



NATIONAL CENTER FOR
SPECIAL EDUCATION



IN CHARTER SCHOOLS

It Is Time to Unearth and Stop Subterranean Discipline and Exclusion

PAUL O'NEILL

January 17, 2019

NCSECS.ORG

National Center for Special Education in Charter Schools



The circumstances are sobering and unacceptable: Students are being suspended and expelled from American public schools at an alarming rate. Even worse, students with certain profiles are consistently and disparately subjected to exclusionary discipline in much higher numbers. For example, a recent report found that in a typical year Black students lost 66 days of instruction to exclusionary discipline, compared to just 14 days for White students. That same data also shows that students with disabilities lost 44 days of instruction, more than double the loss experienced by their non-disabled peers.

According to recent data from the Civil Rights Data Collection maintained by the U.S. Department of Education, students with disabilities are suspended and expelled—and thus lose instructional time—approximately twice as often as their peers without disabilities across all schools. The consequences of this exclusion can be devastating. Young students who are expelled or suspended are as much as 10 times more likely to drop out of high school than other students. Researchers regularly warn of the “school to prison pipeline” that is fostered by exclusionary discipline. Public schools—charter and district alike—must hold themselves accountable to confront such statistics and remedy the inequities they describe.

But that is not enough.

Available data only capture part of the problem. In addition to the suspensions and expulsions that must be reported by schools, many engage in other, less traceable forms of exclusion. These measures are designed to minimize disruption by students who present behavioral challenges. That may include students with disabilities, students of color and others who present cultural and practical considerations that a school is not able or willing to address. In the education space, professionals have begun referring to such techniques as “subterranean discipline.” Subterranean discipline is any exclusionary practice that removes a student from instruction but does not trigger reporting requirements or generate data or attention. It is largely invisible. In over 20 years as a school attorney and advisor, I have encountered many forms of subterranean discipline. Sometimes schools engage in these practices inadvertently—just trying to cope with challenging situations without enough thought to the impact of their actions—and sometimes schools are so frustrated by an extremely disruptive,



aggressive student that they just want them to be gone, no matter what that requires. Since disruptive students are often perceived as low-performers, districts and schools may also seek to exclude such students as a way to bolster standardized test scores. Subterranean techniques are varied and would elude a simple list, but some notable examples include:

- Administrators nudging parents to remove a disruptive child from school rather than face the possibility of expulsion. Schools are required to report on expulsions but usually not on withdrawals or transfers, and can be held accountable for posting high expulsion numbers. If the student withdraws, the absence is rarely visible.
- The use of in-school suspensions that are as exclusionary as any out-of-school suspensions. While the federal government and many states require that out-of-school suspensions be tracked and reported, this is not generally the case for in-school suspensions, which are usually a consequence for minor transgressions of school rules. But too often schools impose in-school suspensions in a way that is as exclusionary as any out-of-school suspension would be. A good way to assess in-school suspensions is to ask a few questions: Are students ineligible to receive instruction in class? Are they restricted to a solitary area such as a detention room or a library carrel? For how long? If so, this is an exclusionary suspension, whatever it may be called.
- Schools responding to disruptive students by calling the police. In rare instances of crisis in which a student is engaging in behavior that is genuinely dangerous, such a call may be warranted. School leaders must keep the school safe. But in too many instances, exasperated administrators may dial 911 to deal with a student who does not pose a real threat; who is more annoying and insolent than violent. In one extreme recent example, a six-year-old Florida girl was arrested, handcuffed, and sent in a patrol car to a juvenile processing facility after kicking a school staff member. There are also instances in which schools use 911 calls to nudge parents to disenroll their children. There may be limited reporting requirements for such emergency calls, but schools can track and report on calls to 911 and should be required to do so.
- Schools sometimes require students who are frequently disruptive to have a parent sit with them in order to remain in the classroom. If the parent cannot be in attendance, the school may exclude the child.



- Some schools also exclude students by limiting participation in the school community, even when students are not removed from instruction. Such policies impose shaming as a way to limit bad behavior. In response to minor or moderate violations of the school's code of conduct, students may be publicly chastised and excluded from non-instructional activities in a way that is visible to their classmates but not to the outside world. For example, one program used to require students who break certain rules to wear their school uniform shirt inside-out for a period of days—a humiliating demonstration akin to Hawthorne's scarlet letter. Disciplinary practices that shame students do not show up on data compilations, but they may be devastating for children and families.

The practices described above could apply to any student. There are also a number of subterranean practices that relate specifically to students with disabilities. Federal and state special education laws protect students with disabilities from exclusionary discipline. The Individuals with Disabilities Education Act (IDEA) states that, after 10 days of suspension in a school year, students covered by its protections cannot be further removed from class if a link is found between the problem behavior and the disability, except in rare situations involving extreme danger. This can be very frustrating for schools, and at times results in the following practices:

- Some students with disabilities are sent home early. Every day. This usually happens when the child has behavioral challenges and the school struggles to meet them. A decision may be made to effectively shorten the school day for that student (for instance, requiring pickup several hours before the end of the day), often with the rationale that this is best for all. Whatever a school's intentions, such practices are unlawful and constitute invisible, subterranean exclusions from school. While not imposed as a disciplinary measure, this policy effectively serves to preempt disruptive incidents. It is not OK to do this.
- Parents may be nudged by a school to consider a more restrictive placement for their child with disabilities than is warranted by the student's needs. This would result in the student disenrolling from the school and instead attending another program that has greater supports. Given the legal restrictions on suspending or expelling a student with disabilities, this could be a different route to removing a child from the school—but that doesn't make it a legitimate one.



- Another way schools skirt the legal restrictions on suspensions and expulsions is placing a student on home instruction when the child's needs do not call for it. Home instruction can be appropriate when a doctor makes a determination that for medical or psychological reasons instruction should take place for a period of time in the child's home. Under IDEA, tutoring is then provided by the school. Home instruction should not be used to avoid dealing with disruptive behavior in the school environment.
- It is important to note that unnecessary 911 calls can be a particular concern for students with behavioral disabilities—such students may have chronic outbursts linked to their disabilities for which they cannot lawfully be removed from class after 10 days of suspension. A school can always call the police, though, claiming that the student poses a threat. This dysfunctional pattern may indicate that the child is not in an appropriately supportive or therapeutic placement and that should be considered. Regardless, schools should not be permitted to use 911 calls as a backdoor method of excluding students whose IEPs protect them from removal.

Educators and administrators do their best every day to educate children and keep their instructional environment safe. Most of the time they do so in ways that respect student rights and comply with the letter and spirit of applicable law. But not always. In order to know what is happening and to ensure that inappropriate practices are identified and corrected, we need more transparency. Federal, state and district authorities, as well as charter school authorizers, need to increase the scope of reporting requirements such that more subtle, informal, and sometimes sneaky subterranean disciplinary practices are unearthed and prevented.