

RACIAL DISPROPORTIONALITY IN SCHOOL DISCIPLINE: THE PROBLEM IN WASHINGTON SCHOOLS & RECOMMENDATIONS FOR THE FUTURE

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I. INTRODUCTION

In Washington State, tens of thousands of elementary, middle and high school students are excluded from the classroom by suspension or expulsion every year.¹ Often, students are merely suspended for a few days; however, many students are denied access to school on a long-term or indefinite basis.² A majority of the suspensions are for minor infractions of school codes, such as “disrupting class, tardiness, and dress code violations” or subjective infractions such as defiance or disrespect, rather than for serious behaviors, such as violent or criminal actions.³ A growing body of research indicates that exclusionary discipline affects students in highly damaging ways, and often the effects are life long. Exclusion from the classroom leads to higher dropout rates, increased delinquency, lifelong poverty, and an increased chance of contact with the criminal justice system.⁴ Further, discipline data in Washington, and around the United States, shows that students of color and low-income students are disproportionately impacted by exclusionary discipline.⁵

¹ Office of Superintendent of Public Instruction, Suspensions and Expulsions, 2013-2014 District Student Behavior Data (2014). <http://www.k12.wa.us/SafetyCenter/Behavior/pubdocs/StudentBehaviorReport2013-14.pdf>.

² Washington Appleseed, Education Projects, Reclaiming Students (November 2012), http://media.wix.com/ugd/4569ed_e44ccb42cff21777ea479f4125d347df.pdf.

³ Daniel J. Losen and Tia Elena Martinez, Center for Civil Rights Remedies, Out of School & Off Track: The Overuse of Suspensions in American Middle and High Schools, http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack_UCLA_4-8.pdf.

⁴ Washington Appleseed, at Executive Summary.

⁵ *Id.* Note: Students with disabilities are also disproportionately excluded from the classroom. Unfortunately, discussion of the particular issues those students face is beyond the scope of this paper.

Article IX, section 1, of the Washington State Constitution states that “It is the paramount duty of the state to make ample provision for the education of *all* children residing within its borders, without distinction or preference on account of race, color, caste, or sex.”⁶ In *McCleary v. State of Washington*, the Supreme Court held that “all” means “ever” and “each and every one” of the children residing within the borders of Washington, with no qualifiers excluding badly behaved children from the conferred right to education.⁷ Thus, arguably, when schools exclude students from the classroom and fail to provide educational services during the period of exclusion, the State is failing in its paramount duty to provide education to *all* students in Washington.

II. EXCLUSIONARY DISCIPLINE IN WASHINGTON

Washington State law requires that each school district adopt and publish reasonable rules regarding student conduct, discipline and rights, and allows schools to suspend, expel, or discipline students in accordance with State law.⁸ RCW 28A.600.020 emphasizes that the “highest consideration is given to the judgment of qualified certificated educators” regarding their classrooms and that students may be excluded from the classroom if necessary.⁹ State law does encourage school districts to consider alternatives to exclusionary discipline. § 020 states that, “Except in emergency circumstances, the teacher first must attempt one or more alternative forms of corrective action” and § 410 encourages schools to find alternatives to suspension including “reducing the length of a student’s suspension conditioned by the commencement of counseling or other treatment services.”¹⁰ Yet, even the encouraged alternatives still often involve excluding a student for a period of time.

In 2012, Washington Appleseed and Team Child published a report on school discipline and its effects after surveying all 295 school districts in Washington.¹¹ Unsurprisingly, the report found that

⁶ Wash. Const. art. IX, § 1. Emphasis added.

⁷ *McCleary v. State*, 269 P.3d 277, 260 (Wash. 2012).

⁸ Wash. Rev. Code § 28A.600.010.

⁹ RCW § 020(1)-(2).

¹⁰ *Id.* and RCW § 28A.600.410.

¹¹ Washington Appleseed, at Executive Report. “The Appleseed report team requested information from all 295 school districts in the state, however, not every

exclusionary discipline negatively impacts academic success and a student's relationship with the education system. Exclusionary discipline consists of short-term suspensions (up to 10 school days), long-term suspensions (definite time periods longer than 10 days), and expulsion (denial of attendance for no longer than one calendar year).¹² The report also found that the inconsistent definitions of disciplinary infractions and the discretionary implementation of the exclusion procedures appear to have the single largest impact on discipline rates in Washington.¹³

The effects of exclusionary discipline are often severe and have long-term impacts. Higher rates of exclusionary discipline are correlated with higher dropout rates: the report found that the average graduation rate is 24% lower in school districts with more than 100 incidents per 1,000 students than in school districts with fewer than 25 incidents per 1,000 students.¹⁴ This naturally leads to an astonishing loss of instructional time for students in Washington. In the 2009-2010 school year, students in 183 of the State's districts missed at least 71,357 cumulative days of school when they were excluded from the classroom.¹⁵ In 2012-2013, there were over 74,000 incidents that resulted in suspension or expulsion (47,519 students) and in the 2014-2015 school year 44,655 students in total were suspended or expelled.¹⁶ 771 students surveyed stated that they permanently dropped out of school because they were suspended or expelled.¹⁷ Often, schools have severe academic penalties associated with long-term suspension; for example, Arlington High School's policy is that "a second offense under the drug and alcohol section of their rules mandated a 90-day suspension from school that 'will result in failure to complete course requirements and a loss of credits.'"¹⁸ It is unlikely that the average student, even if they eventually re-engage in school,

district could provide a response to every question posed. For example...only 177 could provide race and ethnicity information about those incidents."

¹² OSPI, *School Safety Center*, Frequently Asked Questions, <http://www.k12/was.us/SafetyCenter/Guidance/FAQ.aspx>.

¹³ Washington Appleseed, at 32.

¹⁴ *Id.* at Executive Summary.

¹⁵ *Id.* at 8.

¹⁶ OSPI, *Student Discipline Task Force, Final Report (2013-2014)*, <http://www.k12.wa.us/studentdiscipline/pubdocs/StudentDisciplineTaskForceFinalReport2015.PDF>.

¹⁷ *Id.*

¹⁸ *Id.* at 10.

would be able to recover from both an exclusion and a loss of course credits. Further, even a single exclusion can set a student down a path to decreased academic performance, an increased chance of contact with the juvenile justice or adult criminal justice system, lower paying jobs, and decreased job market mobility.

Exclusionary discipline negatively impacts both the excluded students and the other students who remain in the classroom.¹⁹ Researchers Brea L. Perry and Edward W. Morris have used the concept of collateral consequences in mass imprisonment to look at the impacts of the United States educational system's use of exclusionary discipline on students. Their findings suggest that "higher levels of exclusionary discipline within schools over time generate collateral damage, negatively affecting the academic achievement of non-suspended students in punitive contexts."²⁰ They hypothesize that in these school environments all "students become both constantly anxious and increasingly distrustful of educators who appear to level discipline unfairly."²¹

And while studies show that exclusionary discipline has negative effects across the board, 2009-2010 data from 177 school districts in Washington show that students of color are 1.5 times more likely to be disciplined than their white peers.²² The levels of disproportionality varied between racial/ethnic groups as compared to white students: Native Hawaiian/Pacific Islanders are 2.56 times more likely to be disciplined, Native American students are 2.29 times more likely, African American students are 2.21 times more likely, and Latino students are 1.36 times more likely to be disciplined.²³ This further exacerbates the achievement gap and lowers graduation rates for students of color.²⁴

¹⁹ Washington Appleseed, at viii.

²⁰ Brea L. Perry and Edward W. Morris, Suspending Progress Collateral Consequences of Exclusionary Punishment in Public Schools (2014), <http://asr.sagepub.com/content/79/6/1067>.

²¹ [Claudia Rowe](#), Contrary to popular belief, tossing 'bad' kids harms 'good' ones, too, Seattle Times, May 23, 2015.

²² Washington Appleseed, at 26.

²³ *Id.*

²⁴ *Id.* at 28.

III. FAILURE TO PROVIDE EDUCATIONAL SERVICES

Washington, unlike many other states, has no state law or regulation that clearly sets forth the process by which suspended or expelled students can continue to receive educational services during the period that a student is excluded.²⁵ Educational services could be any combination of opportunities that would allow a student to continue his or her schoolwork, keep up with peers, and maintain credits while excluded from school, which could include, but is not limited to, being given the opportunity to receive and turn in homework, receive tutoring, or participate in an online program.²⁶

However, because Washington does not require that education services be provided, the vast majority of suspended or expelled students do not receive any services while they are excluded from the classroom. 183 school districts reported that educational services are provided only 7% of the time when a student is given a long-term suspension or expelled.²⁷ Many of the schools surveyed were unable to provide specific information about the education services, such as what was provided, even if they reported that some service was provided. Out of Washington's 295 school districts, only 18 districts reported that they provide homework assignments, 5 school districts provide online programs, and 5 offered tutoring to excluded students.²⁸ In school districts that do provide services, the impetus is often still on the student or parents to remain engaged. For example, the Rainier School District has a formal process for parents to collect homework assignments for their children, which allows the students the stay caught up and maintain academic credit.²⁹ Unfortunately, most of these districts merely allowed assignments to be picked up, but did not provide any formal procedures or process of notifying students and parents of this option.³⁰ However, even among the school districts that offered services, most do not track and could not report whether or not the services were actually used.³¹

²⁵ *Id.* at v.

²⁶ *Id.* at 17.

²⁷ *Id.* at 18. Students that are suspended are slightly more likely to receive educational services at 8% of incidents than students who are expelled, who receive services only 4% of the time.

²⁸ *Id.* at 19.

²⁹ *Id.* at 21.

³⁰ *Id.*

³¹ *Id.*

Not only are students of color disproportionately excluded from the classroom, but also during the period of exclusion they are less likely to receive educational services.³² White students are almost twice as likely to receive education services while suspended or expelled than students of color. White students in Washington were responsible for 55% of discipline incidents in 2009-2010, and these students accounted for 69% of the incidents where educational services were provided.³³ In the same time period, students of color were responsible for 43% of discipline incidents, but in only 29% of incidents were education services provided during the period of exclusion.³⁴

IV. PARAMOUNT DUTY TO PROVIDE EDUCATION

The Washington Appleseed report made several recommendations including that school districts be required to “provide access to education services during periods of exclusionary discipline.”³⁵ Several of these recommendations made it into ESSB 5946, which passed during the 2013 legislative session. Importantly, ESSB 5946 provides that exclusions from school can no longer be indefinite, that school districts must make reasonable efforts to assist students in returning to school, that reengagement meetings are required, and that time limits be placed on long-term suspensions.³⁶ However, the legislation does not require that educational services be provided to students while they are suspended or expelled.

If students are not receiving education services while excluded, these students are falling behind academically, the chance of repeated behaviors or contact with the criminal justice system increases, and the likelihood of re-engaging these students decreases. Further, if these students are not being given the opportunity to receive an education, Washington State is failing in its paramount duty to “make ample provision for the education of *all* children residing within its borders, without distinction or preference on account of race, color, caste, or sex.”³⁷ As the *McCleary* Court reaffirmed, this provision “confers on

³² *Id.* at 25.

³³ *Id.* at 31.

³⁴ *Id.*

³⁵ *Id.* at viii.

³⁶ S.B. Rep. to ESSB 5946, 63rd Leg., Spec. Sess. (Wash.2013).

³⁷ Wash. Const. art. IX, § 1.

children a positive constitutional right to...education.”³⁸ The Court also affirmed the trial court’s interpretation of the word “all” to mean “every” and “each and every one of,” which therefore means that Article IX, section 1 “encompasses ‘each and every child since each will be a member of, and participant in, this State’s democracy, society, and economy’ ...No child is excluded.”³⁹ The *McCleary* Court’s only qualifier on the word “all” is that it includes the children residing within the borders of the State of Washington.⁴⁰

Neither the Washington State Constitution, nor the Court in *McCleary*, qualify “all” with all “good” children or all “well behaved” children. The Washington Appleseed report notes that “despite the fact that Washington has made a unique commitment to children by declaring education as the ‘paramount duty’ of the State,” and requires all children to receive a basic education, “no state statute or regulation explicitly requires districts or any other entity to provide students with any education during exclusionary discipline.”⁴¹ The Office of the Superintendent of Public Instruction (OSPI) recognizes that this is a problem and that “expelled students often have great difficulty finding a way to complete a high school diploma.”⁴² And while OSPI states that schools must create a reengagement plan for each excluded student that includes a “description of a variety of alternative learning experiences...available to the student,” the data discussed above clearly shows that these services are being provided rarely and inconsistently at best.⁴³ If Washington State continues to exclude students from the classroom, the State should require districts to provide educational services to excluded students in order to meet their paramount duty outlined in the State Constitution.

As discussed above, racial disproportionality in school discipline and its exclusionary effects can have a lasting, devastating impact on students of color. Although current discipline rates of minority students are troubling, there are a number of potential solutions.

³⁸ *McCleary*, 269 P.3d at 232.

³⁹ *Id.* at 250.

⁴⁰ *Id.*

⁴¹ Washington Appleseed, at 22.

⁴² OSPI, [School Safety Center](http://www.k12.wa.us/SafetyCenter), Frequently Asked Questions, <http://www.k12.wa.us/SafetyCenter/Guidance/FAQ.aspx>.

⁴³ *Id.*

V. ELIMINATING ZERO TOLERANCE

Racial disproportionality in school discipline can be attributed in part to the existence of “zero tolerance” policies. Zero tolerance policies emerged in the 1990s as a response to a perceived increase of violence in schools.⁴⁴ Despite the intended purpose of the policies, there is no evidence that zero tolerance policies have increased the consistency of school discipline or that they improve school climate.⁴⁵ In fact, “disproportionate discipline of students of color continues to be a concern; overrepresentation in suspension and expulsion has been found consistently for African American students.”⁴⁶ Furthermore, “The evidence shows that such disproportionality is not due entirely to economic disadvantage, nor is there any data supporting the assumption that African American students exhibit higher rates of disruption...rather, African American students may be disciplined more severely for less serious or more subjective reasons.”⁴⁷

As an alternative to zero tolerance, the American Psychological Association (APA) advocates for three alternatives: bullying prevention, threat assessment, and restorative justice (discussed below).⁴⁸ In cases where schools are more hesitant to eliminate zero tolerance policies, the APA advocates for reforming the zero tolerance policies being used. For example, the APA suggests that zero tolerance policies be applied with greater flexibility, and that they take into account the school climate, as well as teacher expertise.⁴⁹ Teachers and other staff who have more regular contact with students are advised to be the “first line of communication with parents and caregivers regarding disciplinary incidents” in order to minimize the involvement of school administrators, which often increases the use of zero tolerance disciplinary removals.⁵⁰

⁴⁴ Russell J. Skiba et al., *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y.L. SCH. L. REV. 1071, 1080 (2010).

⁴⁵ Am. Psychological Ass’n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST 852, 854 (2008).

⁴⁶ *Id.* at 854.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 857.

⁵⁰ *Id.* at 858.

VI. RESTORATIVE JUSTICE

Restorative justice programs serve as an alternative to policies like zero tolerance that often result in the exclusion of students from the classroom, and exacerbate a student's behavioral and academic challenges. Restorative justice is a process that brings together stakeholders who were involved in a conflict, and provides them with a process to "collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible."⁵¹ Following the lead of the Oakland Unified School District, Garfield High School became the first school in the Seattle School District to implement a restorative justice program. The school district's decision to implement the program was based in large part on research showing that "restorative practices decrease suspension rates and lower racially disproportionate discipline."⁵² The program, which involves students, teachers, and peer mentors, seeks to help the school develop shared behavioral expectations and to reduce the use of out-of-classroom and out-of-school consequences for behavior.⁵³

When implemented correctly, restorative justice programs hold offenders accountable for their actions, offer an alternative to suspension that provides the offender an opportunity to learn from the misconduct and make reparations to the victim, and provide community involvement in responding to individual misconduct.⁵⁴ According to a recent study by the International Institute for Restorative Practices, restorative justice is effective in minimizing racial disproportionality in school discipline.⁵⁵ Restorative justice practices alter student-teacher relationships, leading to more equity in

⁵¹ *Restorative Processes at Garfield High School: Professional Development Training* (September 24, 2014). available at http://garfieldhs.seattleschools.org/UserFiles/Servers/Server_7283/File/Staff/Staff%20Resources/BLT/GHS%20PD%20Sept%2024.pdf.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Instead of Suspension: Alternative Strategies for Effective School Discipline*. Duke University Center for Child and Family Policy (2015). Available at https://law.duke.edu/childedlaw/schooldiscipline/downloads/instead_of_suspension.pdf.

⁵⁵ *Improving School Climate: Evidence from Schools Implementing Restorative Practices*. International Institute for Restorative Practices (2014). available at <http://www.iirp.edu/pdf/IIRP-Improving-School-Climate.pdf>.

school discipline.⁵⁶ Classrooms that utilize restorative practices had “fewer disciplinary referrals for defiance and misconduct compared to classrooms with a low level of implementation.”⁵⁷ The study also found that the gap “in the average number of misconduct/defiance referrals between Asian/White and Latino/African American students was narrower” in classrooms that had high levels of implementation.⁵⁸

VII. IMPLICIT BIAS TRAINING

Teachers, like everyone else, hold implicit biases with regard to race, gender, socioeconomic status, etc. The connection between teachers and their discipline patterns is not always clear because “biases do not necessarily lead to explicitly biased decisions or behaviors in schools, but they can undergird discriminatory behaviors – especially when such biases remain unstated and unexamined.”⁵⁹ These implicit biases contribute to racial disproportionality in school discipline in a number of ways. For example, studies have shown that educators “perceived black girls as being ‘loud, defiant, and precocious’ and that Black girls were more likely than their white or Latina peers to be reprimanded for being ‘unladylike.’”⁶⁰ In 2003, researchers found that “Students who displayed a ‘black walking style’ were perceived by their teachers as lower in academic achievement, highly aggressive and more likely to be in need of special education services.”⁶¹

Implicit biases among teachers can be minimized using a number of different strategies. The Kirwan Institute for the Study of Race and Ethnicity proposed a few of these strategies in its 2014 report

⁵⁶ *Id.* at 4.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ PRUDENCE CARTER ET AL., YOU CAN’T FIX WHAT YOU DON’T LOOK AT: ACKNOWLEDGING RACE IN ADDRESSING RACIAL DISCIPLINE DISPARITIES 7 (2014).

⁶⁰ MONIQUE W. MORRIS, AFRICAN AM. POLICY FORUM, RACE, GENDER AND THE SCHOOL-TO-PRISON PIPELINE: EXPANDING OUR DISCUSSION TO INCLUDE BLACK GIRLS 8 (2014).

⁶¹ Tom Rudd, Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated,

THE KIRWAN INSTITUTE (Feb. 2014), available at <http://kirwaninstitute.osu.edu/wpcontent/uploads/2014/02/racial-disproportionality-schools-02.pdf>.

on implicit bias. One of the most effective ways to minimize the implicit biases of educators is to provide training that addresses the causes and consequences of biases, specifically in the context of “cultural deficit thinking.”⁶² To ensure that teachers are prepared prior to setting foot in the classroom, the Kirwan Institute advocates for teacher certification and Bachelor degree programs that include training in “cultural competency.”⁶³ In addition to restorative justice programs such as the one discussed above, the Kirwan Institute also advocates for “Positive Behavioral Interventions and Support” (PBIS). PBIS provides a framework for “selection, integration, and implementation of the best evidence-based academic and behavioral practices for improving important academic and behavior outcomes for all students.”⁶⁴ Studies have shown that schools practicing PBIS have less exclusionary and aversive teaching and learning environments.⁶⁵

In Washington, the state legislature has taken steps to address implicit bias by enacting WAC 392-190-020, which outlines staff responsibilities for bias awareness training. Under the WAC, every school district and charter school is required to provide training to “raise awareness of and eliminate bias based on sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal.”⁶⁶ Although a step in the right direction, the law in its current state fails to provide specific guidelines to ensure that school districts are being held accountable, and that training is effective.

VIII. ALTERNATIVES TO EXCLUSION

Racial disproportionality in school discipline can have a lasting impact on students of color, especially when discipline involves suspending or excluding students from the classroom, thus limiting their access to education. One way to offset the effects of exclusionary school discipline policies is through alternative schools. Alternative

⁶² *Id.* at 6.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ WAC 392-190-020.

schools can have a variety of goals, with the primary purpose being to work with disadvantaged and at-risk students who struggle with behavior in traditional public schools.⁶⁷ Although it is unclear whether alternative schools as a whole are effective in reducing juvenile delinquency, studies have shown that the more effective schools are smaller in size, offer a supportive and noncompetitive environment, and have a student-centered curriculum.⁶⁸

At YES Prep Gulfton⁶⁹, students were disciplined under a clearly defined behavior system called RISE. Students could receive up to five “marks” for misbehavior before being placed on RISE, and at the third mark a homeroom teacher was required to meet with the student to discuss what behaviors needed to be changed to avoid receiving the fourth and fifth marks. If a student did receive five marks, despite homeroom teacher intervention, then that student was required to wear a white shirt for an entire day and remain separated from the other students (this involved not speaking with anyone other than the teacher, and losing privileges like recess). Although militaristic at first glance, our school’s RISE system was a great way to address misbehavior while still ensuring that students stayed in the classroom and continued to learn. In order to be taken off of RISE, students had to complete *all* homework for the day, further ensuring that students stayed engaged during class.

For more challenging misbehaviors, the school implemented targeted intervention. Each grade level met on a bi-weekly basis to identify “target students” who were having behavior issues in multiple classes. As a grade level, teachers decided upon consistent intervention strategies (such as keeping the student at a separate desk to minimize classroom disruption). Intervention strategies addressed the root causes of student misbehavior and because the strategies were implemented consistently, all teachers were able to address more serious misbehaviors fairly quickly while keeping students in the classroom.

⁶⁷ *Special Report-School Violence: Disciplinary Exclusion, Prevention and Alternatives*, available at <http://prevention.psu.edu/pubs/docs/expulsion.pdf>.

⁶⁸ *Id.* at 4.

⁶⁹ One of the authors of this paper taught at YES Prep Gulfton; these observations stem from her experience. As a former teacher, she saw how alternatives to exclusion and out-of-school suspension can benefit struggling students.

IX. IMPROVING STUDENT BEHAVIOR THROUGH PARENTAL INVOLVEMENT

Another crucial aspect of school discipline is parental involvement. As discussed in an ACLU Washington pamphlet titled “Parents’ Guide to Public School Discipline in Washington,” parents have the ability to serve as advocates for their children when discipline policies fall short.⁷⁰ In addition to providing basic information regarding statewide discipline policies, the pamphlet suggests ways that parents can challenge poor discipline policies.⁷¹ For example, the pamphlet outlines the ways that parents can seek an appeal when they feel that their child is being unfairly treated.⁷² Parents have the ability to successfully advocate for their child, if given accurate and timely information such as the kind provided in the ACLU pamphlet. Access to information is crucial in ensuring that parents, particularly those from communities of color, are fully aware of the options available to their child. Information becomes especially important when racial disproportionality in school discipline leads to exclusionary practices, and parental involvement is needed to petition for readmission.⁷³

X. CONCLUSION

Racial disproportionality in school discipline, in conjunction with exclusionary practices, can have a lasting negative impact on students of color. As highlighted above, Washington State is currently failing in its paramount duty to provide all students with the education that they are entitled to under the law. However, by implementing the policies and programs outlined above, Washington can begin to minimize racial disproportionality in school discipline and ensure that all students continue to have access to an adequate education.

⁷⁰ *Parents’ Guide to Public School Discipline in Washington*. ACLU Washington (2007). available at

https://aclu-wa.org/library_files/Discipline_guide_parents_3_07.pdf.

⁷¹ *Id.* at 17.

⁷² *Id.* at 18.

⁷³ *Id.*

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