ability to handle future conflicts. However some critics feel that this level of mediation is unsuccessful due to the students’ young age as well as their intellectual and emotional immaturity. These students would also prefer to talk to a friend about the situation or avoiding the situation entirely rather than actually solving the problem.

As students continue to be suspended, there must be an alternative to the suspension hearing process. Every student has his own story and administrators should be aware of a student’s grades, family history, and efforts before taking a student out of class and out of school. As one boy stated during his AIR interview, “You don’t know what I have been through before I was in school, and I still made it here, and I’m doing my work, and you still want to find some way to suspend me.” Only once schools

88 Robinett, supra note 8.
89 Jon M. Philipson, The Kids Are Not All Right: Mandating Peer Mediation As A Proactive Anti-Bullying Measure In Schools, 14 CARDOZO J. CONFLICT RESOL. 81, 83–88 (2012) (“Scholars argue that peer mediation, a student–centered approach, is effective because it empowers children to engage in problem solving without a mandate from an adult or a limitation by an adult regarding how the children are to communicate with each other.”).
90 Kajs, supra note 32.
93 Fetzer, supra note 91.
94 Roundtable, supra note 6, at 6.
fully evaluate all relevant factors pertaining to a student’s behavior can they take effective and appropriate action.

IV. PROPOSAL

A. The ADR Method: Because There’s Always a Reason

Black’s Law Dictionary defines arbitration as “the investigation and determination of a matter or matters of difference between contending parties, by one or more unofficial persons, chosen by the parties.” 95 This method can provide a safe environment for students and administrators to work through sensitive issues in an open and honest way.

Disruptive students who are forced to go to school suspension hearings often feel as if they need to defend themselves because there is no one there to represent or support them. 96 But before punishing these students, it is important for educators to better understand the backgrounds and lifestyles of these children, which may explain the reason behind the student’s actions. Without this knowledge, suspended students will not be able to work on critical issues such as aggressive behavior, 97 will not be able to get the therapy that they may need, 98 and can be forced to stay at home without adult supervision. 99 Students feel that a better way to address their behaviors is for the school to provide them with an adult to talk to, who will provide emotional support and help them with concerns that their teachers might not be able to help them with. 100 An example of this would be a social worker that is adept in situations of aggressive student behavior and who has the means and solutions to help these students from acting out in school. 101

As referenced earlier, a new method called the Board of Education Arbitration, replaces school suspension hearings and Hearing Officers with an Arbitrator and a comfortable environment where students can speak freely. This form of Arbitration provides students with the opportunity to speak on their own behalves and

95 BLACK’S LAW DICTIONARY 712 (9th ed. 2009).
96 See generally Freeman, supra note 4.
97 Lee et al., supra note 75.
98 Roundtable, supra note 6.
99 Ward, supra note 3.
100 Roundtable, supra note 6.
101 See Teasley & Miller, supra note 5.
support their sides of the argument. It focuses on improving students’ positive behaviors and actions rather than condemning them for their misconduct.\(^\text{102}\)

Research shows that because of the less developed brain structure of adolescents, before the age of fifteen, adolescents display psychosocial immaturity in four main areas: ”(a) poor resistance to peer influence (b) attitudes toward and perception of risk (c) future orientation, and (d) impulse control.”\(^\text{103}\) This finding shows that many incidents occur due to their poor judgments. Rather than punishing the student and removing him from class, the goal of the Board of Education Arbitrator (“BOE Arbitration”) is to distribute responsibility appropriately. The Arbitrator, in making a decision on how to effectively educate the student, will focus on the individual student’s best method of rehabilitation while also looking at his psychological background, including his mental and emotional health, and his educational and family history.

**B. How Board of Education Arbitration Works**

At the AIR roundtable session, one student stated that in his school, “[t]hey didn’t dig deeper into why you were getting into trouble.”\(^\text{104}\) With BOE Arbitration, an arbitrator works to find the underlying psychological reason behind why the student acted out. This new interdisciplinary approach, evaluating both the psychology of the student as well as his educational shortcomings, requires the arbitrator to look into the actions of the student and to help achieve the proper resolution while still avoiding the student’s suspension altogether.\(^\text{105}\)

\(^{102}\) Clinton Smith, Sara C. Bicard, David F. Bicard & Laura Baylot Casey, Decreasing In-School Suspensions with Function-Based Interventions, 48 KAPPA DELTA Pi RECORD 174 (2012).

\(^{103}\) APA Zero Tolerance Task Force, supra note 2, at 855.

\(^{104}\) Roundtable, supra note 6.

\(^{105}\) See Richard J. Bonnie et al., Reforming Juvenile Justice: A Developmental Approach 3 (2013)

Scientific literature shows that three conditions are critically important to healthy psychological development in adolescence: (1) the presence of a parent or parent figure who is involved with the adolescent and concerned about his or her successful development, (2) inclusion in a peer group that values and models prosocial behavior and academic success, and (3) activities that contribute to autonomous decision making and critical thinking.

*Id.* If these conditions are lacking in a child’s life, he may act out in class. He may need the proper discipline or assistance in creating a better and more successful life for himself.
Students can act aggressively and become defensive in suspension hearings, but in an Arbitration type atmosphere, a student will find himself in a less formal and more lax setting, far less formidable than being brought to court. The first goal of such a session is to make the student feel comfortable, therefore allowing the student to speak openly. The arbitrator will begin by asking a series of casual questions such as his name, age, grade, favorite sport, and favorite television show. Once the BOE arbitrator determines that the student is comfortable, the arbitrator can then ask more direct questions to the student about his personal and academic life. Typical questions can include whether he lives with one or two parents, what his grades are in school, and whether or not he goes to all of his classes. The arbitrator can also ask the student whether he feels happy in school or if he fights with other students. By asking these questions, the arbitrator will get a clearer understanding of the student. She will be able to better determine whether the child is acting out in the classroom because he is unhappy at home, bullied in class, or is having trouble understanding class assignments. By asking these questions, the arbitrator will be able to make a proper assessment and resolution based on the child’s needs.

If at any point the arbitrator feels that the student is becoming uncomfortable or anxious, or if the student says that he needs a break from their meeting, the arbitrator may choose to postpone the next set of questions to a later time that day. It is important for the arbitrator to reschedule the meeting for a later time because even though the meeting is less formal than a school suspension hearing, the student may still feel a certain pressure, causing him to feel overwhelmed or agitated, making this meeting ineffective. It is more important for the arbitrator to wait and allow the student time to gather all of his thoughts before continuing their meeting.

When the arbitrator feels that she has a clear understanding of the student’s educational background, mental health, and family background, the arbitrator will then begin to discuss the events that led to their meeting. The student will first be asked to produce his side of the story. Because this environment is far less threatening than the courtroom, he will be able to respond and tell his side of the story with a calm demeanor about how the situation came about and why he felt that his peers or an administrator thought he committed the alleged offense.

106 See generally Zero Tolerance, Zero Evidence, supra note 18.
Once the student feels that he has told the full story, the arbitrator may ask follow-up questions to make sure that the facts and series of events create a complete story. If at any point the student admits that he did act improperly, he will be given the opportunity to explain why he acted in such a manner. He may testify or provide evidence that he acted out in self-defense, acted unintentionally, or was under peer pressure.\footnote{See, e.g., Michail, supra note 7 (“I got suspended for smashing a window. I didn’t mean to . . . because someone was out the front of it taunting me so I hit it with like the palm of my fist and it snapped, it wasn’t safety glass.”).} Similarly, if the student states that he did not commit the alleged offense, he will be entitled to bring evidence that he did not commit the act. This differs from a School Suspension Hearing because a student who is given the opportunity to talk to a BOE Arbitrator will not feel as if he was denied any due process,\footnote{See generally Goss v. Lopez, 419 U.S. 565, 580 (1975) (noting that it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his dereliction and to let him tell his side of the story in order to make sure that an injustice is not done).} will feel as if his side of the story was heard, and will not feel any animosity toward the arbitrator that a student would otherwise feel about a hearing officer.

Once the student feels that he has adequately proved his point, the opposing party, whether a peer, teacher, or administrator, will then have the opportunity to state his position in the matter in front of the student. They will similarly be able to bring proof and explain why they believe that the student acted improperly. The student will then be given the opportunity to rebut anything he heard that he feels is untrue.

Following this meeting, an arbitrator who has listened fully to both sides of the story will be able to make a well-informed decision as to what would be most beneficial for the student. If, for example, the arbitrator feels that the child acted out in class because he does not understand the material and needs help, the arbitrator can find a tutor or a student who knows the material to help him. If the student has a mental disability that has never been dealt with before, the student can get the child tested for proper diagnosis. Similarly, if a child acts out in school because he suffers from anger management, the student can be assigned to a social worker who will work with the student and teach him how to channel his emotions in a healthier and more effective way.\footnote{Webb & Vulliamy, supra note 14.} These outcomes will allow students to focus on their own needs and pro-
vide them with resources that will properly help and discipline them in school settings.

Many children need critical forms of assistance and schools must facilitate such access and guidance in school. Students should not be pushed away from positive and a safe educational environment. Placing these students in BOE Arbitration will create better outcomes because schools can offset the risks that children are subjected to and allow students to learn from their mistakes while at the same time, affording them the opportunity to learn and grow in the classroom.

C. How We Know BOE Arbitration Will Work

Students acknowledge that they need to be helped by their schools and administration, and many have explained that “[t]hey don’t need to be arrested; they need to go to therapy.” Students feel that their schools do not take the time to learn about them and does not care to understand that they are acting out because they have educational, behavioral, or familial troubles that have never been dealt with at before. When asked what a good school is, a student answered, “[a] good school to me is when you feel like you are supported by your teachers and can talk to somebody and get help.” Students also admit that they need reinforcement and help from school personnel. If their schools took more time to listen to students, rather than punishing them right away, fewer students would be removed from schools and fewer students would join the school-to-prison pipeline each year.

Allowing the BOE arbitrator to learn more about the student, such as his family history and his socioeconomic situation, the arbitrator will be able properly assess the student’s situation and guide this student off the school-to-prison pipeline and onto the correct path to graduation. One effective alternative to suspension that an arbitrator may have for a student is to create or provide these students with a positive relationship between themselves and adults, which some students do not have at home. This will allow the

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110 See generally Fetzer, supra note 91.
111 Roundtable, supra note 6, at 4 (explaining that school teachers and administrators did not try to find the reasons behind the students’ actions and their behavioral issues).
112 Id.
113 Id. at 5.
114 Michail, supra note 7.
115 Id. at 9.
student to see what being an innovative, competent and stable adult is like. Whether through therapy or extracurricular actives, such as a mentor program, students will begin to understand that school is meant to be a positive environment in which they can learn and grow without feeling persecuted by their teachers or administrators.

If a child lives in a home in which their parent or parents do not provide them with the proper nurturing that they need, a child may need an adult to talk to and look up to. Students can work on their problems at home or in school with trained social workers who can provide them with the appropriate support, perhaps by channeling their anger toward appropriate outlets or by improving their self-esteem and relationships with others.

Serving in a similar function but less formalized are adult mentors outside a school setting. While just as important as a social worker, a student can chose a mentor with whom the student feels he or she has similar likes, dislikes, and experiences. This person can provide the student with an adult outside of school to talk to, rely on, and trust. This friendship that is created will put an emphasis on building youth-adult relationships and the development of skills, such as self-control, and academic achievement, as well as reducing negative behaviors, such as profane language, drug use, and aggression. This relationship may also encourage the student to reengage in class and may reinforce the importance of doing schoolwork. Big Brothers Big Sisters of America is an organization that pairs up children and adults in order to help children realize their potential and build their futures. In one of the organization’s success stories, Dante needed someone who he could trust and talk to since his father was never home to spend time with him. He was paired up with Rob, a volunteer, who acted as a positive role model for him. While they went on trips to museums and sporting events, Rob was able to instill in Dante the importance of education. Dante explained, “I want to be an engineer, so Rob tells me to do well in school . . . He says I can do

116 Teasley & Miller, supra note 5.
117 Miller, Ross & Sturgis, supra note 11; see generally Teasley & Miller, supra note 5, at 138 (noting that it is important for social workers to understand a students family structure as it will assist them in working on the proper intervention).
118 Fetzer, supra note 91.
119 Id.
120 Id.
121 See generally Big Brother Big Sisters of America, http://www.bbbs.org/site/c.9iILJ3N GKhK6F/b.5962335/k.BE16/Home.htm (last visited Feb. 11, 2015).
anything I want if I pay attention in class.’”122 Rob has also assisted Dante with important social skills and has raised his level of self-esteem. He has helped Dante strengthen his relationship with his mother, and Dante has worked to improve his academic performance. To Dante, the relationship he has with Rob is different from a relationship that students have with teachers, and feels that this mentor relationship has been extremely beneficial for him.123

Through BOE Arbitration, the arbitrator will learn why a student has decided to disrupt their teacher in the classroom. Whether it be the student that acts up in class because they are behind in class or cannot comprehend the material, or even if the students parents work more than one job and cannot afford to help their children with homework or pay for a tutor. If student makes mention of this during a meeting, the arbitrator may be able to assign him to a study or a guidance team124 or find another student to tutor him and explain the class material.

Another aspect that the arbitrator may notice during her meeting is the student’s level of attentiveness and behavior. In a study done by Edmonds-Cady & Hock, 14–20% of school children have some type of psychiatric disorder.125 At the same time that teachers are busy with many students, parents may also be too busy to notice that the child acts out because they have behavioral disorders such as Attention Deficit Hyperactivity Disorder,126 Conduct Disorder,127 or Oppositional Defiant Disorder.128 A child’s mannerisms, such as his lack of ability to sit down and focus129 or his

123 Id.
124 Robinett, supra note 8.
125 Teasley & Miller, supra note 5.
126 Id.
127 Amanda L. Lannie & Barry McCurdy, The Challenge of Conduct Disorder, Principal Leadership 11 (2007) (noting that schools have more recently witnessed an increase in the number of students with antisocial behaviors, commonly diagnosed as Conduct Disorder. Behaviors range from aggression such as causing harm to others, destruction of property, lying, stealing, and failing to listen to adults by either running away or openly defying parents and adults).
128 Heitzeg, supra note 2.
129 Id. at 9. For example,
In Ponchatoula Louisiana, a 12-year-old who had been diagnosed with a hyperactive disorder warned the kids in the lunch line not to eat all the potatoes, or “I’m going to get you.” The student, turned in by the lunch monitor, was suspended for two days. He was then referred to police by the principal, and the police charged the boy with making “terroristic threats.” He was incarcerated for two weeks while awaiting trial.
aggression and hostility toward adults, can provide the arbitrator with evidence that he is suffering from a disorder that may require a referral for a psychosocial or psychological educational assessment. If these tests are proven to be positive, the child may be better suited in a different class or may require medication that can regulate his emotions and keep him from being disruptive.

Finding an appropriate solution that fits each student’s individual challenge is the proper form of rehabilitation. Only through this specialized method can students truly learn from their mistakes and adequately tackle his specific challenges, which will decrease the likelihood of dropping out of school.

D. Why BOE Arbitration Will Be A Success

Other states have begun to make similar efforts to help these youths as opposed to relying on School Suspension Hearings. But once this new method is put into place, many more states will begin to incorporate BOE Arbitration as well. In Maricopa County, Arizona, students are sent to the Court Unified Truancy Suppression Program (“CUTS”) rather than being sent to these Hearings. In CUTS meetings, the student, his family, and the school focus on providing the student with the necessary school based and community based services for his rehabilitation rather than suspending him. Similar to BOE Arbitration, this program allows the student to learn and perform better as opposed to removing him from his peers, which is what happens with school suspension hearings. Ninety-seven percent of students who are part of the CUTS program attend school on a regular basis, and students who participate in CUTS also graduate at higher rates. Because the CUTS program has an increased rate of school attendance and graduation, and because BOE Arbitration is another similar alternative to rehabilitating a student, BOE Arbitration will be able to yield similar results.

Arbitration methods have also been successful in schools across the globe. To reduce rapidly increasing school suspensions,

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130 See generally Ward, supra note 3; see also Lannie & McCurdy, supra note 127.
131 Robinett, supra note 8.
132 Ginsburg, supra note 15.
133 See Teasley & Miller, supra note 5.
134 Miller, Ross & Sturgis, supra note 11.
135 Id.
136 Id.
schools in Northeast England began hiring social workers in schools to meet with troubled students and teach them how to manage their anger, thereby creating a climate that is conducive to learning. The social workers first befriend the students, similar to what a BOE arbitrator would do. Once the student feels comfortable, the social worker will then proceed to work with the student based on his findings of what the student need help with. If the student is suffering from personal or mental issues or if the student needs to improve his social skills, the social worker will work with the student on a one-on-one basis to improve these skills. As a result of this initiative, school suspensions decreased by twenty-five percent. Students were able to internalize the counseling because of the social workers non-threatening approach, and as a result, these students gained the skills they needed to prevent further disturbances in the classroom. The success of this program in England shows that children in the United States who are afforded sessions with trained social workers will have someone with whom they can rely on, who will help them learn from their mistakes and provide them with the advice and help that they need.

As it is becoming more evident that school suspension are not a positive resource to remedy a students misconduct, beginning in 2012, a growing number of advocates in the United States began working to create a national “moratorium on out-of-school suspensions as part of the Solutions Not Suspension initiative” led by the Dignity in Schools Campaign and the Opportunity to Learn Campaign in Los Angeles.

By implementing this initiative, states and districts have begun to work together to discipline students and provide alternatives to out-of-school suspensions. States have begun to take action by creating tools that allow students to reflect on their actions while taking responsibility for their mistakes, creating positive relationships with their peers and teachers, and developing new ideas that

137 Webb & Vulliamy, supra note 14.
138 Id.
139 Id.
140 Id.
141 Id.; see also Miller, Ross & Sturgis, supra note 11.
143 See generally SOLUTIONS NOT SUSPENSIONS, http://stopsuspenions.org/about.
can prevent these students from acting again in the future.\textsuperscript{144} One type of practice used, Positive Behavioral Interventions and Supports (“PBIS”), was created by the U.S. DOE’s Office of Special Education Programs.\textsuperscript{145} PBIS is designed to provide students with continuous support and a positive environment in order to improve their emotional and behavioral skills as well as their academic success.\textsuperscript{146} “Students also are encouraged to take ownership of behaviors that can be problematic in a school setting . . . kids are asked to think about what they did, what their actions were trying to accomplish and who their actions may have hurt.”\textsuperscript{147} However, in order for PBIS to be successful and have the most positive outcome, it must be implemented on a school-wide basis; this means that all school administrators should rely on PBIS so that children receive the proper guidance and redirection not only in the classroom but in the lunchroom, hallway, and on the school playground.\textsuperscript{148} By implementing PBIS in schools, students will be able to learn and practice positive behaviors while teachers spend more time teaching students rather than being disrupted by students.\textsuperscript{149} This initiative is similar to BOE Arbitration as it focuses on the needs of each student and allows them the opportunity to learn from their mistakes through positive intervention. However, PBIS is used on a larger scale than BOE Arbitration because it focuses on the entire school at once rather than on the individual student. PBIS also works to solve these problems before any misconduct takes place while BOE Arbitration focuses on a solution after the child misbehaves.\textsuperscript{150} However, both PBIS and BOE Arbitration work with students directly and focus on the individual child’s weakness, trying to get to the root of the problem.

Following the moratorium on out-of-school suspensions, President Barack Obama worked to create his own similar initiative. “My Brother’s Keeper” was created in 2014 specifically for young men of color to help “[o]ur young people stay on track” by providing them with the support they need to plan and look forward to

\textsuperscript{144} A Guide for State Policy, supra note 142.
\textsuperscript{146} Id.; see also Ward, supra note 3 (DOE report from January 2014 “[e]ncourages schools to create positive climates with evidence–based prevention for discipline. It specifically mentioned clear expectations . . . a framework for behavioral guidance and social culture focused on emotional needs and academic success.”).
\textsuperscript{147} Ward, supra note 3.
\textsuperscript{148} Klehr, supra note 79, at 604.
\textsuperscript{149} Id. at 606–07.
\textsuperscript{150} Id. at 604.
their futures.\textsuperscript{151} The Obama Administration joined with schools, communities, and businesses to connect students to mentors and support networks, and provide them with the skills they need to get into college or find a job.\textsuperscript{152} This initiative has a similar outcome to BOE Arbitration and may therefore act as a stepping-stone for BOE Arbitration in these schools. Both My Brother’s Keeper and BOE Education are built on the premise that a child’s education is the most important thing, not just for the individual but also for the community at large. My Brother’s Keeper and BOE Arbitration provide students with the assistance of social workers and tutors, which will provide them with the resources they need to keep them in school and allow them to have a successful future.

If we do not create and build a strong foundation through education, then an individual will not have the same support as he would have had with the proper education.

\textbf{V. Conclusion}

Victor Hugo an acclaimed artist for his 19th-century masterpiece, \textit{Les Miserables} is credited for stating, “[h]e who opens a school door closes a prison.”\textsuperscript{153} This statement is becoming more evident today due to the rate of suspension. In schools across America, students are being suspended and expelled for reasons that can easily be handled without removing a student from his classroom. Every student has potential and every student deserves the opportunity to learn in school and have a successful future.\textsuperscript{154} Yet, schools today are increasingly unwilling or unable to cope with children who have challenging behavior. Instead, they resort to the zero-tolerance rules and school suspension hearings, which do not find the root of the problem. Instead of making the same mistakes and instead of being suspended time and time again, Board of Education Arbitration can provide these students with the tools they need to learn from their actions, while also remaining in school and learning among their peers.

\begin{thebibliography}{99}
\bibitem{151} \textit{My Brother's Keeper}, http://www.whitehouse.gov/my-brothers-keeper (last visited Feb. 11, 2015).
\bibitem{153} \textit{See U.S. v. Deen}, 706 F.3d 760, 761 (6th Cir. 2013).
\bibitem{154} \textit{See, e.g.}, Freeman, \textit{supra} note 4.
\end{thebibliography}
The Supreme Court in *Brown v. Board of Education* stated that, “education is perhaps the most important function of the state and local governments.” Schools must make the effort to keep students on the path of success in school by stopping school suspension hearings and by looking at each student individually and providing them with the help they need.

If BOE Arbitration is successful, suspension rates will decrease, college graduates will increase and more students will be found succeeding in a classroom setting. By interacting with the Arbitrator, the students potential to grow will increase tremendously. Schools as well as communities will begin to better understand children’s psychological problems and will be able to help these children learn how to cope with their problems from a young age. Without this new method, schools will continue to rely on suspension methods that remove their students from class and as a result, our country will continue lose the knowledge and potential of hundreds of students each year.
