

“THEY’RE THE WORST STUDENTS!”: CONSTRUCTIONS OF CRIMINALITY,
RACIALIZED SAFETY, AND PUNISHMENT IN TEXAS PUBLIC SCHOOLS

A Dissertation

by

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ABSTRACT

Public schools in the U.S. continue to define and manage student discipline through a paradigm of crime and punishment. Although zero-tolerance policies have been widely implemented since the early 1990s under the guise of protecting the safety of students and staff, these harsh disciplinary policies mark Black and Latinx students as dangerous and delinquent, subsequently leading them into the criminal justice system. As such, Black and Latinx continue to face disproportionate discipline experiences within schools.

This dissertation is an ethnographic case study of school-based policing practices in public schools in Bryan, TX. Using a triangulated methodological approach, I interrogate Bryan Independent School District's (BISD) 20-plus-year-old practice of issuing Class C misdemeanor tickets to students for in-school conduct such as disruptive behavior in class, using profanity, or being too loud in the classroom – behaviors that are not a violation of criminal law. By issuing criminal tickets, particularly tickets for non-criminal behavior, BISD's policy has funneled Black and Latinx students through the criminal justice system as opposed to utilizing non-punitive punishments. I build on various areas of literature to develop of a more critical understanding of how zero-tolerance policies, courts, and schools racialize and unequally distribute safety. In order to do this, I build a Critical Race Theory (CRT) of fear and safety to demonstrate how in-school disciplinary policies create and reinforce racialized notions of safety and in doing so, reproduce unequal access to safety.

My field work reveals two major findings. On the one hand, I demonstrate that zero-tolerance policies not only function to legitimize surveillance, policing, and criminalization of Black and Latinx students within public schools and within U.S. courts but also play a pivotal role in facilitating the tendency to link danger and violence to Black and Latinx youth. As such,

racialized notions safety create consensus on the appropriateness of punitive disciplinary policies and promote and legitimize greater punishment of Black and Latinx. On the other hand, however, I demonstrate the hypocrisy that underwrites zero-tolerance policies, as my findings reveal that the very same policies that are framed as essential to ensure safety thwart the ability of Black and Latinx students to feel safe from criminal justice persecution within school and in their lives outside of school.

DEDICATION

To every Brown and Black kid who has felt unsafe, targeted, unjustly penalized, ignored, overlooked, and not believed because of the color of your skin. I see you. I hope I do your stories justice. Thank you for trusting me to tell your stories.

To my late grandmother, Sophia ‘Sol’ Ceballos de Espinoza (September 18, 1929- October 27, 2018), who could neither read nor write, or fully comprehend that I would become a different kind of doctor. Sol, even though you were no longer with me when I finished this dissertation, your legacy and fighting, stubborn spirit are directly intertwined with the academic struggle that resulted in this dissertation. *Espero que estés orgullosa de mi, Sol. Te quiero.*

To Ahmaud Arbery, Michael Brown, Sandra Bland, James Byrd, Philando Castile, George Floyd, Eric Garner, Oscar Grant, Trayvon Martin, Tamir Rice, Breonna Taylor, and countless others who have been victims of white supremacist state violence. We will say your names forever.

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NOMENCLATURE

B/CS	Bryan/College Station
BISD	Bryan Independent School District
BMC	Bryan Municipal Court
BPD	Bryan Police Department
DAEP	Disciplinary Alternative Educational Program
ECM	Extended Case Method
FTA	Failure to Appear
NAACP	National Association for the Advancement of Colored People
NAACP - LDF	National Association for the Advancement of Colored People Legal Defense and Educational Fund
NCYL	National Center for Youth Law
OCR	U.S. Department of Education's Office for Civil Rights
TA	Texas Appleseed
TPM	Truancy Prevention Measures
TEA	Texas Education Agency
TEC	Texas Education Code
SRO	School Resource Officer
SSI	Social Security Income
WIC	Women, Infants, and Children

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CHAPTER I

INTRODUCTION

Welcome to Bryan, Texas

If you didn't know exactly where Bryan Municipal Court (BMC) was located, you would probably drive right by it while attempting to locate it. Located within the Bryan Justice Center on East 29th Street in Bryan, TX, BMC is on the same street corner as the Bryan Police Department (BPD). While BMC and BPD share the same sunburnt brick and grey slate, modernized architectural style, they differ significantly. Unlike the sign demarcating the College Station Municipal Court located just 15 minutes away, the two-story building that houses BMC only has one sign reading "Court" that sits directly above the front doors but with its silver coloring, you need to be right up close to the building to read it. Although BMC processes both civil and criminal cases, BPD's presence is ever looming – police cars can regularly be seen, as the main court doors are directly adjacent to the court staff and police officer parking lot, and police officers themselves are ever-present in the court building itself.

BMC is more than courtroom, however. Since the mid-90s, it has been fundamental in the preservation of the racial inequality in Bryan, particularly as a direct result the zero-tolerance policies and practices used by the Bryan Independent School District (BISD). It blatantly symbolizes the theft of opportunity for generations of Latinx and Black students. From 2014 to 2017, during the three years I spent collecting data for this study, I witnessed an overwhelming flow of people of color anxiously appear before the same judge week after week. The hearings – most of them not lasting more 10-15 minutes – processed tickets issued in Bryan schools dating as far back as 2002, and were a combination of chastising, 'benevolence,' and 'tough love' from the Judge.

Although zero-tolerance policies have been widely implemented in the United States since the early 1990s under the guise of protecting the safety of students and staff, zero-tolerance policies in Texas are unique. For over 20 years, the Texas Education Code allowed schools to issue students Class C Misdemeanor tickets for in-school infractions, the vast majority of which were for Disorderly Conduct or Class Disruption citations, encompassing anything from talking in class to dress code violations, which required students to attend court to be resolved.

What's Race Got To Do With It?

Bryan, TX is a generally quiet town of about 84,000 and is directly adjacent to College Station, TX, home to Texas A&M University, one of the largest public universities in the country (United States Census Bureau 2019). Bryan itself has had a long and complicated racial history – racial segregation, discrimination, and violence have always been central to Bryan's history. Its racial history is evident in the very characteristics that Bryan residents pride themselves on. For example, Bryan takes pride in the rich agricultural history that has long characterized the Brazos Valley. While Bryan first emerged as a railway station serving the farms and plantations of the Brazos Valley, Bryan's agricultural economy was rooted in and greatly benefited from slavery. Similarly, as a community, Bryan-College Station has been defined by the presence of Texas A&M University since the late 1800s, but racial segregation and discrimination have also defined Bryan's educational institutions. For example, rather than admitting Black students in its early days, Texas A&M instead opted to create Prairie View A&M University in nearby Prairie View, Texas, and did not admit Black students until 1963. This was not exclusive to higher education or limited to times past. K-12 schools in Bryan also have a controversial racial history – after the United States Supreme Court ordered schools to desegregate in 1954, schools in Bryan failed to

integrate until a Black parent filed a federal lawsuit with the Department of Justice (Brundidge 1986; Odintz 2010; Standish 2006).

Over half a century later, racial discrimination and segregation in Bryan schools has taken the form of zero-tolerance policies, where Black and Latinx students are disproportionately punished and criminalized for in-school misbehavior. In February of 2013, the National Association for the Advancement of Colored People Legal Defense and Educational Fund (NAACP – LDF) and the National Center for Youth Law (NCYL) filed a complaint with U.S. Department of Education’s Office for Civil Rights (OCR) arguing that BISD’s practice of issuing Class C Misdemeanor tickets for in-school regulatory disruption was a violation of Title VI of the Civil Rights Act of 1964. The complaint argued

First, the practice disproportionately affects African-American students; their chances of receiving a ticket for either of these offenses [Disorderly Conduct or Class Disruptions] is *more than four times greater* than the risk faced by students of all other races. Second, the ticketing practice is not educationally necessary. Third, there are equally effective, less discriminatory alternatives for preventing and/or responding to minor student misbehavior...Bryan ISD’s current ticketing practice results in the ongoing, improper and harmful criminalization of the district’s African-American students. As set forth in this complaint, this practice disproportionately affects African-American students, is not required by educational necessity and is in fact antithetical to the district’s goal of providing a safe learning environment in which all students can thrive (italics added; National Association for the Advancement of Colored People Legal Defense and Educational Fund/National Center for Youth Law 2013:1, 36; See Appendix A).

The complaint highlighted how in an age where punitive school policies are the norm in public schools across the country, the zero-tolerance policies established by the Texas Education Code were extremely punitive and created a literal pathway from the classroom to prison, with the direct help of the local criminal justice system, particularly for Black who face disproportionate discipline experiences within BISD and BMC (Balfanz, Byrnes, and Fox 2013; Losen and Martinez 2013, Skiba et al. 2011).

The complaint echoed existing findings from previous decades of social science research – the use of punitive zero-tolerance policies, such as those found in Texas public schools, not only widen the achievement gap between white students and Black and Latinx students but also marks Black and Latinx students as dangerous and delinquent, who are then disproportionately punished and targeted by school discipline policies. Such policies have been shown to subsequently lead students into the criminal justice system from an early age (Balfanz, Byrnes, and Fox 2013; Fabelo and Carmichael 2011).

The issue of school safety and punitive school discipline policies has long-ranging implications, for scholars and policy-makers alike. The ramifications of implementing new concepts of crime and criminal punishment range from the fragmentation of neighborhoods and communities to a reduction in the appeal of rehabilitative penal policies and numerous mental health issues.

Overview of Dissertation

Existing research has discussed not only the implications of zero-tolerance policies for Black and Latinx students but also the negative experiences of Black and Latinx youth in juvenile and adult court. Most theoretical frameworks, however, fail to situate the criminalization, hyper-surveillance, and victimization of Black and Latinx students within a broader structural context that places racialized constructions of safety and punishment at its core. Instead, existing research often focuses on other areas of K-12 education, such as academic achievement or school climate, for example. Similarly, previous research has quantitatively documented the long-term implications of zero-tolerance policies for Black and Latinx students including the negative implications of lack of safety within and school the disproportionately punitive experiences Black and Latinx youth face once they are part of the criminal justice system. While vast, this body of

research has limited our ability to understand and think beyond conventionally-used variables and has resulted in little being known about the different *processes* that contribute to making safety an unequally distributed public good, despite the fact that racialized constructions of safety continue to be the dominant paradigm through which discipline policies are created. Ultimately, existing literature fails to explicate the long-lasting *racialized* implications of in-school disciplinary policies.

This dissertation is an ethnographic case study of school-based policing practices in Bryan, TX public schools. Using a triangulated methodological approach, I interrogate Bryan Independent School District's 22-year-old practice of issuing criminal misdemeanor tickets to students for in-school conduct such as disruptive behavior in class, dress code violations, using profanity, or being too loud in the classroom—behaviors that are not a violation of criminal law. By issuing these tickets, BISD's policy funneled Black and Latinx students through the criminal justice system as opposed to utilizing non-punitive, and more importantly, non-criminalizing methodologies, to redirect or control behavior that was against codes of conduct. In many ways, this policy serves as a literal example of how zero-tolerance policies funnel students, especially Black and Latinx students, into the criminal justice system.

I develop a Critical Race Theory (CRT) of racialized fear and safety that undergirds how we think about linkages between courts, schools, and racialized safety. I present a theoretical framework that facilitates a more critical understanding of how zero-tolerance policies further racialize and unequally distribute safety. In addition, I explicate how in-school disciplinary policies reproduce racialized notions of who and what is 'safe' and as such, create and reinforce *racialized constructions of safety* that function to legitimize surveillance and policing of Black and Latinx students within public schools. These racialized constructions of safety provide a direct

path to the criminalization of Black and Latinx youth within U.S. courts. Two primary propositions guide this study: (P1) There is a complex relationship between race, punishment, and how Black and Latinx students experience safety while in school, within the courtroom, and their everyday lives; and (P2) Racial inequality is reinforced and reproduced through the unequal distribution of safety as a public resource.

Public schools and punitive discipline policies serve as an excellent proxy for gauging how safety is perceived and experienced. Arnette and Walsleben (1998) note that violence and safety within local schools are often associated with local neighborhood violence. Similarly, students who cite experiencing lack of safety within their respective schools are also likely to express concern for their personal safety when walking about their neighborhoods. Yet to date, research on fear of crime and school safety is largely based on the experiences of the white majority and constructed from a white perspective with little attention given to the experiences of people of color and how race shapes fear, safety, and ultimately punishment.

I argue that in-school zero-tolerance and those that use local court systems, though often implemented under the guise of protecting the safety of students and staff within schools, play a pivotal role in legitimizing the surveillance and policing of Black and Latinx youth and facilitate whites' tendency to link danger and violence to Black and Latinx youth. My analysis demonstrates how in-school disciplinary policies create and reinforce *racialized constructions of safety* that function to legitimize surveillance and policing of Black and Latinx students within public schools and the criminalization of Black and Latinx youth within U.S. courts. In doing so, I demonstrate how in-school disciplinary policies reproduce racialized notions of safety by creating consensus on the appropriateness of their use and promote and legitimizing greater punishment of Black and

Latinx students, while simultaneously thwarting the ability of Black and Latinx students to feel safe from criminal justice persecution in school.

Organization of Dissertation

In Chapter II, I elaborate on the theoretical framework that guides this study. To build this framework, I first review the body of literature that investigates the effects of zero-tolerance policies since the 1970s. This literature suggests that zero-tolerance policies not only disproportionately affect Black and Latinx students, they are also inconsistently implemented and carry an inherent racist bias. This body of literature has provided limited evidence that zero-tolerance policies actually improve school safety. Next, I review literature on youth experiences in juvenile and criminal courts, particularly research on race and gender inequality, and the use of extralegal factors in case processing for cases involving Black and Latinx youth. Finally, using Critical Race Theory, I explicate how zero-tolerance policies are fueled by racialized constructions of safety and racist stereotypes of Black and Latinx youth that suppose a propensity for criminality. I argue that not only do these racialized constructions of safety and criminality feed into the punitive logic of zero-tolerance policies but also legitimize the policing of Black and Latinx students within schools and the punishing of Black and Latinx youth in the adult criminal justice system.

Chapter III describes the research design of this study. First, I outline Chapter 25 and Chapter 37 of the Texas Education Code, both of which have been instrumental in materializing the punitive nature of zero-tolerance policies in Texas public schools. Second, I outline the study's guiding research questions. Finally, I present the three major sources of data, the process by which each set of data were collected are described, and the analyses process for each source. In doing, I

demonstrate the benefit of using a multi-data approach to study the effects of the Texas Education Code's school discipline policies.

Chapter IV provides a retrospective account of how safety and fear were racialized and framed in newspaper reports while the statute was law. This includes newspaper reports prior to its being signed into law, while it was actively used in schools, the controversy that arose in its final years, and when it was finally eliminated. The analysis demonstrates how racialized fears of violent Black and Latinx youth consistently permeated the discourse surrounding this statute.

Chapter V provides an in-depth analysis of court experiences, through the use of ethnographic observation data and legal court cases. I detail how the atypical organizational structure of court proceedings of school-ticketing cases are characterized by ambiguity and inconsistency, which allows court personnel to introduce a wide variety of extra-legal factors into decision making. I argue that the ways in which extra-legal factors are incorporated in everyday decision-making represent crucial turning points that have the potential to legally, financially, and socially disenfranchise people of color. Furthermore, my analysis demonstrates the unnecessary nature of ticketing students to ensure school safety.

Chapter VI moves beyond the courtroom and draws from in-depth interviews with current and former students who were previously ticketed. Here, I focus on three particular patterns. First, I demonstrate the ways in which school punishment experiences reinforce the racialized stereotypes that have long connected danger and crime to Black and Latinx youth – stereotypes which were present in the everyday lives of my participants. Second, I examine the ways in which school ticketing itself was normalized in the lives Black and Latinx students. Third, I illuminate the safety experiences of my participants and demonstrate how danger, for them, was linked to state and police violence.

Chapter VII revisits the significant empirical findings of this study and their connection to racialized constructions of safety and fear. Here, I make broader connections between the findings of this case study and larger national trends in student discipline and how Black and Latinx youth are punished within juvenile and adult courts. Furthermore, I detail the current national rhetoric on the discipline of Black and Latinx youth and the way in which this rhetoric not only continues to reinforce the supposed criminality of Black and Latinx youth and the supposed appropriateness of using harsh punitive policies to punish Black and Latinx youth but also finds its way in local, state, and federal policy that looks to strip Black and Latinx students of any sort of protection from criminal justice persecution.

CHAPTER II

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

Punishment in Public Schools: The Rise of the School-to-Prison Pipeline

Criminologists and legal scholars have argued that the rise of incarceration rates and increasing use of aggressive street policing practices are part of a punitive shift in criminal justice policies that has taken place as part of the “war on crime” (Alexander 2011; Nolan 2011; Simon 2007, Tonry 1994, 2010).

However, the use of “public safety” laws targeting supposedly undesirable groups in society has a long history in the United States – from vagrancy laws of the 19th century, to the establishment of a juvenile justice system intended to make delinquent youth ‘productive’ members of society. Public safety laws have always been classed, gendered, and racialized and reflect moral panics of the day and age in which they enacted. Today’s public safety and crime control laws are no different.

Contemporary punishment scholars have linked present-day crime control policies to an increasing concern with victims’ rights. They have argued that an increasing emphasis on the victims has not only played a more prominent role in the shaping of public attitudes toward crime but has also fostered public support on the appropriateness of tougher criminal justice policies (Elias 1993; Garland 2001; Gottschalk 2006; Simon 2007). As a result of this emphasis, there has been an unprecedented shift in criminal justice policies that focus on preventing the victimization of law-abiding citizens, which has simultaneously facilitated the broader public viewing themselves as potential victims. As Elias (1993) notes, the emphasis now is “to really address the victim’s plight . . . we must get tougher on crime and curb offender rights – even public rights generally: Increased police powers help victims best” (3). As such, contemporary crime control

policies are based within a discourse that seeks to punish and control “dangerous classes” while increasing the security of potential victims (Shelden 2004).

As policy makers began to place their focus on controlling Black and Latinx communities through implementation and expansion of punitive drug laws, truancy laws, curfews, and loitering, “tough on crime” policies within schools became the next logical step in the quest for law and order. Prompted by multiple high-profile school shootings within the last fifteen years and several events which occurred during the 1980s and 1990s, led lawmakers and educators alike to implement disciplinary policies known as ‘zero-tolerance’ policies in order to improve school safety.

For example, moral panic about juvenile violence beginning in the mid-1980s raised concerns that existing juvenile courts were ineffective in addressing youth crime (Butts and Mitchell 2000; Singer 1997). Such worries were exacerbated in the 1990s when scholars such as DiIulio (1995) and Zimring (1998) incorrectly projected the supposed rise of “juvenile superpredators” and advocated for a juvenile criminal justice system that would forcefully punish Black and Latinx youth (see also Fox 1996). While this projection ultimately failed to materialize, fear of “juvenile superpredators” resulted in the adoption of punitive juvenile justice policies including harsh zero-tolerance policies that funnel Black and Latinx youth into the U.S. court system, and policies that allow Black and Latinx youth to be transferred, prosecuted, and punished in adult court (Bishop 2000; Feld 2000; Griffin, Addie, Adams, and Firestine 2011; Myers 2005).

Similarly, current zero-tolerance policies can also be traced to the 1980s. The term was first used as the title for a U.S. Navy program intended to impound any sea craft carrying drugs and was subsequently applied to various social programs including sexual harassment, environmental pollution and homelessness. In 1989, several school districts in California, New

York, and Kentucky began to apply the term to disciplinary policies within their schools. These early policies mandated expulsion for drugs, fighting, gang-related activity, and weapons (Skiba 2004; Verdugo and Glenn 2002).

By 1993, zero-tolerance policies were widely implemented and broadened to include other forms of truancy such as school disruption. Fears about school safety and school-based violence ultimately culminated in the Gun-Free Schools Act of 1994 signed by the Clinton Administration, whose defining feature was mandating one-year expulsion for possession of a firearm and a referral of the student to criminal or juvenile court. Since the signing of Gun-Free Schools Act of 1994, zero-tolerance policies have proliferated in schools and now include anything ranging from uniforms, closed campuses, drug sweeps and metal detectors (Verdugo and Glenn 2002). As Skiba (2004) notes

The philosophy of zero-tolerance, adapted from the war on drugs in the late 1980's.... encourages a no-nonsense approach to school discipline, increasing both the length and numbers of suspensions and expulsions for a broader range of behavior. By punishing both serious and less serious disruptions more severely, the goal of zero-tolerance is to send a message to potential troublemakers that certain behaviors will not be tolerated (1).

School safety has thus become a matter of crisis management, as schools continue to attempt to increase and maintain school safety through multiple efforts including installing surveillance cameras and metal detectors; adopting strict dress code policies; hiring police officers and security guards; and increasing the use of suspension and expulsion (Beger 2002; Beger 2003; Muschert and Peguero 2010; Skiba 2004).

However, zero-tolerance policies have become increasingly controversial – not only do they rely on the assumption that school violence can be avoided and school safety can only be ensured through the use of harsh disciplinary policies; they have also become almost synonymous with racial and ethnic inequality. By punishing both serious and minor disruptions, much like other

criminal justice policies, zero-tolerance policies have shifted school discipline toward a crime control paradigm that actively criminalizes student truancy, further reifying the criminalization of young men and women as a fixed component of crime and order discourse (Elliott, Hamburg, and Williams 1998; Fenning and Rose 2007; Heitzeg 2009; Raible and Irizarry 2010; Skiba 2004; Wald and Losen 2003).

Furthermore, as Hirschfield (2008) notes that these "...policies stipulate that students are treated like actual or suspected criminals" and thus have "increased collaboration between schools and the juvenile justice system, which has eroded the traditional boundaries between the two institutions" (83). Termed the "school-to-prison pipeline," quantitative and qualitative studies suggest that zero-tolerance policies facilitate direct and indirect links between these punitive policies and entrance into the criminal justice system through academic disenfranchisement and disrupted learning, suspension and expulsion, arrest while in school, and dropping out (Casella 2003; Hirschfield 2008; Hirschfield and Celinska 2011; Kim, Losen, and Hewitt 2010; Rios 2011; Rocque and Snellings 2018).

While this body of literature is vast, encompassing numerous disciplines, methodologies, theoretical traditions, and differing study foci, over the past 30 years it has consistently demonstrated that zero-tolerance policies are inconsistently implemented and carry an inherent risk of bias when being enforced or implemented. Black and Latinx students are negatively and devastatingly affected by zero-tolerance policies and evidence of the ability of zero-tolerance policies to improve school safety is severely lacking.

Racial Disparities in School Punishment

One of the most consistent findings of this body of literature is the high degree of racial disparities found within all aspects of school discipline, a trend which has become more

pronounced since the Gun Free Schools Act was passed in 1994. For more than 30 years, research has demonstrated that Black students are over-represented in office referrals, suspensions, and expulsions (Beger 2002; Beger 2003; Children's Defense Fund 1975; Fenning and Rose 2007; KewelRamani, Gilbertson, Fox, and Provasnik 2007; Raffaele Mendez, Knoff, and Ferron 2002; Skiba 2004; Skiba 2013; Skiba and Peterson 1999; Skiba and Rausch 2006; Skiba, Michael, Nardo, and Peterson 2002). Skiba, Michael, Nardo, and Peterson (2002) note

White students were significantly more likely to be referred to the office for smoking, leaving without permission, obscene language, and vandalism. In contrast, Black students were more likely to be referred to the office for disrespect, excessive noise, threat, and loitering...there are clearly different patterns of referral for the two races. The majority of reasons for which white students are referred more frequently seem to be based on an objective event (e.g., smoking, vandalism) that leaves a permanent product. Reasons for Black referrals to the office, on the other hand, are infractions (e.g., loitering, excessive noise) that would seem to require a good deal more subjective judgment on the part of the referring agent. Even the most serious of the reasons for office referrals among Black students, threat, is dependent on perception of threat by the staff making the referral (334; see also McFadden, Marsh, Price, and Hwang 1992; Shaw and Braden 1990)

While research on school discipline and African American/Black students has yielded consistent findings for several decades, research on school discipline and other racial/ethnic groups such as Latinx and Native students, has provided less consistent results (Gordon, Piana, and Keleher 2000). Regardless, numerous studies have demonstrated that Latinx and Native students are also subject to disproportionately harsh school discipline experiences, including office referrals, suspension, and expulsion (Arcia 2007; Krezmien, Leone, and Achilles 2006; Verdugo 2002; Wallace, Goodkind, Wallace, and Bachman 2008).

Gregory, Skiba, and Noguera (2010) note that the intent of school discipline is to remove disruptive and misbehaving students from school in order to preserve school safety and the overall learning environment, while also attempting to prevent other students from misbehaving. As such, supporters of zero-tolerance policies argue that Black and Latinx students are punished

disproportionately because they misbehave at higher rates than their white counterparts. However, research on student behavior, race and ethnicity, and discipline has consistently found no evidence to support this claim (Beger 2002; Peguero and Shekarkhar 2011; Raffaele Mendez, Knoff, and Ferron 2002; Skiba 2013; Skiba and Peterson 2000; Skiba, Michael, Nardo, and Peterson 2002). As Skibba (2004) argues, "...available data make a case that the use, and especially the overuse, of disciplinary removal carries with it an inherent risk of racial bias" (4).

Zero-tolerance policies have been implemented across the nation and their implementation has been highly inconsistent (Skiba 2013; Skiba and Peterson 2000). As Skiba (2013) notes

...although it is often presumed that suspension and expulsion are a direct response to student disruption, which student actually gets suspended or expelled is determined as much or more by the unique characteristics of that particular school. School climate and school governance, school demographics, and principal and teacher attitudes all play significant roles in determining the rate of school discipline (383).

Similarly, multiple studies have demonstrated that school personnel often target Black and Latinx students because they perceive such students as not fitting into the overall norm of the school, being uncontrollable, being troublemakers, and being dangerous threats to school safety (Bowditch, 1993; Brantlinger 1991; Casella 2003; Domenico 1998; Noguera 1995; Sheets 1996; Wald and Losen 2003).

Negative Outcomes for Black and Latinx Students

The multiple effects of out-of-school suspension have also been well documented by scholars, who suggest that negative outcomes are amplified for Black and Latinx students often leading to personal and educational disenfranchisement. For example, research suggests that students who are either suspended or expelled are at high risk of academic underperformance or academic failure (Davis and Jordan 1994; Gregory, Skiba, and Noguera 2010). Discipline sanctions often result in lost instructional time that ultimately damage the learning process limiting

students' opportunity to learn. Research demonstrates that Black and Latinx students who have been suspended or expelled have lower test scores and overall grades, delayed academic progress, or are disproportionately placed in special education classes (Kao and Thompson 2003; Kupchik and Monahan 2006; Losen and Skiba 2010; Noguera 2003; Peguero 2011; Peguero and Shekarkhar 2011; Wald and Losen 2003).

Students who have been suspended, expelled, or disciplined by school officials are ultimately placed on a path toward “educational disengagement” (Peguero and Shekarkhar 2011:11). Scholars such as Kupchik and Monahan (2006) and Noguera (2003) have suggested that students who have been suspended, expelled, or disciplined are less likely to be bonded to school or teachers, have lower levels of commitment to academic success, and are often disconnected and alienated from the overall school system (see also Brooks, Schiraldi, and Ziedenberg 2000; Peguero and Shekarkhar 2011; Raffaele Mendez, Knoff, and Ferron 2002; Skiba, Peterson, and Williams 1997). Once on this path students face a wide variety of barriers to re-entry into the school system, as schools rarely offer adequate avenues for transition or re-entry (Wald and Losen 2003). Scholars have demonstrated that suspension results in lower grade retention and is often a major impetus toward school push out, with school suspension often being used by school administrators to get rid of perceived trouble making students (Baker et al. 2001; Balfaz 2003; DeRidder 1991; Fenning and Rose 2007; Losen and Skiba 2010; Raffaele Mendez and Knoff 2003; Skiba and Noam 2001;). Because of this, suspended or expelled students become less likely to pursue further education (Skiba and Rausch 2006).

Studies suggest that every-day security practices such as strip searches, locker searches, and being led away by school police in handcuffs are also affecting students in multiple psychological ways. For example, Hyman and Perone (1998) suggest that these security measures

lower student self-esteem and can cause emotional distress. Similarly, Theriot (2009) notes that “students also face humiliation and stigma from classmates and teachers...” that can subsequently foster tense relationships between school officials and students (280; see also Beger 2003). This stigma is particularly alarming, as it has the potential to further criminalize students through increased surveillance and scrutiny of particular students who have been labeled as troublemakers in the past (Beger 2003; Theriot 2009). As Christle, Jolivette, and Nelson (2005) note, “...academic failure, exclusionary discipline practices, and dropout have been identified as key elements in a ‘school to prison pipeline,’ especially for minority students” (70).

Evidence of its Ability to Improve School Safety

While the multiple layers of zero-tolerance policies have been extensively documented, research also demonstrates that, “There is no credible evidence that zero-tolerance measures improve classroom management or the behavior of students (Beger 2002:120; see also Beger 2003; Losen and Skiba 2010; American Psychological Association 2008; Muschert and Peguero 2010; Skiba 2004). While school districts continue devoting large portions of their annual budgets to security, their use has not proven to be effective in fostering and maintaining school safety (Skiba 2004). In fact, research demonstrates that in addition to disrupting students’ learning environment, out-of-school suspension, and expulsion has negative effects on school climate. For example, Hyman and Perone (1998) demonstrate that intrusive security measures are more likely to increase student misbehavior rather than prevent it and have a “negative effects on student morale...” (13). Beger (2002) echoes these findings noting that heightened security also results in a learning environment laden with hostility and fear. Similarly, Skiba (2004) argues that zero-tolerance policies create a less than welcoming school climate thus making overall school governance ineffective and unsatisfactory.

It is important to note that while multiple studies suggest that zero-tolerance police do make students and school personnel feel safer, their findings are often based on the narratives of the same school officials and administrators that advocate the implementation of zero-tolerance policies in the first place (Martinez 2009; Morrison and Skiba 2001; Skiba, Michael, Nardo, and Peterson 2002; Verdugo 2002).

Using Courts to Punish Black and Latinx youth

Scholarship documenting youth experiences in both juvenile and adult criminal courts has developed into a multidisciplinary body of literature which covers a wide range of academic disciplines, methodologies, and theoretical foci. Juvenile and criminal courts fundamentally differ in their punishment goals and are symbolically distinct from each other. Scholars have noted that juvenile court was initially intended to act in the ‘best interest’ of youth, emphasizing the need for punitive sanctions to punish severe crimes with critically needed rehabilitative interventions in instances of less severe crimes (Feld 1990; Merlo and Benekos 2010; Scott and Steinberg 2008). Instead, it has evolved into a system in which Black and Latinx youth are criminalized for non-criminal behavior, thus creating generations of Black and Latinx youth who’ve come in continuous contact with the criminal justice system.

Black and Latinx youth More Likely to Receive Punitive Sanctions

The impact of race and ethnicity on ‘get tough’ juvenile justice policies and their implementation has not only been well documented but is also noted as the cause of disproportionate punishment for Black and Latinx youth (Thomson and Zingraff 1981; Tonry 1994; Zatz 2000). Researchers have argued that public fears about the anticipated rise of “super predators” is rooted, in part, in an attempt to control supposedly “delinquent” Black male teenagers, making them the primary catalyst in the expansion and adoption of punitive juvenile

justice policies (DiJulio 1995; Feld 1990, 1991, 1999, 2003; Jackson and Pabon 2000; Tonry 1994). As such, Black and Latinx youth were described as threatening, violent, and remorseless supposedly indicating criminality and reflecting the entrenched disorganization of their communities (Rothenberg and Heinz 1998; Sampson 2014; Sampson and Laub 1993; Welch, Price, and Yankey 2004). However, the effects of race and ethnicity on the experiences of Black and Latinx youth within juvenile and criminal courts has been widely debated. Regardless, empirical research has provided several insights and has led scholars such as Baumer (2013) to conclude that “there are substantial racial disparities in the application of law in the USA” (235; see also Gonzalez VanCleve 2016; Tonry 1994, 2010).

Research indicates that at every step of the criminal justice system, Black and Latinx youth face multiple challenges and are punished more harshly than their white counterparts (Zatz 2000). For example, research indicates that Black and Latinx youth are overrepresented in arrests, referrals to juvenile court, transfers to criminal court for prosecution as adults, and referred to prosecution (Bishop and Frazier 1992; DeJong and Jackson 1998; Leiber 1994; Rodriguez 2013; Sampson and Laub 1993). Furthermore, Black and Latinx youth are at greater risk of detention, incarceration, and conviction and are sentenced more severely than their white counterparts (Lizotte 1978; Spohn, Gruhl, and Welch 1982; Steffensmeier and Demuth 2000). Once sentenced, Black and Latinx youth, particularly Black youth, are less likely to be given probation or put into a diversion program, both of which are rehabilitative interventions. Black and Latinx youth are also less likely to receive rehabilitative interventions because courts may be less willing to invest limited resources to aid Black and Latinx youth under the belief that they are more likely to reoffend. Instead, Black and Latinx youth are more likely to receive punitive sanctions than their white counterparts such as incarceration, longer sentences, and harsher departure guidelines, which are contingent on youth

adhering to a variety of other conditions (Bales and Piquero 2012; Bishop and Frazier 1988; Davis and Sorensen 2013; Doerner and Demuth 2010; Fader, Kurlychek, and Morgan 2014; Fagan 2010; Leiber 1994; Johnson 2003; Kramer and Ulmer 2002; Rodriguez 2010, 2013; Steen, Engen, and Gainey 2005; Steffensmeier and Demuth 2000; Warren et al. 2012). Such disparities have been documented in the local and federal court systems (Baumer 2013; Franklin 2018; Ulmer 2012).

Disparities such as these have led scholars toward two possible explanations: 1) Differences in offending among Black and Latinx youth and white youth or 2) racism with the juvenile and criminal justice systems. Some scholars such as Hagan (1974) and Kleck (1981) have noted that the effect of race is more complex than we have been led to believe because its magnitude is not as pronounced. Both noted that this could be due to the fact that racism within juvenile and adult criminal courts may be more covert and subtly embedded, rather than overt which is what would appear as statistically significant in quantitative studies, and is complicated by other factors such as racist stereotypes, gender, socioeconomic status, disability, age, among others (see also Hagan 1994; Tonry 1994, 2010; Zatz 1987). To this end, researchers such as Feld (2003) have argued that racialized personification of youth crime has resulted in fear and hostility toward Black and Latinx youth which has ultimately facilitated the use of policies that prosecute youth in criminal courts (see also Cochran and Mears 2015; Feld 1999; Lehmann, Chiricos, and Bales 2017). Similarly, researchers have argued that court personnel, particularly judges, consciously and unconsciously rely on racialized stereotypes during court proceedings and sentencing, which make Black and Latinx youth more blameworthy or especially “threatening” to public safety (Albonetti 1991; Bridges and Steen 1998; Conley 1994; Steffensmeier, Ulmer, and Kramer 1998).

Gendered Experiences in Court

In addition to race and ethnicity, gender has also been shown to play a significant role in the experiences of youth within juvenile and adult criminal courts, with increasing evidence suggesting that race/ethnicity and gender interact to create disproportionately punitive court experiences for Black and Latinx youth. Empirical evidence falls within two areas: 1) That Black and Latinx males are more likely to receive severely punitive sanctions than women and their white counterparts and; 2) Black and Latinx females are more likely to receive punitive sanctions than their white female counterparts (Bishop and Frazier 1992; Leiber, Brubaker, and Fox 2009).

For example, Black males, followed by Latinx males, receive more severe dispositions and are sentenced more harshly than white males, particularly males under the age of 30 who are charged with minor crimes (Spohn and Holleran 2000; Steffensmeier, Painter-Davis, and Ulmer 2017; Warren, Chiricos, and Bales 2012). Black male youth are more likely to be given prison sentences and tend to receive the longest sentences when compared to both Latinx and white males (Steffensmeier, Ulmer, and Kramer 1998; Doerner and Demuth 2010; Franklin 2015). Furthermore, Black and Latinx females have been shown to be treated more harshly than their white counterparts. When compared to their male counterparts, however, female youth are not only less likely to receive some sort of prison sentence they are also less likely to be given long prison sentences (Bishop and Frazier 1992; Leiber, Brubaker, and Fox 2009).

Researchers have argued that traditional racialized gender roles are critical in decision making in juvenile and adult criminal courts and functioning as normative boundaries regarding behavior, deviant actions, negative or ‘criminal-prone’ character traits, culpability, potential remorsefulness, and propensity for committing future crimes (Doerner and Demuth 2010; Franklin 2015; Steffensmeier, Ulmer, and Kramer 1998) Such stereotypes, whether used consciously or

unconsciously, introduce racialized gender roles into case processing within both kinds of courts and ultimately suggest that the complexity of intersectionality manifests in unexpected ways in juvenile and adult criminal courts (McCall 2005; Steffensmeier, Painter-Davis, and Ulmer 2017; Steffensmeier, Ulmer, and Kramer 1998).

For example, Black and Latinx females who find themselves in either kind of court are often viewed as “atypical” women who deviate from prevailing gender stereotypes (Belknap 2001; Chesney-Lind 2006; Daly 1994; Gaarder and Belknap 2002). While some scholars such as Steffensmeier, Kramer, and Streifel (1993) have argued that paternalism on the part of court personnel can lead to the perception that women are less threatening or harmful and as such, give women less severe punishment. Others have argued that severity of the offense and past record can influence the way in which Black and Latinx females are viewed (Barnes and Franz 1989; Chesney-Lind and Sheldon 2004; Gaarder, Rodriguez, and Zatz 2004). This has been referred to this as the “evil” woman hypothesis wherein Black and Latinx females are seen as more deviant than Black and Latinx males (Belknap 2001; Chesney-Lind 2006; Daly 1994; Gaarder and Belknap 2002).

Furthermore, empirical evidence suggests that Black males and white females are, consciously and unconsciously, viewed and treated as representing opposite ends of a culpability spectrum. For example, research suggests that while Black males are more likely to receive punitive punishment including prison sentences, white females are more likely to receive sanctions that are rehabilitative in nature (Belknap 2001; Chesney-Lind 2006; Daly 1994; Gaarder and Belknap 2002).

Importance of Racialized Extralegal Factors

While juvenile and adult courts consider legally relevant factors during court proceedings, such as whether an arrest was done correctly or prior offense, courts also discuss a number of extralegal factors such as the personal and home lives of Black and Latinx youth. For example, research on juvenile courts has shown that while the families of defendants may not be directly involved in court proceedings, they are still discussed as peripheral information (Kupchik 2003; 2006). Kupchik (2003) argues that discussing the personal and home lives of Black and Latinx youth creates the potential for greater subjectivity in all phases of case processing (see also Kupchik 2006).

Albonetti (1991) similarly argues that because legal decision making is complex but also restrained by time and availability of resources, a degree of uncertainty is inevitably introduced. Court personnel, in order to reduce uncertainty weigh a number of extralegal factors to inform their decision making including out-of-home placement history, family structure, parents' employment status, history of mental illness in both parents and youth, immigration status, English proficiency, among others (Albonetti 1991). However, judges and other court personnel are not immune to prevailing racist and gendered stereotypes that are often subtly embedded within any number of extralegal factors (Kupchik 2003, 2006). These extralegal factors intersect with and exacerbate the effects of race and gender in court proceedings, not only in length of sentencing but also perceptions of guilt and culpability, and severity of punishment (Carmichael 2010; Desai, Falzer, Chapman, and Borum 2012; Steffensmeier, Ulmer, and Kramer, 1998; Ulmer and Kramer 1998). For example, research by Pope and Feyerherm (1993) demonstrated that youth from single, female-headed households were often given more severe sanctions than youth from two-parent households. Pope and Feyerherm (1993) argued that "family situation" could be considered a

proxy for race and ethnicity within court proceedings as single motherhood is often stereotyped as being synonymous with Black families and communities (see also Frazier and Bishop 1995; Leiber 2003; Leiber and Mack 2003).

Concerns regarding family structure and of ‘ability to care for children’ in particular have resulted in a significant amount of research that argues that such concerns represent a more subtle form of racial bias that is often used in decision making by court personnel (Frazier and Bishop 1995; Leiber 2003; Leiber and Mack 2003). For Black and Latinx youth, family structure – such as whether youth find themselves in a ‘good home environment’ or whether they have ‘appropriate supervision’ – has been shown to have significant ramifications for how cases involving Black and Latinx youth are handled (Feld 1999; Frazier and Bishop 1995; Odem 1995).

The coupling of racist and gendered stereotypes with the use of extralegal factors in court decision making inevitably label some youth as more dangerous than others, making them more likely to not only suffer harsh punishments but also to remain within the criminal justice for major portions of their lives (Albonetti 1991; Tonry 1994, 2010). For example, research has documented instances in which Black and Latinx youth, particularly males, are described as a threat to public safety but also as belonging to a demographic “known” to be dangerous (Rothenberg and Heinz 1998; Sampson and Laub 1993; M. Welch, Price, and Yankey 2004). Furthermore, prosecuting youth, particularly Black and Latinx youth, in criminal and juvenile courts results in significant legal consequences in addition to their sentences including loss of driving privileges, fines, involuntary community service, disclosure of personal information, investigations from various branches of family services, and mental health consequences, among others.

Theoretical Framework: A Critical Race Theory of Fear and Safety

While previous work on racial and ethnic inequality in school punishment and in juvenile and criminal court prosecution informs this work, I argue for the need to rearticulate (and in a manner of speaking, actually articulate) and redefine safety – particularly racialized safety – as it is often used as the foundational justification for implementing zero-tolerance policies.

Existing work on safety has often fallen under research investigating fear of crime, which focuses on the extent to which individuals express fear of particular crimes in comparison to other crimes (often referred to as “sensitivity to risk” or “risk assessment”). While first investigated by Warr (1987), researchers have argued that “perceived risk and sensitivity to risk act in conjunction to produce fear” and as such, are strong predictors of fear of crime (30, 45; see also Jackson 2008; Warr 1990). However, due its almost exclusive use of mass surveys and its individual-level focus, most fear of crime data is collected using a variation of questions such “How safe is your neighborhood from crime” and “Do you feel safe walking in your neighborhood at night?” (Roundree and Land 1996; Skogan and Maxfield 1981). While these studies have produced very valuable information, they are limited in that such questions elicit general assessments of safety but mostly ask respondents to assess hypothetical situations (Roundree and Land 1996; Skogan and Maxfield 1981).

This body of research suggests that sensitivity to risk is ordered along race and gender lines and further suggests that women and racial and ethnic minorities are most fearful, as they are most likely to be physically and socially vulnerable (Baumer 1978; Garofalo 1979). Skogan and Maxfield (1981) also note that empirical evidence suggests a strong link between indirect victimization and fear of crime.

Defining “Safety”

A central component of examining racialized constructions of safety and punishment involves defining safety. Here, I work with Huey’s (2012) definition of security and extend it to my discussion on safety. Huey (2012) states:

I use the term security to denote a *relative* status of physical and ontological freedom from both immediate and potential criminal threats, this definition includes two key components: physical safety (crimes against the person) and the safety of one’s personal belongings (crimes against property)...In order to have a sense of ontological security, or a sense of inner peace...one must be reasonably free from the burden of constant wariness and anxiety over future threat (11; original italics).

Following Stanko (1990), I intentionally use safety throughout this study because, “*Safety implies a level of managing danger from a position of equality*. Safety is a positive action. It demands that the seeker of safety is an autonomous individual capable of positive choices, not having to choose between unpalatable options” (180; italics added). Thus safety considers the systemic nature of white privilege by not obscuring the patterns of domination and subordination surrounding safety and punishment. As such, safety does not limit the analysis to solely being a consideration of individual level behavior and ideology (Wildman and Davis, 2000; Moore 2013). In other words, the term safety places the responsibility on the overall structure under which individuals live to demonstrate that varying levels of safety are the result of institutional forces, not individual choice. Though not discussed at length by Stanko (1990) and Huey (2012), the intentional use of safety allows for an analysis that considers how varying social factors such as gender, age, race, class, and sexuality function together to influence how safety is experienced by different groups of people.

Similarly, central to this discussion is the concept of racialized space. Moore (2013) notes, “Racialized space is one of the mechanisms of racialized social systems that facilitates the

reproduction of white power, privilege and wealth over generations.”¹ Although the concept of racialized space is not new to sociology, scholars continue to demonstrate that racialized space (in this case, public schools) spatially isolate Black and Latinx people from the wealth and resources (Kefalas 2003; Massey and Denton 2003; powell 1999). As Moore (2008) notes, racialized space, “... acts or enlarges many material privileges of economic opportunity, quality of life, power to influence actions and events, and convenience. At the same time, it obscures the fact of such privileges from many of their beneficiaries” (24).

I propose that it is necessary to place dominant definitions and conceptualizations of safety and fear within a broader Critical Race Theory (CRT) framework in order to fully explicate the racist foundations found within both. While CRT scholarship often differs in subject, argument, and emphasis, CRT nonetheless adheres to several core tenants. Here, I focus on two.²

First, race and racism are central aspects of American society. CRT argues that race and racism continue to be fundamental aspects of American society and considers the multiple ways in which current racial inequalities and manifestations of racial privilege and disadvantage are directly linked to past historical periods. By challenging the assumption that America is a post-racial, color-blind society, CRT forces us to consider the complex dynamics of racial power and its continued social, political, legal, and cultural embeddedness (Bell 1992; Crenshaw, Gotanda, Peller, and Thomas 1995).

Second, dominant political and legal ideals function as forms of racial oppression. Because of their focus on law and race, CRT also questions traditional ‘democratic’ values and legal ideals

¹ Unpublished manuscript—page number not available.

² I have chosen two themes as they best fit the argument and analysis I present here. Multiple CRT scholars however highlight more than four themes. For example, CRT scholars such as Matsuda, Lawrence, Delgado, and Crenshaw (1993) highlight six theoretical themes (see also Crenshaw, Gotanda, Peller, and Thomas 1995).

including citizenship, neutrality, objectivity, and color-blindness. These ideals and values, CRT argues, are not random or unintentional but instead continue to function as mechanisms of racial subordination, particularly because race continues to have social meaning (Flagg 1993; Haney-Lopez 1996; Matsuda, Lawrence, Delgado, and Crenshaw 1993).

Racialized Safety - Racially Contested and Racially Laden.

Safety is often thought of and functions as a fundamental traditional democratic value. To the extent that safety can be understood as a necessary component of an individual's state of being, being safe influences not only "liberty of the person" but also one's ability "to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society" (Marshall 1950:11; see also Foucault 1980; Pain 1997, 2000; Pain and Francis 2004; Wood and Dupont 2006). However, I argue that safety itself and how it is experienced is not immune from systems of racial domination and subordination, rather the experience of "safety" itself mirrors and is embedded within prevailing racial dynamics and ideology.

Safety, Huey (2012) notes, is not only a vital public good, but it also requires both the ability to feel physically safe and also an absence of concern over one's surroundings and belongings. Safety, however, is a stratified concept, marred with a wide range of inequalities, as individuals not only experience varied degrees of safety but also define safety and threat in sharply different ways (Lipsitz 2011; Kern 2005). Thus, only when individuals are able to live in such a way that they do not experience constant fear or feelings of lack of safety within their immediate environments, in other spaces, from the State, and other community members, are they able to properly fulfill their aspirations as citizens (Foucault 1980; Huey 2012). As Huey (2012) notes, "...security as a public good is not problematic in and of itself, but rather that the problem lies in

its distribution...If some citizens have too much security, then other have not nearly enough” (20; see also Wood and Dupont 2006).

Multiple scholars have demonstrated that this obsession with safety has resulted in increasing demands for punitive policies and security apparatuses that reduce risk and increase safety (Garland 2001; Simon 2007). For example, Garland (2001) argues that the existing “*culture of control*,”...rooted in the use of policies based on punishment, control, and security, represents a series of responses to economic, social, and technological changes that have occurred since the 1970s. This has resulted in a “new collective meaning of victimhood” where individuals not only identify more strongly with victims of crime but are now focused on minimizing victimization to the extent that the public and law makers are more willing to exercise unrestrained punitive authority. Individuals now increasingly adopt routines as way to reduce their likelihood of victimization and increase their security, including installing security systems, avoiding supposed high-crime areas, and moving to the suburbs or into gated communities. As a result, this sense of victimhood not only contributes to but also actively promotes punitive, security-oriented policies, ultimately diminishing and fundamentally altering public empathy for any individual or groups deemed an offender or thought to be criminally threatening (Garland 2001).

Similarly, Simon (2007) notes that one important consequence of this sense of victimhood is a new series of public and private organizations, that are both within and external to the jurisdiction of the criminal justice system and are undertaking efforts to minimize victimization—i.e. that are “*governing through crime*.” Simon (2007) argues that because crime victims’ “vulnerabilities and needs . . . define the appropriate conditions for government intervention,” crime becomes a significant strategic tool in the fight to minimize risk and as such, is used not only to exercise power and governance but also to legitimize the deployment of penal interventions

in multiple facets of American life, including government, education, the work place, and the home (75-76). Tracing the present ‘war on crime’ from the 1960 to the present, Simon (2007) argues “....crime became the model for government....it is crime through which other problems are recognized, defined, and acted upon” (14).

Ultimately rooted in political and economic transformations that have occurred over the past several decades, this punitive turn has had an especially devastating effect on resource-deprived communities of color (Gonzalez VanCleve 2016; Rios 2011; Tonry 1994, 2010). As such, I argue that not only do race and racism play a defining role in how safety is conceptualized and experienced, race and racism also defines who and what is feared.

Racist Fears - The Dangerous Man of Color

Social scientists have long documented the way in which additional racialized factors, in particular social identifiers, including skin color, and phenotype, are often linked to stereotypes about the connection between race and propensity for criminality and criminal behavior (Chiricos, Hogan, and Gertz 1997; Smith 1986; Taub, Talyor, and Dunham 1987; Welch 2007). The racialized image of the criminal-Black-man has been manifested quite vehemently since the U.S. Civil War. Not only does it remain etched in the collective consciousness of the United States, it also an image that provokes fear and is quickly linked to violence and criminality (Tonry 1994, 2010; Wacquant 2002).

Research on the trope of the criminal-Black-man indicates that this dominant stereotype is one that evokes fear (Blair, Judd, and Fallman 2004; Dixon and Maddox 2005; Duncan 1976; Greenwald, Oaks and Hoffman 2003). These characteristics and images not only perpetuate racial stereotypes but also reaffirm racialized perceptions of crime. In each instance, prevailing misconceptions of Black and Latinx male behavior operate as an active mechanism of

criminalization of Black and Latinx (Blair, Judd and Fallman 2004; Greenwald, Oaks and Hoffman 2003). As such, our understandings of Black and Latinx male behavior have not only contributed to the ostracization of Black and Latinx men but are continuously reflected in various areas of social life including police interaction with Black and Latinx men, sentencing policies focused on particular crimes thought to mostly be committed by Black and Latinx men, immigration laws, school discipline policies, and even how criminal acts are portrayed in the media (Rios 2011; Tonry 1994, 2010 and Wacquant 2002).

Although Latinx and African American men share similar experiences and are often both typified as embodying crime, Latinxs have received much less attention within this realm of research (Castro 1998; Dixon and Linz 2000; Gilliam, Shanto, and Wright 1996; Mehan 1997; Romero 2001). Several scholars have contributed to our understanding of how Latinx criminality is constructed and reinforced. For example, in what they label “Mexicophobia,” Salinas and Navarro-Colon (2011) argue that Latinxs (Mexicans, specifically) are constructed as threats because of increasing fears of the “browning” of America. They further argue that because “Mexican appearance” is often associated with criminal behavior, those who are perceived to meet this criteria become targets of random searches, likely to be stopped more frequently or likely to be victims of police violence. Similarly, Romero (2001) notes that Latinxs are not only constructed as criminals but are also often portrayed as “superpredators,” arguing that white middle class youth are considered safe and “ours” while “Latinx adolescent males are violent, inherently dangerous and endangering” (1085). As a result, Latinx men are circumscribed as dangerous regardless of their actions. Portrayals of Latinx males often include images of gangs, prisoners, drug dealers, and wife abusers in addition to other violent characters (Mirande 1985; Navarro-Colon and Salinas 2011; Romero 2001; Romero and Serag 2005;). Within these portrayals, the most common

representations is that of young Latinx gang members. Although gangs are not a new phenomenon, researchers note that US local police and departments most often target Latinx youth (along with Black youth) (Johnson 2010; Romero and Serag 2005). This fear of Latinx males is not limited to Latinx males who are citizens but is also applied to Latinx migrants, both documented and undocumented. Salinas and Navarro-Colon (2011) note that when Latinx criminality rhetoric is situated within the debate over immigration reform, Latinx criminality functions as a mechanism of fear, not just of Latinx males but also of Latinx immigrant males more specifically (Castro 1998; Colon-Navarro and Salinas 2004; Johnson 2010; Romero 2001; Romero and Serag 2005).

Racialized Safety and Criminality in Zero-Tolerance Policies

While they are implemented under the guise of ensuring the safety of students and staff while at school and written in facially neutral terms, CRT reminds us that the adoption of zero-tolerance policies is not a random social phenomenon but instead allows schools to continue to function as mechanisms of racial subordination (Flagg 1993; Haney-Lopez 1996; Matsuda, Lawrence, Delgado, and Crenshaw 1993). I argue that the zero-tolerance policies have distinctly race-based foundations and that the racialized image of the criminal-Black-man/Latinx super-predator has influences how zero-tolerance policies are meted out in institutional and organizational forms, which ultimately compromises the safety of Black and Latinx youth, as they are continuously being labeled as unsafe and potential threats to the safety of other students, school officials, and teachers. The framing of public schools as unsafe spaces in need of penal surveillance serves a meaning-making purpose because it is through the construction and labeling of ‘safe’ and ‘dangerous’ places that racialized constructions of safety come to play a monumental role in defining the everyday experiences of Black and Latinx youth (Bell 1992; Crenshaw, Gotanda, Pellar, and Thomas 1995; Haney-Lopez 1996; Lipsitz 2011; powell 1999; Rios 2011).

Specifically discussing zero-tolerance policies in public schools, Simon (2007) argues that there are three factors that have accelerated the criminalization of public schools: 1) Social memories of youth protests and violence of the 1960s and again in the 1980s; 2) the established connection between youth culture and drugs which was framed as a threat to public education in the 1980s; and 3) the right-wing framing of public schools as being permeated and overrun with overwhelming amounts of crime. These factors, he argues, have found their way into the media, further normalizing the crime and punishment paradigm through which public school disciplinary policies are created. Though the three factors highlighted by Simon (2007) did indeed contribute to an increase in the use of zero-tolerance policies, Blau (2003) argues that media accounts of crime and delinquency continue to shape and reinforce *whites'* conceptions of *Black and Latinx youth*, which exaggerate and distort rates of youth crime in public schools.

The trope of the criminal-Black-man/Latinx super-predator as a prevailing stereotype that intersects with current criminal justice policies finds its origin within systems of punishment, surveillance and control of Black and Latinx people, at macro and micro levels and historically and presently. Wacquant (2002) notes that the US penal system “produces and (or co-produces)” divisions among different racial groups in society (54). And much like slavery and Jim Crow, punishment consistently creates arbitrary and subjective boundaries between Blacks/Latinxs and whites, not just through incarceration but also through micro-level policies that have ultimately resulted in high levels of police surveillance of communities of color, racial profiling, racial stereotyping and a criminal justice system that disproportionately targets Black and Latinx people.³

³ It is important to note that penal policy is being increasingly used as a mechanism for defining Black (and to a lesser extent, Latina) women as deviant and unfeminine. Davis (2003) argues that women represent the fastest-growing prison population in the U.S. Although punishment as social system has conventionally defined criminality in masculine (though still Black and Latinx) terms, “There has always been a tendency to regard those women who have been publicly punished...as significantly more aberrant and far more threatening to society.....women convicts [are]

Punishment solidifies and further reinforces long-standing associations between Blackness and Latinxness with criminality and violence within the criminal justice system. However, these dominant stereotypes and imaginaries have also resulted in a greater tendency of public school officials to adopt zero-tolerance policies in predominantly Black or Latinx public schools (Blau 2003; Giroux 2003). In this way, public schools function as a racialized social system, particularly because of the way in which whites been granted the power “to draw...social (racial etiquette) boundaries between itself and other races” (Bonilla-Silva 1997: 470). In doing so, public schools, as a social institution, mirror the prevailing racial ideology in which racist ideology is able to define particular behaviors (and thus, particular students) through a paradigm of criminality (Blau 2003; Giroux 2003; Lewis 2003; Wacquant 2002,). As Simon (2007) notes, “Today, the merging of schools and the penal system has resulted in speeding the collapse of the progressive project of education and tilting its administration of schools toward a highly authoritarian and mechanistic model” (209).

Similarly, while penal policies find their origin in long standing systems of punishment and surveillance and have a long history in the US, the introduction and normalization of zero-tolerance policies within public schools demonstrates the practical functions that public schools as a racialized social systems perform at the micro level (Bonilla-Silva 1997). Because of the stereotype of the criminal-Black-man/Latinx super-predator, Black and Latinx youth continue to be at highest risk for detention, suspension, and in-school ticketing, and are subsequently at highest

irrevocably fallen women....female criminals [are seen] as having transgressed fundamental moral principles of womanhood.” (66,70). However, the fact that Black women are often placed in prisons for deviant behavior, while white women are placed in psychiatric wards, indicates that punishment actively defines Black women as criminal (Davis 2003; George 1999; Sudberry 2002). It further demonstrates how punishment is changing its function as an institutional mechanism to also limit the life chances of Black women in a way that it does not for white women. Though research in this area is limited to the incarceration of women in federal and state prisons, it is not reasonable to assume that a similar logic can eventually result in a similar plight for young women of color in public schools.

risk for arrest and imprisonment (Giroux 2003). The active deployment of these distorted conceptions of Black and Latinx youth compromise the safety of Black and Latinx youth, as they are continuously being labeled as unsafe and as potential threats to the safety of other students, school officials, and teachers. Within this context, Black and Latinx youth become vulnerable to white stereotypes and now carry the burden of being perceived as criminals.

As such, public schools and zero-tolerance policies become an active mechanism of what Rios (2011) referred to as, “the youth control complex” because are seen as essential for the preservation of white safety within this particular institution. At every stage in which zero-tolerance policies are carried out, distorted images of the behavior of Black and Latinx youth behavior operate to define how these policies are meted out in institutional and organizational forms and actively engage in both material and symbolic criminalization (Rios 2011). The framing of public schools as sites in need of safety results in the “material criminalization” of Black and Latinx youth with the use of violence, crime, and safety within discourse surrounding school punishment functioning as racialized coded language for the supposed criminal nature and dangerousness of Black and Latinx youth (Rios 2011). This continuing pathologization of Black and Latinx youth not only makes them prime targets of punishment practices such as these but also allows for punishment to serve as an outlet for anti-Blackness/anti-Latinxness and white fear of crime. As such, punishment cannot be thought to exist in a vacuum – instead it is directly influenced the racial ideology of broader social life (Garland 1990). Everyday practices such as these continue to justify differential treatment of different groups within social institutions such punishment and the criminal justice system.

Symbolically, on the one hand, school buildings, classrooms, and corridors have become the most significant physical locations in which social behavior is racialized and criminalized. On

the other hand, the ways in which school officials, school resource officer (SROs), the interactions between teachers with Black and Latinx youth, the specific punishment given to each students for whatever school rule was broken, and even how Black and Latinx students are portrayed in local media and to other parents functions as an active mechanisms of normative guidance for supposed appropriate behavior – i.e. which behaviors are safe and which behaviors are not (Lewis 2003; Nolan 2011; Simon 2007). Similarly, the additional implementation of technological security apparatuses – metal detectors, drug tests, locker searches, etc. – are not indicative of a system intended to increase school safety but are instead a meticulous way of further confirming the supposed criminal nature of Black and Latinx youth (Ferguson 2000; Giroux 2003; Rios 2011; Simon 2007).

Race is marked and reinforced by the way that Black and Latinx students are conceptualized by the general public – conceptualizations which are then translated into harsh disciplinary policies eventually transforming public schools into racialized institutions of punishment and thus, lead to incarceration (Rios 2011; Wacquant 2002). Moreover, these in-school punishment policies are considered critically important and necessary for the maintenance of safe educational spaces, inside and outside the classroom. However, they simultaneously reproduce a penal-like atmosphere throughout the whole public-school system (Ferguson 2000; Simon 2007). This is particularly so because school administrative officials, teachers, and SROs working within public schools are not immune to prevailing stereotypes – prevailing opinions about the propensity of people of color to commit crime and engage in criminal behavior feed into the logic of these policies and thus influence how these policies are implemented (Garland 1990).

Paradoxically, growing anxiety over school safety has resulted not only in the creation and implementation of penal-like disciplinary policy but has also resulted in an increase in insecurity

among Black and Latinx youth. The climate of fear surrounding the implementation of these policies is indicative of how many Black and Latinx youth are now vulnerable to victimization from authority figures including police, city officials, and school authority figures. Additionally, because such policies criminalize Black and Latinx youth, they increasingly reify white stereotypes that associate a lack of safety with Black and Latinx people and communities (Rios 2011; Wacquant 2002).

Similarly, because the purpose of these policies is to modify behavior thought to be criminal, they contribute to a public narrative that results in increased vulnerability for Black and Latinx people by ultimately suggesting that white understandings of what is safe and what is unsafe are legitimate and appropriate. The framing of public schools as unsafe spaces in need of penal surveillance serves a meaning-making function because it is through the construction and labeling of safe and dangerous places that racialized construction of safety protect the ability of whites to portray Black and Latinx youth and Black and Latinx communities as unsafe and the causes of violent crime within schools. Thus, public narratives are justified in their suspicions that Black and Latinx youth are potential threats to school safety (Giroux 2003; Smith 2009).

CHAPTER III

THE STUDY

Since the 1970s, research investigating the school-to-prison pipeline, punishment, and safety continues to grow and now represents an extensive area of research encompassing several social science disciplines. As demonstrated in Chapter II, this area of research is vast with study after study highlighting new facets of safety and punishment not previously considered. This research, however, has been heavily quantitative, conducted using large national or state data sets. For example, Carvalho and Lewis (2003) argue that research on “safety” is limited, as researchers have instead focused on “fear of crime,” “risk,” “disorder” and have thus not investigated alternate reactions to crime and punishment. Similarly, Roundtree and Land (1996), note that questions such as “How safe is your neighborhood from crime?” and “Do you think that people in this neighborhood are safe inside their homes at night/during the day time?” are intended to give researchers a general assessments of safety but do very little to expand our understanding of safety. As Carvalho and Lewis (2003) note however that, “Although this approach has provided valuable insight...it has limited our ability to think beyond the variables commonly used” (779).

The exclusive use of quantitative methods in this area makes it is difficult to investigate *how* the school-to-prison pipeline, punishment, and safety affect daily life and are affected by race, class, and gender. Due to the intersectional nature of this study, it was essential to use a methodological approach that would allow me to interrogate the ways in which punishment and school safety practices limit the ability of Black and Latinx students and their families to circumvent the criminal justice system.

Why Texas?: The Texas Education Code

Zero-tolerance punishment policies have been widely implemented across the United States with a variety of qualitative studies exploring the relationship between race and school discipline (see for example, Nolan 2011). The overtly punitive nature of the Texas Education Code's Chapters 25 and 37, coupled the extreme racial and ethnic disparities and the unique political landscape of Texas, make a study of school ticketing policies in B/CS ideal for exploring the long lasting effects of the school-to-prison pipeline.

Chapter 25

Under Chapter 25, known as the Compulsory Attendance Law, Texas students between the ages of 6 and 19 are required by law to attend school each day when instruction is provided. In addition to the Compulsory Attendance Law, Texas school districts are required to enforce the "90% rule," where K-12 students are required to attend school 90% of the time of any given class in order to receive credit or a final grade for the class. The 10% that students are "allowed" to miss includes all absences, including any excused absence (Texas Education Code).

According to Chapter 25, Texas school districts are required to take two actions when violate the Compulsory Attendance Law. First, districts are required to adopt truancy prevention measures (TPMs), which often consist of programs or services intended to promote consistent school attendance. TPMs are initiated under very specific circumstances: When a student, "...has three or more unexcused absences for three or more days or parts of days within a four-week period but less than 10 or more days or parts of days within a six-month period, the district shall initiate truancy prevention measures (Texas Education Code: 25). TPMs for each district must impose at least one of the following: Behavioral improvement plans; school-based community service; or referring students to an in-school or out-of-school service intended to address student behavior and

attendance, including referral to court. While TEA outlines minimum requirements for TPMS, at the very least, school districts are expected to identify the root cause of student absences and actions that can remedy the cause (Texas Education Code). Second, Texas school districts are also required to have facilitators, which can be either a truancy prevention facilitator or a juvenile case manager to implement TPMs. Facilitators are also tasked with meeting annually with a court case manager to determine the effectiveness of a school district's TPMs. Additionally, the TEC allows local school boards to appoint attendance officers, who are tasked with investigations, home visits, court referrals, and taking students into custody. In the event that a school does not have attendance officers, the school superintendent or school resource officers (SROs) will perform the duties tasked to attendance officers (Texas Education Code).

Truancy and Judicial Enforcement

When a district determines that TPMs have failed to solve the problem, school districts have the option to refer students to truancy court. The judicial process for truancy is outlined by Chapter 65 of the Texas Family Code. Chapter 65 states that the purpose of court referrals is to, "...encourage school attendance by creating simple civil judicial procedures through which children are held accountable for excessive school absences" (Texas Family Code, N/A, Texas Education Code).

When a student is referred to court, the district is required to provide documentation that demonstrates that TPMs were unsuccessful in remedying a student's lack of school attendance (Texas Family Code). Constitutional County Courts, Justice Courts, and Municipal Courts are all designated as truancy courts under the Texas Family Code and have exclusive jurisdiction over truancy cases. In Bryan, TX, the designated truancy court is BMC (Texas Education Code; Texas Family Code).

Under Chapter 65, any student between the ages of 12-19 may be referred to court. In 2015, House Bill 2398, signed by Governor Greg Abbott, removed the portion of the TEC that allowed truancy to be prosecuted and processed as a criminal offense. Instead, truancy can now only be prosecuted as a civil case in truancy court (H.B. No. 2398).

However, Chapter 65 states that truancy court retains jurisdiction over any truancy court referral that is not adjudicated, regardless of the age of the individual, if the referral occurred before the individual's 19th birthday, which includes truancy referrals before 2015. Thus, while truancy court is intended to be the last resort to remedy student truancy, referral to court can mean civil and sometimes criminal consequences (Texas Family Code).

Chapter 37

In 1995, during the governorship of future United States President George W. Bush, the 74th Texas legislature signed The Texas Safe Schools Act of 1995 in order to “give educators key tools to respond to students who are violent, abusive, or chronically disruptive in the classroom” (Texas AFT 2019). The Texas Safe Schools Act of 1995 would occupy Chapter 37 of the already existing TEC and was intended to function as a statewide, legal framework used to ensure safety and discipline within the Texas public schools by providing school personnel, such as teachers and bus drivers, with increased disciplinary authority (Texas AFT 2015).

Per Chapter 37, local school districts are required adopt a student “Code of Conduct,” which establishes what is considered acceptable student behavior for that school district. Each local Code of Conduct must also specify the conditions under which a student can be removed from a classroom or school campus; alternative education classrooms and campuses classrooms; and school district vehicles such as school buses. Codes of Conduct must specify the conditions under which a student can be suspended, expelled, or placed in a disciplinary alternative education

program or juvenile justice alternative education program. When a decision regarding student suspension, expulsion, or placement in either a disciplinary alternative education program or juvenile justice alternative education program has been made, local Codes of Conduct must also give consideration to: 1) Whether the student acted in self-defense; 2) the student's disciplinary history; and 3) student's disability; among others. While Codes of Conduct can vary tremendously from district to district, they must comply with state standards regarding the disciplinary removal of any student (Texas Education Code).

Additionally, Chapter 37 outlines three categories of disciplinary actions available to school officials, teachers, and bus drivers: 1) Discretionary removal; 2) Mandatory removal and placement in a disciplinary alternative educational program; and 3) Mandatory Removal and Expulsion (Texas Education Code; Texas AFT 2016). Each not only triggers removal from the classroom or school campus, each also triggers a variety of legal consequences for students and sometimes, their parents.

First, discretionary removal allows teachers to remove students from classrooms who have "repeatedly or seriously interfering with instruction," which includes "unruly, disruptive or abusive behavior" that limits the ability of the teacher to teach and other students to learn (Texas AFT 2016: 3). Second, mandatory removal and placement in a disciplinary alternative educational program (DAEP) is triggered by more serious conduct violation, such as assault or causing bodily injury to another student or a teacher. Finally, mandatory removal and expulsion is triggered by specific criminal behaviors that qualify as felony offenses such as the use of firearms on school grounds, aggravated assault, and sexual assault, among others. The TEC states that such offenses require expulsion or referral to the juvenile justice system (Texas Education Code; Texas AFT 2016).

Chapter 37 and Judicial Enforcement

Prior to 2013, Chapter 37 allowed schools to issue non-traffic, fine-only misdemeanors to students between the ages of 10 -17, which were issued by SROs. Known as Class C Misdemeanors tickets, schools were able to ticket students for Disorderly Conduct (Texas Education Code).

Disorderly Conduct includes offenses such as:

- Cursing;
- Chewing gum in school;
- Class Disruption;
- Being loud in class or in school hallways;
- Fighting;
- Skipping school;
- Dress code violations;
- Talking back to teachers or other school personnel; and
- Damage of school property (Texas Education Code).

Such offenses are generally included within school districts' Code of Conduct and generally fall under the Discretionary Removal category.

Students who were ticketed with Class C Misdemeanors were required to go to the local county or municipal court in order to resolve their tickets. Tickets carried fines up to \$500 per offense for which the student was ticketed. In some instances, students were also given community service in addition to fines and in several cases, parents were also fined in addition to the fines their children were required to pay for their tickets. In the event that a student did not pay the fines associated with their tickets, they could be arrested once they turned 17 and the offenses can still appear on their criminal records (Texas Education Code).

On June 14th, 2013, the 83rd Texas Legislature signed S.B. 393 into law, changing the way in which schools handle Class C Misdemeanors (S.B 393). S.B. 393 was intended to decriminalize disorderly conduct in school. Under S.B. 393, SROs can no longer issue Class C Misdemeanor tickets for in-school, minor behavioral infractions. While SROs can no longer issue tickets, school

administrators can still send students to the local county or municipal court for minor behavioral infractions, including disorderly conduct. Rather than issuing tickets, school administrators and SROs file a complaint and the local prosecutors will decide whether to charge the student with a Class C Misdemeanor. The complaint functions in the same way as a ticket – being charged requires students to appear in court where they can still be ordered to pay up to \$500 or fines and have a criminal conviction on their records (S.B. 393).

Chapter 37 allows SROs to issue alternative punishments for minor behavioral infractions rather than filing a complaint or prior to filing a complaint. Under chapter 37, school districts may develop a graduated set of sanctions that students can complete, which includes community service, tutoring, counseling, other in-school or out-of-school services. If the student fails to complete the sanction, school administrators and SROs may then file a complaint (S.B. 393; Texas Education Code).

The Texas Education Code and the Role of Law Enforcement in Texas Public Schools

Local law enforcement play a significant role in each school’s disciplinary system. Chapter 37 allows school districts to employ security personnel to enforce all school rules associated with Chapter 37, in addition to local, county, and state laws. School districts have several options regarding law enforcement within schools, which often depends on district size, funds, and school district location. First, school districts have the option to employ SROs, who are commissioned and employed by local law enforcement agencies and who are placed within schools on placed within local schools on either a part-time or full-time basis. SROs in Texas public schools are contracted through a document called a Memorandum of Understanding (MOU). Second, school districts have the option to have an in-school police department for their own school district, which is commissioned by the school board under Chapter 37 and which is overseen by the school

superintendent. Both types of security must meet the qualification requirements set by the Texas Commission on Law Enforcement (Texas Education Code).

While school police have become increasingly controversial, only 200 of Texas's 1,247 school districts in Texas have their own in-school police departments, with most other school districts employing local law enforcement to have officers within their schools. Bryan ISD does not have its own police force and instead employs local law enforcement to serve as SROs (Texas Appleseed 2016).

Research Questions

Four research questions are the central focus of this study:

- 1) How do BISDs school ticketing policies create and reproduce racialized constructions of safety?
- 2) How does school discipline in BISD and the criminal justice system of Bryan, TX facilitate the tendency to link danger and violence to Black and Latinx youth?
- 3) How have school ticketing policies impacted the financial, psychological, and legal well-being of Black and Latinx families, Black and Latinx current students, and former Black and Latinx students?
- 4) How do Black and Latinx families, Black and Latinx current students, and former Black and Latinx students experience the criminal justice system of Bryan, TX?

Data and Data Collection

This study uses a triangulated approach and combines formal and informal interviews; participant observation; and print data in the form of court cases and newspaper reports. The benefit of using this triangulated approach is two-fold. On the one hand, I am able to directly engage participants' experiences with punishment policies and the effects that such policies have on their overall understanding and conceptualization of safety. On the other hand, this design allows me to triangulate my participants' experiences and present a more holistic, detailed, step-by-step narrative of the school discipline and school safety experiences of students, families, and former Black and Latinx students.

Formal and Informal Interviews

Interview data was collected from 2014 to 2017 and includes both formal and informal interviews. A total of 35 interviews were conducted, including 29 formal, in-depth, semi-structured interviews and 6 informal, semi-structured interviews. Interview length varied from 30 minutes to three hours. All interviews were recorded and transcribed. The transcriptions were then pulled into ATLAS.ti for analysis (my analysis process is discussed in a later section of this chapter).

I had originally intended to only conduct formal, semi-structured interviews. However, the 6 informal interviews included in this study are considered informal due to parent concerns and concerns about immigration status. Several parents were initially apprehensive to speak with me because their children were still students in BISD schools. While I attempted to explain to that I was in no way connected to the school district, it was still not enough unless I agreed to count their interview as an informal interview that they agreed to speak with me. Informal interviews were different from formal interviews in that I did not audio record them and did not keep contact information for those participants who wanted their interview to remain informal. The only information I collected was the date on which the interview was conducted; number of people who participated in the interview; and race/ethnicity, age, sex, and whether they were a student/former student or parent. Similarly, two sets of parents were concerned about their undocumented status. I also attempted to explain that I was in no way connected to the legal system of B/CS but they were (understandably) apprehensive to be interviewed given the sociolegal nature of the study.

32 interviews (26 formal interviews and all 6 informal interviews) were conducted in the B/CS area in Texas; 3 were conducted as phone interviews while I lived in Los Angeles, CA with participants still living in the B/CS area. The demographics of the interviews are broken down in Table 1.

Table 1 Interview Participant Demographics

	African American Male	African American Female	Latinx Male	Latinx Female	TOTAL
Parent or Grandparent	3	7	1	3	14
Sibling	2	0	1	0	3
Significant Other or Spouse	0	2	0	1	3
Former Student	9	0	4	2	15
TOTAL	14	9	6	6	35

Participants were recruited using three different methods. First, they were approached after court after having attended the necessary court proceedings (which I had observed) related to their school ticket. Second, they were recruited using snow-ball sampling wherein a past participant would pass my name along to someone they knew who had also received a ticket or would help me set up a date/time to interview someone they knew who had also received a ticket. In most instances, these were friends they had gone to school with or their own siblings. This was by far the most successful recruitment method. Third, they were approached during a community meeting. Usually these were community meetings or events hosted by the local Brazos Valley NAACP on a variety of issues facing the community.

Participants also received compensation. Each was given a \$25 dollar Visa gift card. Additionally, in the event that a past participant would pass my name along or help with setting up an additional interview with someone they knew – and if it actually resulted in an interview (which it often did), I would give that initial participant an additional \$25-dollar Visa gift card as incentive to keep helping with interviews. Interviews were conducted in public settings, such as a restaurant or a local park. When an interview would take place in a restaurant, I would also cover

the cost of lunch or dinner for the participant and whomever accompanied them. The three participants who were interviewed over the phone received their gift cards in the mail.

Interviews were essential to this study. While I was able to glean a considerable amount of information from my other data sources, interviews were unique in that they provided insight into specific social injustices that I myself have not and could not experience as someone who did not grow up in attending BISD schools (Hesse-Biber & Leavy 2004; Weiss 1994). By conducting interviews, I was able to gain in-depth insight into how BISD's school ticketing policy and the subsequent contact with the judicial system in B/CS affected my participants and their families. Additionally, by conducting interviews with former students whose court proceedings I had attended myself, I was able to integrate multiple perspectives – not just based upon my own observations or the experiences of a former student, but also the perspectives of parents, grandparents, siblings, and significant others or spouses. The multi-perspective was crucial to investigate the systemic inequality resulting from BISD's school ticketing policy (Hesse-Biber & Leavy 2004; Weiss 1994).

Participant Observation

Observational data was collected from 2014 to 2017. While this study focuses on BISDs school-based ticketing policies, the participant observation data I collected was collected outside of BISD schools for several reasons. While BISD does approve requests to conduct research in BISD schools through their Department of Students Services and Accountability, BISD has become notorious among student researchers at Texas A&M for hardly ever approving research requests. I submitted two requests myself – the first in January 2015 and the other in September 2015 – in which I was purposefully framed my research request as a study focusing on school

safety. While I did not mention the NAACP – LDF/NCYL’s complaint, the timing of my research coincided closely with the OCR complaint that was filed. Both requests were denied.

As such, I collected observational data outside of BISD schools. On the one hand, I collected observational data at community meetings and events hosted by the Brazos Valley NAACP, beginning in Fall 2014. Observation of community meetings and events allowed me to observe families, students, and former students in settings where they were not restricted or intimidated by the presence of school officials, teachers, or school police officers.

On the other hand, the bulk of my observational data is from observing court proceedings of school ticketing cases in BMC, which was collected from July 2015 to June 2017. Often these court cases appeared on Friday mornings on the *Community Service* and *Juvenile Now-Adult Offender* dockets. However, some school ticketing cases appeared on other dockets scheduled Monday to Thursday, the *Pre-trial* and *Motion* dockets in particular. Weekly dockets were publicly available on BMC’s website and were published online on Sunday evening or early Monday morning. Court observations allowed me to document the legal progression of school ticketing cases and the long-lasting effects of being issued a Class C Misdemeanor ticket. Table 2 demonstrates the type and number of cases I observed from 2015 to 2017.

Table 2 Observation Data – Court Cases

	2015	2016	2017	TOTAL
Disorderly Conduct (Fighting)	7	12	24	43
Disorderly Conduct (Language)	10	16	37	63
School – Disrupt Class – Noise	16	28	21	65
School – Trespass on School Property	5	1	2	8
School – Disrupt Class – Misconduct/Profanity	0	1	0	1
TOTAL	38	58	84	180

As such, I personally observed a total of 180 school ticketing cases. In addition to the school ticketing cases I observed, I also observed several hundred non-school ticketing cases. These cases often appeared on the same dockets as school ticketing cases and included citations ranging from Possession of Drug Paraphernalia and DWL – License Suspended/Revoked to Fail to Maintain Financial Responsibility. I observed these cases out of respect for the courtroom, as I was careful to preserve the already tenuous relationship I had with the Judge and bailiffs and not leave the courtroom for cases that were not school ticketing cases.

It should be noted that while I focus my analysis on the tickets listed above, my interviews revealed that students were also issued other types of tickets, notably Assault by Contact (sometimes given in the event of a fight) and Theft of Property <50.00. However, unless I attended court the day a case like this was on the docket, it was impossible to know which citations were issued as school tickets and which were not. As such, these types of tickets are not included in this study.

I also took observational notes during NAACP meetings and court hearings. While the president of the Brazos Valley NAACP knew I was a graduate student and was understanding and

even encouraging of my notetaking, BMC was not so conducive to my note-taking. While in the waiting room, I chose to take notes on my phone, rather than my typical notepad in order to not raise suspicions among those around me. Inside the courtroom, I was often the only person besides the court clerk who was taking notes. On more than one instance, I felt the bailiff looking over my shoulder to decipher what I was writing. My notes were transcribed at the end of each week and also included transcription of the audio recordings I made using a small hand-held recorder immediately after each observation session. My audio recordings included my overall thoughts on the day, special notes to myself about behavior I had observed, and anything unique about the day. It was easier and faster for me to record these concluding thoughts rather than write them down or attempt to recall details at the end of the week.

Getting access to BMC was not difficult, as the court itself is not able to bar the public from observing public court proceedings. Similarly, personal invitations to local community meetings and events from the President of the Brazos Valley NAACP provided me with clear access to such events. Qualitative scholars have noted that field research conducted by minority scholars has empirical and methodological advantages, as the lenses through which we view social reality allows us to ask different research questions and gather innovative data while in the field. Scholars contend that certain social realities and aspects of race, class, and gender are “difficult if not impossible for a member of the dominant group to grasp empirically and formulate conceptually” (Zinn 2001:159). I shared several similarities with my participants – I grew up in a low-income/working class and heavily migrant neighborhood; my own parents were migrants themselves, and as a Latinx woman, I myself sit at the intersection of various axes of inequality. However, several other social identifiers placed a wall between myself and my participants that I had to continuously work to overcome. I often found that these social identifiers – my status as a

Texas A&M graduate student who was not originally from anywhere near Texas, the way I dressed, and even my strange midwestern/southern California accent – made it difficult for participants to understand why I was interested in talking to them about how school tickets had affected them and their families in the first place.

Once I began my field research in B/CS, there were several things that occurred that often marked me as an outsider. For example, when I first began my observation within BMC in July 2015, the presiding Judge called me into the courtroom before beginning the proceedings for that morning. When the bailiff called the names of those in the waiting room, I never raised my hand during the roll call indicating that I was not there to take care of any sort of legal case. The bailiff asked why I was there – “Just to observe the cases for the 10:00AM docket,” I answered. He left and within minutes I was asked to enter the courtroom alone to speak with the Judge. The courtroom was small and completely empty except for myself, the Judge, and his bailiff. In a somewhat tense environment the Judge questioned my purpose: why I was there to observe this specific docket; which school was I from; whether my observation was part of a class project; whether I was an undergraduate or graduate student; and the length of time that I would be observing. I purposely answered each question vaguely cognizant of the controversy surrounding the NCAA-LDF and NCYL’s OCR complaint – I was observing school ticketing cases as part of my dissertation project on school safety policies for my Ph.D. in Sociology at Texas A&M and I was unsure of how long I would be observing. I was instructed to sit in the last row of the courtroom for the morning, in the same spot that I would occupy every week for the next two years. In that instance, I felt anxious even though I was only there to observe.

Week after week for almost three years, I observed a variety of court proceedings and the court staff, including the Judge, grew accustomed to my presence. Every time I showed up to court

to collect observational data at BMC, there was a rigid routine that court personnel and I followed. Before each docket began, the bailiff would call everyone's name on the docket and of course, did not call my name. While I initially had to restate the reason I was there (to observe) in the beginning stages of my field research, eventually the bailiff grew to recognize me. However, with the exception of a rare few, the individuals who were there to take care of their school tickets changed week after week but because they read the nonverbal cues between the court personnel and myself that easily indicated some level familiarity, I continued to be marked as an outsider by all parties. In a way, the bailiff recognizing me alienated me to from those who were there because they were on the docket or were accompanying someone who was on the docket, as this familiarity implied a connection and familiarity between myself and court personnel. This would later make it difficult to gain trust from any potential participants that I approached after court, regardless of my attempts to assure them that I was in no way connected to the B/CS judicial system. Often times, I was asked to go through the metal detector first and allowed to enter the courtroom before anyone else. Everyone who entered after I did who was not court personnel, had not only already seen me be singled out by court personnel but also witnessed me sitting toward the back with a notepad in my lap. My role within that space was very vague and suspicious. In one instance, an Black man who accompanied someone else who was on the docket for that morning whispered, "You're here to make sure they don't do anything wrong, right?," demonstrating that court actors were well aware and cognizant of my presence within that space while being equally aware that I am not white. Furthermore, his question also suggested a deep suspicion of Bryan's court system and an awareness of the inequality surrounding BMC.

Print News Data and Court Cases

I also incorporate two forms of print data – print newspaper reports and individual court cases. Both were pulled into ATLAS.ti for analysis (my analysis process is discussed in a later section of this chapter).

First, print news reports were collected from January 1994, when the chapters of the Texas Education Code that this study investigates were first being debated, to the December 2017, when I finished collecting all data for this study. They were collected by either using a world-wide newspaper database made available through Texas A&M University libraries or by searching the newspaper website itself.

What I was most interested in was finding news reports that focused on school ticketing in any part of Texas, but also B/CS in particular. While the bulk of this newspaper data is taken from several Texas-based news outlets, including *The Eagle*⁴ and the *Texas Tribune*⁵, several news reports included in this study are from national news outlets but are included because they specifically discussed Texas school-ticketing policies. A total of 546 news reports were used in this study. Table 3 outlines the number of news reports by region in Texas, the number of news reports from national news outlets, and the number of reports from *The Eagle* and *Texas Tribune*.

⁴ *The Eagle* is the local newspaper in B/CS.

⁵ The *Texas Tribune* is the major newspaper outlet for the state of Texas.

Table 3 Print News Data

News Outlet Area or Publication	Number of Articles
Austin Area News Outlets	6
Bryan/College Station's <i>The Eagle</i>	61
Dallas Area News Outlets	176
Houston Area News Outlets	150
National News Outlets	63
News Outlets from Small Texas Towns	33
<i>The Texas Tribune</i>	57
Total	546

Print news reports function as the starting point for this study because they allow me to capture the racist discursive tactics used by lawmakers, the public, the media, and school officials to justify the implementation of school ticketing policies and the eventual changes made to the Texas Education Code. Scholars have established the connection between racist discourse and the racist ideologies and structures in which they are rooted. Moore (2014) notes that contemporary race scholars have

...documented how racial discourses in the post-civil rights era function to obscure the structural realities of racism and racial inequality. In doing so, racial discourses have created an ideology through communicative interaction that functions to perpetuate racial inequality while simultaneously asserting a message of equality and democracy....Thus, racial ideologies, and the discursive tactics that normalize them, play a central, though often covert, role in justifying structural arrangements of racial inequality (69).

While print news reports may seem like a highly individualized, community or location-specific way to analyze the public discourse surrounding school ticketing, text sources (like print news reports) allow me to identify the discursive mechanisms that allow for structural inequality to

occur, particularly because they appear within ‘neutral’ decision making processes and ‘neutral’ news reports. Text sources also allow me to highlight who benefits from school ticketing policies while simultaneously allowing me to identify who school ticketing is intended to control (Moore 2014; Wildman & Davis 2000).

Second, court cases of school ticketing cases which appeared on BMCs dockets between January 2013 to June 2017 are also used. While these cases appeared on BMCs dockets between 2013 and 2017, these cases included tickets dating as far back 2005. I requested a total of 75 cases from the city of Bryan through the Freedom of Information Act. I observed the majority of these cases, with the exception of 10 cases that are from 2013 dockets and 12 cases that are from 2014 dockets. Table 4 outlines the type of case, amount of cases per type, and the year in which they appeared on BMCs dockets.

Table 4 Court Cases

	2013	2014	2015	2016	2017	Total
Disorderly Conduct (Fighting)	3	3	3	4	5	18
Disorderly Conduct (Language)	3	5	5	6	7	26
School – Disrupt Class – Noise	3	3	6	6	7	25
School – Trespass on School Property	0	1	1	1	1	4
School – Disrupt Class – Misconduct/Profanity	1	0	0	1	0	2
Total	10	12	15	18	20	75

Court cases themselves provide vital information about the way in which school ticketing cases are handled within Bryan’s judicial system. For example, while some appear in court to handle multiple tickets at the same time, there are instances where some individuals would have a variety of school tickets for which they appeared in court but over the course of numerous weeks, months

and even years. The Judge himself would sometimes express familiarity with the individual standing in front of him noting which ticket they had appeared for in the past. Similarly, court cases include both information pertinent to the school ticket (how much they paid in fines, for example), but also extra-legal information such as whether their parents or grandparents were present in the courtroom.

Data Analysis

The data used in this study were analyzed using a multi-step process using a combination of Burroway (1998) and Burroway et al. (1991) *Extended Case Method* (ECM) and Moore's (2014) *Structurally Contextualized Critical Discourse Analysis*. In this study, ECM was used to ensure the validity and triangulation necessary within the research process while Moore's (2014) *Structurally Contextualized Critical Discourse Analysis* allowed me to interrogate the thematic patterns I found in my data. In the initial stages of my data analysis, ECM allowed me to question the relationship between my positionality and the findings I found most theoretically and empirically intriguing, and which I ultimately chose to include in this study. *Structurally Contextualized Critical Discourse Analysis* allowed me identify and critically interrogate the patterns and frames that emerged after I coded my data.

On the one hand, ECM stands in sharp contrast to Grounded Theory by allowing the researcher to

...lay out as coherently as possible what we expect to find in our site *before* entry. When our expectations are violated – when we discover what we didn't anticipate – we then turn to existing bodies of academic theory that might cast light on our anomaly...(Burroway et al. 1991:9; emphasis in the original).

The shortcomings of the existing theory allow for its own reconstruction. Approaching field research in this way allows the researcher to first "hypothesize" the ways in which macro processes affect micro situations such as daily actions, beliefs, behaviors and ideologies but also allows for

the identification of anomalies found in the field in order to build a more rich and robust theory of social life. As Emerson (2001) notes, "...the field provides not opportunities to discover new unappreciated processes of social life, but a series of sites allowing for 'critical tests' of existing theory (283). As such, ECM directly addresses the critique that qualitative research, and ethnography and participant observation in particular, cannot be anything other than micro-level research (Burroway 1998; Burroway et al. 1991).

By using ECM, I was able to interrogate inconsistencies not only the theory I had when I first entered the field but also theories other researchers have used to investigate the relationship between race, class, and gender, and the school-to-prison pipeline. More specifically, by grounding my own theory of racialized safety within CRT, ECM allowed me to build a more robust theory that connects how racialized constructions of safety are influenced by racial structural inequality, both historically and in the present, which indeed impact the lives of BISD students who have been ticketed and their families (Bell 1992; Crenshaw, Gotanda, Peller, and Thomas 1995. Flagg 1993; Haney-Lopez 1996; Matsuda, Lawrence, Delgado, and Crenshaw 1993). The ability of ECM to accommodate my assumptions that: 1) Safety functions as a racialized, gendered, and classed public good; 2) BISD's school ticketing policies serve as a prime example of how racialized constructions of safety are created and reproduced in social life; and 3) policies such as BISDs school ticketing policy facilitate the tendency to link danger and violence to Black and Latinx youth, make it an excellent analysis technique for this study.

On the other hand, Moore's (2014) *Structurally Contextualized Critical Discourse Analysis*, allowed me to connect discourse surrounding race, class, and gender, and safety within the school-to-prison with the analysis of my data. As outlined by Moore (2014), this process involves three steps which are adapted to fit the research aims of this study.

First, a *Structurally Contextualized Critical Discourse Analysis* requires that I identify thematic patterns and frames within my data. According to Moore (2014), “A frame can be thought of as the logic that structures the boundaries and form of a process of communication... the frame is produced through the logic of meaning making” (4). Different social actors within schools such as teachers and SROs, judges within BC/S judicial system, Texas lawmakers, and even the students and families most affected by school ticketing policies engage in meaning-making and attach meaning to their everyday experiences and overall ideologies. In this study, this not only includes patterns and frames found print news stories and case files but also in my interview and participant observation data. This includes the ways in which print news reports include only those ‘facts’ they deem relevant; the legal information included in the case files I received from the city of Bryan, and the ways in which my interview data and observation reveal the consequences that result from being issued a school ticket. A frame analysis is useful in that it allows me to interrogate what is included in the frame and what is ultimately excluded from the frame and deemed irrelevant to report, include in a case file, or mention during an interview or court session.

Second, I analyze the discursive tactics used by print news reports and within case files and court proceedings to explain and justify the use of racialized constructions of safety in the implementation and use of school ticketing. Here, my focus is on the racial discourse, narratives, and ideologies used to not only rationalize but also further normalize the use of racialized constructions of safety. However, I also analyze the discursive tactics used by interview participants to make sense of their experiences with school tickets and within the Bryan judicial system.

Third, I conduct a critical evaluation of how racialized constructions of safety used by different social actors “relates to and connects with the racialized practices, institutional

arrangements, and structures that maintain white supremacy” (Moore 2014:4; see also Bell 1992; Crenshaw, Gotanda, Peller, and Thomas 1995; Flagg 1993; Haney-Lopez 1996; Matsuda, Lawrence, Delgado, and Crenshaw 1993). In this same step, I also critically evaluate the ways in which participants discuss and interpret their experiences to demonstrate the emotional, physical, and psychological toll that zero-tolerance policies have on Black and Latinx people.

As a result, the subsequent chapters analyze these different sources in order to interrogate the patterns of normative assumptions of race, class, and gender and safety found in each of these data sources. The subsequent analyses identify commonalities and differences in how social actors frame racialized constructions of safety and maneuver their experiences with school ticketing policies. These data sources demonstrate attempts to obscure the material realities caused by racialized constructions of safety while simultaneously demonstrating the human cost associated with linking violence to Black and Latinx people and using this link to implement social policies (Bell 1992; Crenshaw, Gotanda, Peller, and Thomas 1995; Flagg 1993; Haney-Lopez 1996; Matsuda, Lawrence, Delgado, and Crenshaw 1993).

CHAPTER IV

FRAMING RACE, SAFETY, AND PUNISHMENT IN THE MEDIA

On February 8th, 1995, *the Dallas Morning News* published a news report on a zero-tolerance bill that would give teachers authority to remove disruptive students. It included the following

Jerry Pyle says he has been assaulted four times in the last three years at the Dallas elementary school where he teaches. Three times, he says, he went to the hospital because of his injuries...In El Paso, high school teacher Gudrun Aguirre still grieves for her husband, murdered when a disgruntled student broke into their house in 1993 and fired at the couple with a shotgun...The “zero-tolerance” bill was filed Tuesday by House and Senate members, who said it is essential to restore order in many schools...Mr. Pyle, a sixth-grade teacher at John Peeler Elementary School in Oak Cliff, said he has faced students with handguns several times in addition to being assaulted...“I have stared down the barrel of a gun held by a student six times in the last three years,” he said at a news conference in the Capitol. “My wife thinks I am a damn fool for wanting to keep teaching”...“It is time that we return our classrooms back to the teachers and the majority of students who come to school to learn,” said Rep. Jesse Jones, D-Dallas, a sponsor of the bill...Mr. Jones also said that deadly weapons and illegal drugs are becoming part of the norm in many schools (Stutz 1995).

The report paints a chaotic picture of Texas public schools where teachers find themselves in dangerous environments with violent, uncontrollable students. The inclusion of Jerry’s experience as part of the overall news report was not a neutral choice but was instead intended to lend credibility to the construction of schools as dangerous spaces that need some sort of harsh policy to ‘fight’ what happens in classrooms across Texas. Jerry’s narrative ultimately places teachers and students in an adversarial relationship, with students representing the very problems zero-tolerance policies are intended to address. This narrative, which is clearly used to evoke sympathy for teachers who teach in Texas public schools, is grossly misleading about school violence.

The message of dangerous public schools and the appropriateness of zero-tolerance policies has remained dominant over decades and has been continuously reinforced by news outlets

based in and outside of Texas. Newspaper reports discussing school safety and violence are powerful – they function as a primary force through which skewed constructions of danger and violence in schools are reinforced.

My analysis of newspaper reports juxtaposes two separate but intertwined discourses. On the one hand is a discourse in which schools continue to be portrayed as dangerous learning spaces that are in dire need of strict discipline practices. This discourse frames zero-tolerance policies as the only logical response to the danger posed by school violence and disruptive students, thus legitimizing their use. This discourse also simultaneously preserves the authority given to school administrators, judges, and SROs to use such policies, regardless of the negative ramifications that result from their use. On the other hand is a discourse rooted in false sympathy for the students whose lives are negatively affected by zero-tolerance policies. The news reports in this analysis often highlight or reference incidents that are intended to demonstrate how rigid, harsh zero-tolerance policies have criminalized trivial student behavior. Included in the same reports however are descriptions of students and their homelives that suggest that they are viewed within lenses of racialized poverty, though it is often presented solely as a matter of poverty. The juxtaposition of these two discourses places Black and Latinx students parallel to danger and in direct contrast to safe spaces. The subsequent analysis engages these two discourses but I break them down into four distinct frames, presented in Table 5.

Table 5 Analysis Frames

Frame	Definition
Unsafe Dangerous Schools	Schools are dangerous spaces where violent incidents occur regularly and which put the lives of teachers, staff, and other students at risk. Students are the main perpetrators and causes of violence.
School Security Apparatus	Zero-tolerance policies are necessary to keep schools and non-disruptive students safe, they serve a critical function and have been instrumental in preventing violent incidents. Their rigidity and neutrality reduce bias.
Denial of Racism in Punishment	Poverty and class are used as a proxy for racism to denounce any allegations of racial bias in punishment. Instead, student education is impeded by the complexity of their homelives, complexities brought on by poverty, including often absent parents, unstable homes, jobs, family obligations. Students find themselves in trouble because of these complexities.
Reporting Student Experiences	The implementation of zero-tolerance policies have resulted in the prevention of violent incidents but also have resulted in a large number of discipline incidents resulting from subjective, non-criminal actions. The punishment of subjective, non-criminal actions is due to the rigidity of zero-tolerance policies, not bias.

I reveal a continuous effort to preserve a punishment system rooted in faulty assumptions about the appropriateness and effectiveness of zero-tolerance policies and also racialized beliefs about students themselves and their homelives that fuel their experiences with punishment policies. Each frame addresses a different component of Texas’s punishment system – why are zero-tolerance policies adopted, how is school safety addressed by school districts, who is affected by zero-tolerance policies, and what happens when a student is disciplined. These frames work tangentially with each other to produce narratives that justify the use of punitive zero-tolerance policies. My analysis engages these frames directly in order to interrogate the ways in which news reports use

countless amounts of intertextual images to demonstrate how physical locations and social institutions shape, regulate, and criminalize behavior and preserve institutional power (Ferguson 2001; Nolan 2011; Lewis 2003).

Creating the Illusion of Dangerous Schools

The *Unsafe Dangerous Schools* frame answers a fundamental question: How is the school district and school environment described? The answer to this question is crucial, as it provides the ‘why’ behind the adoption of zero-tolerance by school districts across Texas. Concerns about increases in school violence and school shootings have long raised panic about school safety (Feld 2000; Bishop 2000; Griffin, Addie, Adams, and Firestine 2011; Myers 2005) – this panic materializes within the words of these of texts.

For example, a 1999 article from the *Dallas Morning News*, titled “Schools’ Growing Reliance on ‘Zero-tolerance’ Debated - Expulsions, Suspensions on the Rise, but Critics say Discretion is Needed” included the following quote from a Dallas ISD security consultant:

The issues are different today...Years ago we didn't have hundreds of knives and guns in schools.....You must look at kids as potentially violent.....You must develop an absolute zero-tolerance policy. Unacceptable acts must be met swiftly and harshly. It's the only hope we have of turning this thing around (Johnson 1999).

Similarly, more than ten years later, *The Eagle* published the following in 2011

An eighth-grader was in the custody of Brazos County Juvenile Services Tuesday after he stabbed another male student in the arm with a small pocket knife at Sam Rayburn Middle School in Bryan, according to school officials. The boys had been in an argument earlier in the day and were in P.E. class when the altercation took place around 2:30 p.m. near the nature trail behind the school, said Sandy Farris, spokeswoman for the school district. A school resource officer arrested the boy with the knife and charged him with aggravated assault with a deadly weapon, Bryan police said....The parent of a fifth-grader who will be attending Steven F. Austin Middle School in Bryan said she grew more “paranoid” about her son entering sixth grade after learning of the stabbing... “I strongly believe it is Bryan ISD’s job to protect my child when I'm not there”...she’d like to see district administrators consider installing metal detectors to prevent weapons from being

brought in and requiring uniforms to help allay potential gang problems that may arise on campuses (Kiely 2011).

Both news reports feed directly into parent fears by mentioning violent weapons. Both interpret school safety solely in terms of eliminating violent weapons and students. In doing so, they demonstrate the ideology that particular behaviors (and thus, particular students) can only be dealt with through a paradigm of crime and punishment (Blau 2003; Wacquant 2002; Lewis 2003; and Giroux 2003). The report published by *Dallas Morning News* goes a step further and draws on a past nostalgia. There is no mention of race anywhere in this article but longitudinal demographics of Dallas ISD are revealing – in 1999, 39% of students were African American, 49% were Latinx, 9% were white, and 2% were listed as other (Texas Education Agency 1998-1999). While demographic data over the previous 4 years from 1995-1998 demonstrate a steady decline in African American students and a steady increase in Latinx students, they also demonstrate a decline of white students in a district with over 150,000 students.⁶ While it is difficult to argue that this shift in demographics are the direct cause of the sentiments expressed in the above article and the increased punitive nature of zero-tolerance policies in Dallas ISD, it is also problematic to argue that this shift is not in some way correlated with the adoption of harsh disciplinary policies and with what is said in these texts, which has also been demonstrated by other scholars (Ferguson 2001; Nolan 2011; Lewis 2003).

⁶ In 1998, 41% of students were Black, 47% were Latino, and 10% were white, 2% were other (Texas Education Agency 1997-1998).

In 1997, 42% of students were Black, 46% were Latino, and 11% were white; 2% were other (Texas Education Agency, 1996-1997).

In 1996, 43% of students were Black, 43% were Latino, and 12% were white; 2% were other (Texas Education Agency, 1995-1996).

In 1995, 44% of students were Black, 42% were Latino, and 13% were white; 2% were other (Texas Education Agency, 1994-1995).

News reports in this sample often attempt to appear racially neutral in the quotes they include from parents and school officials. A 1994 article from the *Dallas Morning News* quoted a school official having noted the following regarding Allen ISD's decision to use dogs to conduct searches of student lockers:

We strongly believe it is critical for students and staff to have safety...Our vision statement says that the school district should have the courage to do whatever is needed to ensure that....People want safety for their kids...Everyone is excited about the message this sends, and I think it's coming across... message is that youths who want to sell or buy drugs, drink alcohol or carry guns are not wanted in the district (Aubespain 1994).

Similarly, a 1999 article that appeared in the *Dallas Morning News* quoted the then-superintendent as having said:

Our whole approach to this is we want to prevent things from happening if we can. And that means a combination of good programs and security measures. Learning can't take place unless students feel safe, and we will do what we have to do to make sure that they feel safe and they are safe....The district's security measures are designed to affect student's attitudes as well as their physical presence...the schools have dress codes...that prohibit students from wearing attire associated with gangs...With gangs, you will not be able to identify every student who belongs to gangs or who wants to be involved with gangs. So you identify gang behavior and improper behavior patterns and make sure it doesn't happen in school...the whole thing in school security is adult control. It sends a strong message to the students that we expect them behave well and not behave like criminals in school (Witherspoon, Piloto, and Jackson 1999).

This feigned racial neutrality demonstrates that the discourse surrounding safety frames safe classrooms and schools as not merely a necessary component of public schools but also as an essential *right* for students, families, teachers, and administrators. As one news report quoted, "Texas families deserve to send their children to school without fear, knowing they can trust their schools to be safe havens" (Pinkerton 2014). Conceptualizing safety as a right which is threatened by disruptive students creates the perfect conditions for school districts to implement punitive zero-

tolerance policies and legitimize them as a necessary tool to minimize any feelings or likelihood of victimization (Garland 2001; Simon 2007).

Furthermore, safe classrooms and schools are framed as not only necessary for teachers and administrations to be able to perform their duties but are also necessary for students to excel in their education and receive a high quality education. A 1994 news report quoted a school district official as having said:

More and more legislators are signing up to co-sponsor the proposed Texas Safe Schools Act because they realize that when we let a few students engage in violent or disruptive behavior, we allow that handful of students to hold hostage the education of the overwhelming majority... We need to guarantee that the 98 or 99 percent of the students who come to school to learn will have a safe, orderly classroom where learning can occur.... We will never achieve world-class standards if we don't restore discipline in our schools. And that means setting clear codes of conduct for student behavior and giving school staff the authority to enforce those codes (Stutz 1994).

This clear connection to education – a constitutionally protected right – is not accidental. By connecting safety to good quality education, these texts root safety within the realm of necessary democratic values and neoliberal legal ideals. This connection also makes the value of safety more concrete than other abstract political ideals, particularly due to the ability of individuals to conceptualize safety in personal and physical ways easily creating fear and anxiety were it to be lost or jeopardized. As one news report noted

“The school is no longer a learning environment - it's a war zone,” said parent Wilbert C. Baker of Humble. He said he had tears in his eyes as he recalled a grandmother asking a district police office where she could find self-protection classes for her granddaughter (Wright 2005).

The fear and anxiety surrounding the loss of safety and quality education thus serve as a major impetus for policies that secure these rights by any means necessary (Flagg 1993; Haney-Lopez 1996; Matsuda, Lawrence, Delgado, and Crenshaw 1993). Ultimately, these images, which are clearly meant to evoke a sense of urgency for parents or others who are reading these newspaper

stories, are also grossly misleading about the effectiveness and supposed need for zero-tolerance policies to restore order and safety (Blau 2003; Kern 2005; Lipsitz 2011; Rios 2011; Smith 1993; Wolf 2007).

Maintaining the Authority of School Security Apparatuses

The *School Security Apparatus* frame demonstrates the extent to which school districts, public officials, and families are invested in the use and ability of punitive zero-tolerance policies to ensure and maintain school safety. The perceived increase of and fear and anxiety surrounding school violence have led school districts to question the ability to traditional punishment approaches (detention, etc.). This perception pushes school districts to find new punishment methods in order to ensure school safety and to demonstrate their toughness and provide reassurance that they are being proactive in their fight against school violence. This includes the use of metal detectors, more stringent dress codes, drug-sniffing police dogs, SROs and security guards, and the use of suspension and expulsion to automatically remove disruptive students. As I noted previously however, Texas has used a uniquely harsh method punishment – school ticketing – which allowed school officials to construct violent and nonviolent incidents as criminal offenses (Beger 2002, 2003; Noguera 1995).

The data that provide evidence for this frame emerged post-2010 when the effectiveness and disproportionate impact of zero-tolerance policies were being questioned by policy makers, advocacy groups, and parents – but not school administrators – questioning which resulted in significant changes to the Texas Education Code. The texts supporting this frame speak to the irrational confidence school districts place in punitive policies, confidence which remains even when decades of social science research has demonstrated their ineffectiveness in preventing school violence (Beger 2002, 2003; Noguera 1995; Skiba and Johnson 1999). As such, they reveal

the ways in which punishment “takes on great importance because it serves as the primary means through which symbols of power and authority are perpetuated” (Noguera 1995:198).

For example, in 2010, the *Texas Tribune* published a news report that contained the following about Dallas ISD

Dallas ISD Police Chief John Blackburn was more outspoken about the value of ticketing as a deterrent. “I definitely think it’s a valuable tool,” says Blackburn, who came to Dallas’s department about four years ago after serving as Houston ISD’s police chief. “I’ve been in school district policing for about 15 years. When I first went to Houston ISD, they were just in the process of starting to write tickets, and I saw a significant change in student behavior. The office has a stronger voice to prevent disorder” (Thevenot 2010).

Similarly, another *Texas Tribune* article titled “Lawmakers Attempt to Change Truancy Laws” noted:

Some school officials say the threats of fines and arrests are necessary in numerous cases where students would otherwise skip class and their parents would not stop them. But the bill has faced opposition from some school district administrators, who say the threat of fines is necessary to keep students from skipping school. “I don’t like this move in society to move the responsibility to the schools...said John Kelly, superintendent of Pearland Independent School District, near Houston. “Don’t close the window on these other courts that can help us” (Chammah 2013).

Both were published when school ticketing policies were gaining negative attention for their racially discriminatory implementation. As such, they reveal how an over-reliance on punitive punishment policies prompted school officials to create a false narrative about the effectiveness of such policies in order maintain authority, even though years of data from multiple sources provide little evidence that these methods are directly related to decreases in school violence (Beger 2002, 2003; Noguera 1995; Skiba and Peterson 1999).

Furthermore, by defending the use of punitive punishment, these texts demonstrate how ‘talking tough’ and getting tough on students – threatening fines, issuing tickets, and suspending and expelling students – is conceptualized as *the only way* to prevent school violence. The reliance

on unproven techniques indicate that ‘talking tough’ and getting tough on students represents a symbolic attempt to assert authority and power over what happens on school campuses – not only by school district officials and SROs but also by local law enforcement, regardless of the negative, concrete impacts of such policies (Noguera 1995). For example, a news report quoted the following after interviewing a truancy court judge from Fort Bend, TX

While school officials may be looking for a new approach, the Fort Bend truancy court reflects a deep-seated belief among some in the Texas criminal-justice system that being tough on children is the best way to help them...If the Texas Legislature moves forward with a bill to decriminalize truancy, eliminating fines and the threat of jail time, she fears that judges’ hands will be tied. “I can’t threaten them [that] I can put them in jail,” she says. “I would never put a child in jail for this, but they don’t know that. Do you know what I’m saying? I have the threat...”It may seem harsh, but Schaefer believes being tough shows children that Texas is serious about keeping them in school. Without an education, she says, “Then you’re going to be like those poor people on the streets in Baltimore or — what’s that other place? Ferguson” (Thottam 2015).

When school officials, SROs, and law enforcement are stripped of the ability to use components of zero-tolerance policies that they previously relied on, it exposes that their authority is not absolute and that a loss of authority is possible. For example, a news report titled “School Officers Can No Longer Issue On-Campus Misdemeanor Citations” included the following:

Clydell Duncan, the police chief at Beaumont Independent School District, said his officers use tickets on a limited basis. Duncan said he understands that tickets can be misused, but he said they were a valuable tool. Officers will not be able to do anything now unless the offense is violent, he said. “It takes a tool away from the officers that witness behavior at a criminal level,” he said (Serrano 2013).

Gaps in power and authority indicate that school officials, SROs, and law enforcement do not have total control over students or what happens on their campuses. As such, gaps in power and authority demonstrate why issues of violence and safety are most often placed within a discourse of behavioral and ideological control – not only are students expected to dress and behave a certain way, they are also expected to respect school authorities and value the safety that zero-tolerance

policies provide. Furthermore, the loss of school district officials' and SROs' previously available important 'tools' (such as ticketing, suspension, and expulsion) exposes the fact that dealing with school behavior within a paradigm of crime and punishment is possibly the most erroneous option within the scope of punishment possibilities that school district officials and SROs could possibly choose.

Denying Racism

The *Denial of Racism* frame highlights how class is used as a proxy for race and establishes the relationship between race and school punishment found in this sample of news reports. In this frame, class-based arguments use poverty, sometimes also framed in terms of "culture," to account for perceived deficits in personal or moral integrity of individual students and their parents. Often referred to as a "culture of poverty argument," framing poverty in this way "...succeed[s] in contemporizing and exacerbating the approach launched by Moynihan in the 1960s" (Davis 1990:83). These data demonstrate how school officials, public officials, SROs, and teachers rely on distorted and subjective class-based arguments in an attempt to remain racially neutral or colorblind when discussing the racially disproportionate effects of school punishment practices. As such, these data demonstrate the conscious and unconscious racist assumptions school district officials and teachers hold about the homelives of students and the considerable influence these assumptions have on daily decision making. For example, a news report from the *Houston Chronicle* demonstrates this

"I want to be very supportive of our teachers as we deal with these discipline issues," said [Superintendent Charles] Dupre. He noted that teachers and campus leaders have challenging jobs "because they have to deal with hundreds of students every day and it gets tiresome to have discipline problems." Dupre said some of the frustration may come from cultural variables...that also affect discipline. "We've got to be very attentive to cultural differences," said Dupre (Binktovitz 2015).

Framing poverty solely in terms of “cultural traits” or individual behavior strengthens a prevailing ideology found in these texts: Dangerous behavioral problems are the direct result of poverty. As such, poverty becomes the only filter through which students, their backgrounds, and their behavior is viewed and becomes the only way for school officials, SROs, and teachers to interpret their own social interactions with students. Similarly, the following was published in 2014 in *Fort Worth Weekly*

When high school sophomore Brandon Jefferson’s parents split up and his mother’s rheumatoid arthritis worsened to the point that she couldn’t get out of bed, Brandon took on the job of getting his two younger brothers to school. That chore often made him late getting to his own classes at Lakeview Centennial High School in Garland and later at North Mesquite High School and Mesquite Academy, both in the Mesquite school district....Instead of being applauded for stepping up, Brandon soon found himself at one of five special truancy courts set up in Dallas County. For his first offense, he was forgiven, but during his junior year he had to continue to help with his brothers and racked up five more appearances at the court for being late to school, each one representing 10 late days — and fines totaling \$2,400. He ended up with five Class C misdemeanor convictions on his record, was sentenced to community service, and had his driver’s license suspended. Losing the license meant losing his fast food job, and without his job he had no way to pay his fines. His mother, living on about \$700 disability monthly, couldn’t help much, nor could his father. After he graduated last June, Brandon tried to join the military, but the unpaid fines and misdemeanors meant the Navy wouldn’t take him. He went back to court, and the judge agreed to reduce his total fines to \$1,700, which he and his mother proposed to pay in \$50 monthly increments. The judge refused, insisting on at least \$300 monthly payments. Brandon volunteered to work it off by doing more community service. Again the judge refused (Gorman 2014).

While the author makes no mention of Brandon’s race or ethnicity, he includes hints which indirectly indicate Brandon’s race/ethnicity the least obvious of which was the *Fort Worth Weekly*’s decision to publish this story with a large illustration of a young Black male with a backpack over his shoulder on its cover for which this was the titular article. The author additionally mentions that Brandon was charged in Dallas County’s truancy courts which had a notorious reputation for disproportionately targeting Black and Latinx students and disproportionately issuing them harsh punishments and large fines (Gorman 2014). Also, at the

time the article was written, Mesquite School District was overwhelmingly Black and Latinx – 25% of the students were Black and 53% were Latinx (Texas Education Agency 2014). Furthermore, the author makes continuous references to Brandon’s homelife and indicates that, in some respect, Brandon’s family lives in some level of poverty – his parents are no longer together indicating that Brandon’s family is a female-headed household; his mother’s only source of income is a \$700 dollar a month disability check; and he also had a job of his own which helped support his family. Again, while the author makes no direct reference to Brandon’s race or ethnicity, all of these indicators function in racially coded ways and provides information for a ready-made filter based on race, which affects how Brandon is viewed by school officials and judges with whom he has repeated contact and through which his story narrative is viewed by readers.

Thus, with each image it provides, print news media informs us what poverty itself is and what it looks like. A 2001 news report titled “Don’t Tamper with Discipline that works in HISD” noted

A basic expectation is that their classroom and campus will be a physically safe environment for both the teacher and the students entrusted to their care.....Houston-area legislators need to weigh a few complaints from parents in denial about their children's disruptive or illegal behavior carefully against the rights of the majority of our parents to send their children to a campus free of disruptive students and free of students who feel they have the right to bring weapons or drugs on campus.....There is an easy way parents can avoid having their child placed in an alternative school. They can teach the child to behave in class, not to threaten or assault teachers and to leave guns and drugs at home. They can also teach their children that when they violate rules in a civilized society, there are consequences (Fallon 2001).

Here, the very nature of students’ homelives are framed as direct cause of their punishment experiences – not only are students themselves blamed for their ‘illegal behavior’ and a whole host of other ‘social ills’ but parents are also attacked. For example, a *Texas Tribune* news report placed mental health and ability within a broader context of class by noting that, “Many status offenders

are children from troubled homes who have faced traumatic childhoods, or who have mental health and special education needs” (Ahmed 2014). Similarly, a news report that appeared in *The Eagle* connected class and students’ homelives to dropping out of school

Growing up in poverty with absentee parents and using drugs are two of the primary reasons that Bryan students are losing interest in school and sometimes dropping out, members of the school district’s strategic planning committee said Saturday (Huffman 2003).

Reducing school punishment experiences to a matter of personal behavior and parenting desensitizes the reader to the gross inequalities that lead to disproportionate discipline experiences. The message is clear: Students and their parents are not doing enough to prevent danger or to keep themselves out of trouble. As such, these news reports blame students and parents themselves for the predicaments in which they find themselves (Davis 1990; Jennings and Kushnick 2004; Mantios 2004; Noguera 1995). As such, these texts demonstrate the ability of educational institutions to create, shape, regulate, and reinforce institutional discourse that while each student *has* the ability to make good and bad decisions, they will always be limited by their personal backgrounds (Davis 1990; Jennings and Kushnick 2004; Mantios 2004; Noguera 1995).

An almost exclusive focus on class is indicative of something else entirely – an unwillingness by school officials, SROs, and teachers to situate disproportionate discipline experiences within a broader context of race/ethnicity and education. For example, in 2013, *The Eagle* interviewed a local community member who hoped to be elected to the Bryan ISD school board. When asked, “What do you think the highest predictor of success is for a student?,” the school board hopeful provided the following answer:

I think the biggest predictor for the troubled students, the dropouts, the low performing students is poverty, I think that’s the No. 1 predictor for the negative consequences that we’re trying to avoid. We look at poverty, single-parent households, no-parent households, and you develop an at-risk number. I don’t think it’s race, I don’t think it’s sex, I don’t think it’s what school you go to. I really think

that what you've got is a poverty problem in the United States (Eagle Staff Report 2013).

Not only is poverty framed as antithetical to stable 2-parent families, educational success, and 'socially adept,' it is also framed as having absolutely nothing to do with race. Within educational institutions, the overt assumption is that poverty and cultural differences provide the patterns of punishment that quantitative data reveal, rather than the racist educational institution itself. By using class as the baseline category for labeling students throughout the education, race is seen as completely irrelevant, save for when discussing student demographics (Noguera 1995). Poverty itself is systemic and thus cannot be understood without considering racial and gender hierarchies, both of which continue to be important features of poverty itself. Poverty is indeed pervasive and often highly concentrated in Black and Latinx communities but poverty also reflects a complex interplay of institutional and systemic factors, including schools and their discipline policies, which are essential in reinforcing pathologizing images of poor Black and Latinx communities. These kinds of comments have been used to deliberately signify that Black and Latinx people are embedded within a culture of poverty that racializes poor communities. As such, they participate in a broader discourse about race, that enables them to not have to explicitly say race and which characterizes under-resourced Black and Latinx communities as pathological. By focusing on the subjective nature of what being a 'troublemaker' entails, schools recreate a stratified school system wherein affluent (white) students are safe and poor (Black and Latinx) students are and criminal-like (Amott and Mattaei 2004; Davis 1990; Jennings and Kushnick 2004; Langston 2004). While these comments are color-blind in nature, they nonetheless evoke a complex discursive system rooted in a culture of poverty paradigm that criminalizes, pathologizes, and racializes poor Black and Latinx communities. In doing so, these texts participate in and reinforce a discourse that not

only enables the connection between race and class but also explicitly characterizes poverty as a component of Black and Latinx communities.

Reporting the Discipline Experience

The *Reporting Student Experiences* frame demonstrates that, in reporting student punishment experiences, news outlets and school officials are provided with additional opportunities to maintain the discourse highlighted by the *Unsafe Dangerous Schools* frame. Throughout the history of zero-tolerance policies in Texas, news reports have frequently included student stories highlighting their discipline experiences and also provided coverage of more ‘popular’ incidents that gained state-wide or national attention. This is true of both Texas-based news outlets and national news outlets, both of which provide data for this frame.

The nature of the stories that news outlets choose to report fall into two different categories. On the one hand, news outlets provide coverage on incidents actually involving some sort of violence or involving an actual criminal act – bringing a loaded gun to school, assault on school campus, felony theft, etc. These reports were more common in the late 1990s and early 2000s, before school districts had begun to be sued over the discriminatory practices resulting from zero-tolerance policies. On the other hand, news outlets also report on a large number of discipline incidents that involve subjective, non-criminal actions but which were treated as criminal actions by school districts and Texas law. These were usually included when news outlets were also reporting on lawsuits filed against school districts. These reports expose the nonsensical, rigid nature of zero-tolerance policies and demonstrate the degree to which punishment for subjective, non-violent incidents has been normalized. Unintendedly, the reports that provide evidence for this frame also demonstrate the financial, emotional, and psychological toll that zero-tolerance policies have on families. They demonstrate how zero-tolerance policies function as an act of terror

for both parents and students – the discipline act itself serves as the primary way in which the power and authority of school officials and SROs is perpetuated and maintained, even beyond the school building itself.

In 2013, the *Texas Tribune* reported on a complaint filed by Texas Appleseed, Disability Rights Texas, and the National Center for Youth Law with the U.S. Department of Justice against Dallas County’s truancy courts on behalf of seven students and their families. The report include the following narrative

Two of Nicole Pryor’s four children are among the seven in the complaint against Dallas County. The single mother said the truancy court process has been expensive and stressful for her family. Pryor said her older daughter, who has attention deficit disorder, became depressed and frustrated and began missing classes when the school stopped providing support services that had helped her to learn. Three truancy cases were filed against her, and she was ordered to appear in court. “She was terrified. She’s asthmatic, and she went to court not knowing whether they were going to lock her up and put her in jail,” Pryor said. The girl was convicted of “failure to attend” in all three cases and ordered to pay fines of more than \$1,300. She has since enrolled in another school, from which she is preparing to graduate this month, but still must attend monthly review hearings until her fines are paid or face being jailed....Pryor’s younger daughter, who has excelled academically, landed in the truancy court after the school inaccurately reported unexcused absences, Pryor said. Once, the girl was suspended for three days for being tardy after she arrived late to class because she was using the bathroom. Then, the school tallied her suspension days as unexcused absences. Pryor said her daughter had to miss school to spend hours in the courtroom pleading with the judge to dismiss the case. “You don’t want them to grow up with a criminal background before they even get a chance to get a real job,” Pryor said. “It’s making the children not have any hope anymore” (Grissom and Smith 2013).

In response to the lawsuit, the *Texas Tribune* noted the following:

Dallas County and school officials argue that the truancy program has been successful at reducing dropouts and that school administrators work hard to accommodate students with special needs. They say the program has worked so well that lawmakers have approved legislation that would make the Dallas program a model for truancy courts statewide.... “That never happens here,” Hugo Martinez, an attendance administrator at Garland [ISD, part of Dallas County], said of the situations described in the advocates complaint, which he said “paints a very negative picture” of how schools handle truancy issues. “Our campuses, our administrators, our principals, our assistant principals, our counselors, they all bend

over backwards to help parents and students out whenever there are pregnancies, whenever a student has to be a caregiver to an ill parent,” Martinez said. “Whenever there are extenuating circumstances, they all bend over backwards to help students” (Grissom and Smith 2013).

While the *Texas Tribune* did highlight, at length, the painful experience Nicole Pryor’s family has had with zero-tolerance policies, it simultaneously discredits her narrative by allowing school district officials and law enforcement to defend the use of truancy courts and truancy policies. Here, school officials are presented as *the* authority on school truancy policies – not only does the *Tribune* print their names, it also names their positions (superintendent, county judge, administrative position). In doing so, the *Tribune* validates their license to speak on matters regarding zero-tolerance policies in their counties or districts, which is ultimately embedded within the institution for which they work.

Furthermore, news outlets reporting student narratives continuously provide additional information – usually subjective and irrelevant to the actual discipline experience – in order to demonstrate the ‘goodness’ of a student who was disciplined. I argue that while doing so may be perceived as ‘reporting an injustice,’ it instead serves a symbolic function and allows school districts to further reinforce the ‘need’ to eradicate any and all threats to school safety and order, regardless of what kind of student is punished. For example, in 2014 the *Houston Chronicle* published the following using the headline “Woodlands Student got Deported”

At his suburban Houston high school, Edgar Torres sold so much candy that kids took to calling him Willy Wonka. The advanced placement student, comic book geek and aspiring robotics engineer repackaged sweets he bought in bulk and sold Snickers pies for pocket money. Overwhelmed by the demand, he hired other students to help. But the normally even-keeled French horn player lost his temper after accusing an assistant of stealing \$67 and taunting him about it. One morning before school, he said, he slammed the freshman into a dumpster and punched him several times in the stomach. Torres, then 18, expected to be suspended for a few days. Instead he was charged with assault. While booking him, sheriff’s deputies discovered he was here illegally and called immigration officials, who started proceedings that led to his deportation to his native Monterrey, Mexico....that

morning in December 2009, the freshman accused by Torres of stealing candy money told school district police Torres had assaulted him. The student also spoke with an assistant principal. Police called the Montgomery County District Attorney's Office, which recommended a charge of assault with bodily injury, the most serious type of misdemeanor (Kriel 2014).

The news report continues to make references to the Edgar's track record of being an excellent student, even going so far as to quote a teacher saying, "That's why we all came to teach was because of kids like him" (Kriel 2014). Furthermore, the news report notes that

"Some teachers said such an action was unusual. They said administrators prefer to deal with problems internally, by involving parents, say, rather than bringing in law enforcement.... "A lot of teachers, a lot of the kids thought (Torres) had gotten a raw deal," said [Barbara] Lowenberg [who taught Torres advanced placement computer science] (Kriel 2014).

Despite framing this fight as an aberration from his 'normal' behavior in school, Edgar's discipline experience and subsequent deportation reinforce the institutional authority given to district officials and law enforcement. While news reports and school personnel (such as Edgar's teachers) are able to indicate that this was not the appropriate way to handle Edgar's situation, supposedly demonstrating disdain for the punishment and support for Edgar, this disdain thinly masks the fact that the incident nonetheless demonstrates the district's ability and authority to regulate who is a part of the district's student body and every aspect of student behavior. The message is clear - fight and the school district can and will get rid of you using whatever means possible even if it means using local law enforcement and immigration officials.

In reporting these incidents, news outlets demonstrate that punishment itself becomes less about preventing future incidents and more about communicating a particular message about school discipline and district authority. For example, in 2000, the *Dallas Morning News* included the following

In the Hurst-Euless-Bedford school district, two eighth-grade girls at Euless Junior High School served detention in September for refusing to comply with orders to

stop hugging each other. Their embraces infringed on the district's rules against "exhibiting inappropriate familiarity" contained in the student code of conduct, said district spokeswoman Helen Williams. Mrs. Williams said she didn't know what was objectionable about the girls' hugs, but said, "It had gotten to the point where it was interfering with the learning environment." She said she wanted to make it clear that the girls were punished not for hugging each other but for continually defying administrators' repeated orders to stop...Determining what qualifies as misbehavior is largely up to school staff. "What we all hope is that people realize that hugging is not a problem" Mrs. Williams said. "People are allowed to hug and hold hands, but if a teacher or administrator gives you a warning to stop and go on to class, that is a sign you've received a verbal warning. After a student- and parent-teacher conference about the incidents, one of the girls withdrew from the school" (Dennis and Packer 2000).

In no way can it be argued that the reason for which both girls were punished constituted an actual criminal offense. Similarly, it cannot be argued, as school districts often do, that two middle schools girls hugging each other presented a threat to school safety. The *Dallas Morning News* with comments from the district officials, however, makes it clear that the issue was not what the girls had done, but instead the challenge of district authority was the actual threat in this situation. In this sense, the punishment served as a public spectacle to demonstrate that the purpose of punishment was to make everyone aware, not just these two girls, that the school district's authority would not be challenged. Thus, "the act of punishment becomes an important exercise for showing who has control" (Nogeura 1995:200).

Buzzfeed News also highlighted, at length, the story of one student years-long school discipline

The 11th-grader in the courtroom wore braces, loved Harry Potter movies, and posted Katy Perry lyrics on Facebook. She also had a bad habit of cutting school, and now, a judge informed her, she owed \$2,700 in truancy-related fines. But Serena Vela, who lived in a trailer with her unemployed mother, couldn't afford to pay. Serena was offered "jail credit" at a rate of \$300 per day. She was patted down, touched "everywhere," and dispatched to adult lockup, where she would stay for nine days, missing a week and a half of classes. The first school day after she was released, administrators kicked her out. She had gone to jail because of a law intended to keep kids on the path to graduation. Instead, her high school career was

over...Serena's habit of playing hooky began in the fall of her freshman year, around the time she turned 16, and continued through the following school year.... The previous couple years had been tough on Serena. Her family was broke, and they had recently moved from a much bigger home to a trailer in Fresno, south of Houston. Her mom was struggling to get out of a tumultuous relationship. Then, after her freshman year, Serena's best friend, Jessica, left Hightower High School to be homeschooled...In all, her court file shows 37 unexcused absences over the course of two school years. For those absences, Fort Bend Independent School District filed five different criminal truancy complaints against Serena...Each of Serena's criminal charges carried a potential fine and a demand to show up at the county's truancy court. But Serena missed her court dates, too. Truancy court was in Sugar Land, a 20-minute drive from Serena's house. Her mother didn't have a car, which meant Serena either had to ask her mother to borrow a car and drive her, take an expensive taxi, or make a long walk to a web of suburban buses for a trip that would take at least 90 minutes. It was easier, Serena said, for her to pretend the court dates just didn't exist...In the fall of 2012, a month after she turned 17 and became a legal adult under Texas criminal law, Serena received her first arrest warrant, on one charge of missing school and another of missing court. She and her mother drove to the constable's office, where Serena was fingerprinted and put in handcuffs. After a night in jail she was brought in front of a judge, who informed her that she owed \$680. Serena's mother could not afford the fine, so Serena sat in jail for two more days....She lived in dread of seeing more constable cars in her driveway, but her fear wasn't enough to keep her in class every day....Serena came to the realization that if she didn't apply herself in school her options looked bleak....She saw what being a high school dropout had done to her older sister, who had once talked of becoming a lawyer. And then there was her mother, whose life had been limited by not finishing high school.... Serena hoped that her improved attitude would keep more warrants for classes she had missed the year before from her doorstep, at least in some karmic way, but the constable car in her driveway and officer's knock on her door in October proved it wasn't to be. She was booked into jail again, and after a restless night she was once again brought in front of a judge to find out how long she'd be behind bars — and how many days of school she would miss.... Serena went into jail on a Wednesday. Seven of the nine days she spent behind bars were days that school was in session, meaning she fell further and further behind. But she had an even more pressing concern: the Texas law that allows 18-year-olds to be kicked out of school after five unexcused absences....The Fort Bend school district confirmed...that it dropped her from its rolls the following Monday (Taggart and Campbell 2015).

However, when the school district was contacted regarding Serena's case

Charles Dupre, the new superintendent of Fort Bend Independent School District, said officials now make a greater effort to keep students in class and send fewer to court...Superintendent Dupre, who took over shortly before this happened, said he didn't know of Serena's case specifically but that he was 'not aware' of any students

getting automatically revoked during his tenure. “And I can assure you,” he said, “that’s not something I would support” (Taggart and Campbell 2015).

Additionally,

Ruby Shaw, the judge in charge of Serena’s truancy case, first told BuzzFeed News that she had never jailed anyone from her truancy court. After reporters shared records from Serena’s court file with Judge Shaw’s name on them, she conceded that she did know of some cases that resulted in jail time, but that she wasn’t the judge who gave Serena her final sentence...(Taggart and Campbell 2015).

Serena’s experience is telling for several reasons. On the one hand, her discipline experience reveals a disconnect between the supposed purpose and achievements of zero-tolerance policies and the actual lived experiences of students and the effects zero-tolerance policies have on their lives. Rather than keep her in school, her discipline experience does the exact opposite and further marginalizes her. In this sense, by pleading a ‘lack’ of personal knowledge about Serena’s experiences with school discipline, the Superintendent and Judge are still able to protect the institutions which grant them authority to punish students because it is through this ‘lack’ of knowledge that they are able to label Serena’s narrative an outlier. Labeling her case an outlier is crucial, as it allows both schools and courts to maintain the discourse found in the *Unsafe Dangerous Schools* frame. In addition, Serena’s narrative exposes the inability of judges and school administrators to understand Serena’s life and the lives of other students who find themselves in similar situations – while judges and school administrators are often quoted saying they do all they can for the student, the data that provides evidence for this frame indicate otherwise. This inability is further compounded by the power vested in courts and school districts to control and regulate student behavior. Were they to recognize the degree to which Serena’s narrative is common and that it in fact has nothing to do with school violence or safety, it would “require a fundamental change in how the institution and the provision of educational services were conceptualized by those in authority, a prospect that at the disciplining moment often seems unimaginable” (Noguera 1995:200).

Conclusion

While the want for safe schools is not problematic in of itself, school districts' instruments of choice for ensuring safety have resulted in stratified discipline experiences. News reports represent one avenue through which increasing demands for safe schools have been continuously vocalized and has contributed to what Garland (2001) refers to as a "new collective meaning of victimhood" (12). As such, news reports have provided crucial imagery for school districts to be able to implement zero-tolerance policies and have provided an impetus for school districts administrators and local law enforcement to be given more punitive power. The same news reports, however, expose the ineffectiveness of punitive security apparatuses. Equally significant, in an 'attempt' to remain facially racially neutral, news reports' choice of words lend credibility to school districts' reliance on racialized images of student homelives and as such, demonstrate that the use and implementation of zero-tolerance policies have distinctly race-based foundations, as these images are embedded within and shaped by long-standing racist assumptions about Black and Latinx families. In this sense, Black and Latinx students continue to be targeted by zero-tolerance policies. By marking Black and Latinx students as unsafe, zero-tolerance policies continue to evoke imagery wherein safety is synonymous with whiteness. Students of who are the targets of racialized zero tolerance policies are less safe, making the audience for a safety narrative invoke the idea that it is white children (and teachers) who need to be safe from Black and Latinx students – students who are expendable and also experiencing an unsafe environment in schools that over-surveil and punish them.

As the discursive frames outlined here continues to permeate through the very social institutions that enforce zero-tolerance policies – school districts and local courts – they have had an impact beyond simple readership. The imagery provided by news reports – dangerous school

that need punitive discipline caused out of control kids from ‘broken’ homes – are further upheld in the every-day use and material realities of zero-tolerance policies. In very concrete ways, the imagery highlighted in this chapter have meticulously made their way into each and every step of the discipline process, particularly in student experiences in courts, which I interrogate in the following chapter.

CHAPTER V

GETTING YOUR DAY IN COURT: RACE AND GENDER IN SCHOOL TICKETING CASES

I arrived at Bryan Municipal Court (BMC) on an early Friday morning to observe that morning's *Juvenile-Now-Adult Offender* docket, whose cases were scheduled to be heard at 10:00am. I arrived about fifteen minutes early, made my way toward the upstairs waiting room and sat where I'd sat countless times before, in the row of chairs with my back against the glass wall that separated the waiting room from the metal detector and the courtroom entrance. I always sat here on purpose – from this particular row of chairs, I could observe the entire room by simply looking up and without having to suspiciously keep turning around. There were several people already sitting in the waiting room. In the row in front of me was a young Black male who looked to be in his early 20s was sitting with an elderly Black woman and a young Black woman who also looked to be in her early 20s. To my far right was a young, also 20-something Latinx male. Both men – Reggie Eames and Marcos Garcia Robles⁷ – had school ticketing cases on the docket.

A few minutes after I arrived, the bailiff came out of the court room and called out each name on the docket to see if both men were present – they were and the bailiff had recognized that they had all the necessary paperwork to appear before the Judge. Before calling Reggie into the courtroom, he turned to me and mumbled, “You’re...?” “Observing again,” I answered. At this point, this particular bailiff – who I presumed was a white man based not only on his physical appearance but also on the surname printed on his uniform – had become familiar with my presence, both within the waiting room and the court room. Regardless, every single time he saw me in the waiting room, he reaffirmed, not just to himself but also to the rest of room, my status

⁷ All participants are referred to and discussed using a pseudonym in order to protect them and their privacy.

as an observer and not a potential defendant. His familiarity with me worked as a double edge sword. His familiarity sometimes worked to my benefit – I didn't have to constantly explain that I was there to observe as part of a research project and I was allowed to enter the courtroom before everyone else. However, this familiarity automatically placed me in a potentially adversarial relationship with everyone else in the room – my familiarity with the bailiff could be misinterpreted as working with BMC in some way, making any potential interview participants apprehensive to speak with me outside of court. Past interactions also indicated that some interpreted my presence in a sort of 'watch dog' capacity – I was there to be sure their rights were not violated by the Judge.

Like I had on many other Fridays, I passed through the metal detector and sat in the last bench on the far left side of the courtroom, closest to the door. Sitting here was not my choice – it was the place where the Judge had instructed me to sit on the first day I arrived to observe cases at BMC. The Judge, a Latinx man in his mid-50s, was sworn in as Presiding Judge of BMC on June 1st, 2015, a month before I began observing at BMC. His background was complex and his experience working in the BC/S area was extensive (City of Bryan). He had served as an assistant city attorney in College Station in the early 1990s after graduating from law school; was a legal aid attorney for 13 years; and had his own private practice while also serving as a part-time city attorney for Bryan from 2003-2007 (Oliver 2010; City of Bryan; Eagle Staff Report 2010; The Eagle 2006). He was subsequently sworn in as an Associate Judge at BMC in 2010 (City of Bryan). He also had a failed run to become Justice of the Peace for Precinct 2, Place 1 (Brazos County) under his belt, in which he ran as a democrat against a republican Latinx woman with no formal legal training but who was the endorsed candidate by the local newspaper, *The Eagle* (Oliver 2010; Eagle Staff Report 2010; The Eagle 2006). During his campaign, he was often quoted as having

said that his experience as a legal aid attorney for the “indigent” of Bryan-College Station gave him “the experience to make sure people know their rights” (Oliver 2010; Eagle Staff Report 2010; The Eagle 2006). The Judge was not openly antagonistic with me but it was clear that he was uncomfortable with my presence in the courtroom.

Reggie Eames was brought into the courtroom first. Both women from the waiting area came into court with him and sat in the first couple of rows in front of the Judge’s bench. He had a total of five school-ticketing cases on the docket that day including four Disrupt Class – Noise tickets and one ticket for Disorderly Conduct – Language, all of which he received in 2009 when he was 14 or 15 years old. Immediately, the Judge chastised him telling him that he was now an adult and was personally responsible for these tickets under the law. “You don’t have your parents to help you out,” the Judge told him – an erroneous assumption since I would learn in a later interview that he had been raised by his grandmother who accompanies him everywhere and who was with him in court with him that day. The fines resulting from Reggie’s tickets were tremendous – the total came in at \$1675 dollars. If Reggie chose to do community service, he would have to complete a total of 231 hours of community service at an organization of Judge’s choosing.

Without hesitation, the Judge began to pry into Reggie’s personal life and background, first asking him if he was employed and if he was able to pay his fines with whatever income he had. While this first question seemed benign enough and arguably the result of the Judge’s experience as a legal aid attorney, it quickly dissolved into an uncomfortable and completely unnecessary conversation about Reggie’s disability. Reggie told the Judge that while he was unemployed at that moment, he received monthly Social Security Income (SSI) benefits. Scanning the seemingly able-bodied young man from head to toe, the Judge asked, “What disability qualifies you to receive SSI?” Reggie stumbled over his answer – he was bipolar. When Reggie admitted that he was not

taking his medication for bipolar disorder, the Judge chastised him again giving him “a little FYI” that he needed to continue to take his meds in order to continue receiving SSI.

Reggie ultimately agreed to complete 231 hours of community service in order to wipe out the fines associated with his tickets but the Judge did not give him a hard deadline for when all of his hours must be completed. Instead, the Judge told Reggie that he would be summoned back into court in three months to have his cases reviewed again. During those three months, Reggie was expected to make “a reasonable effort to finish these hours.” This was a common tactic used by the Judge. He often asked defendants to complete at least half of their community service hours within the first three months. If defendants had indeed completed at least half, he would cancel out the second half of their hours.

A month before Reggie’s court date, the Judge had called me up to his bench one morning after everyone on the docket that morning had appeared before him to explain to me how he justifies giving someone who appears before him community service rather than ordering them to pay their fines. He explained to me that he often based his decision on the ‘severity’ of the fine – whether fines totaled into the thousands of dollars – and how long it would realistically take the defendant to pay the fine. The purpose of reviewing defendants’ cases after three months was intended to provide ‘incentive’ for them to complete some portion of their court-ordered community service. What the Judge did not realize however, was that his ‘benevolence’ placed defendants back into an incredibly stressful environment and in front of a Judge who I had seen time and time again, lose patience with defendants who appeared before him more than once.

In many ways, Reggie’s court experience was not uncommon, as several patterns emerged from my fieldwork at BMC. During my fieldwork, I quickly learned of the court’s atypical institutional legal culture regarding school ticketing cases. While past scholars have used

qualitative court observation to interrogate how court actors evaluate and assign guilt, culpability, and responsibility to Black and Latinx defendants (see Gonzalez VanCleve 2016 and Kupchik 2006, for example), BMC's processing of school ticketing cases creates a unique context in which young adults are legally penalized for minor school behavior. This is a sharp departure from several areas of scholarship. On the one hand, existing scholarship tends to mostly focus on the prosecution juveniles in adult criminal courts but for major felonies (such as sexual assault and homicide), rather than simple school misbehavior. On the other hand, a large body of scholarship focuses on the prosecution of juveniles in specially-designed juvenile courts. Neither applies to BMC – it is a local criminal court that is prosecuting both minors and adults for minor offenses.

My analysis focuses on three particular patterns. First, I examine the way in which wide judicial discretion affects interaction processes between court actors and defendants. While criminal courts (such as BMC) are intended to operate using a particular set of formal rules, my fieldwork reveals subjective and inconsistent institutional practices that result in unpredictable interactions, most notably between the Judge and defendants. Second, I outline how the use of extra-legal factors in legal decision-making creates very distorted and highly racialized understanding of the working-class, predominantly Black and Latinx defendants that appeared in court week after week. Extra-legal factors in legal decision-making in BMC were not introduced as peripheral information but were instead centralized while the Judge heard defendants' cases and often exacerbated the already subjective context in which defendants found themselves. Third, I investigate how perceptions of guilt and culpability are defined through a framework of punishment, order, and social control. Perceptions of guilt and culpability continue to reinforce racialized conceptualization of 'troublemakers' and 'responsible adults' that ultimately determine who is seen as deserving of judicial leniency. While all three patterns are distinct, they often

intersect and build upon one another (Carmichael 2010; Desai, Falzer, Chapman, and Borum 2012; Steffensmeier, Ulmer, and Kramer 1998; Ulmer and Kramer 1998).

Bryan Municipal Court: Disconnect Between Formal Case Processing and Informal Institutional Practices

Early on a Friday morning in Spring 2017, I arrived at BMC to observe both the 9:00AM *Community Service* docket and 10:00AM *Juvenile-Now-Adult-Offender* docket. I arrived around 8:45AM. This morning, the Judge and bailiff are doing the docket ‘roll-call’ together – only 12 of a scheduled 25 defendants listed on the *Community Service* docket are present. The rest are now considered FTA, or Failure to Appear. Among the FTAs was a young, Black man who arrived on time but did not have his paperwork notarized – “I didn’t know...but I can go downstairs to do that,” he told the Judge and bailiff. The Judge retorted by telling him that there was no one downstairs who could notarize his paperwork. His case would be rescheduled another day. The young man protested saying he had taken the day off work to come to court but the Judge and bailiff marked him as FTA, showing absolutely no sympathy for his situation. After some small talk about his rental BMW, the Judge left the waiting to go into his chambers to change into his robe. Immediately, a young, Black woman hurriedly entered the waiting room, about 3 minutes before 9:00AM. She’s already been marked as FTA but has all her paperwork in order. Similar to the young man, the bailiff showed her no sympathy and repeated that her case would be rescheduled for another day. While this was the only time I witnessed the Judge “roll-call” defendants in the waiting room, it was not the only time I witnessed the complex dynamics between court actors and defendants.

Denise Renee Wallis, a young Black woman that sat on the far left of the waiting room, closest to the water fountain, had three cases listed on the 10:00AM *Juvenile-Now-Adult-Offender*

docket. Two of those were school tickets for Disorderly Conduct (Language), which she received in 2011. This wasn't her first time in front of this Judge – all three tickets were placed on deferment in 2014 but she defaulted on all them. Over the years, they amassed a total of \$1021 in fines. When the Judge began to chastise her about being irresponsible, she snapped, "I'm aware of my cases." Since she was employed full-time, she quickly agreed to go on a payment plan for her ticket-related fines. Normally, defendants simply walked out of the courtroom after reaching an agreement with the Judge but instead the conversation between her and the Judge became tense. The Judge reminded her that she had already been arrested for two other tickets. She defaulted on both based on a technicality – her paperwork wasn't notarized the day she appeared at BMC. "You can be picked up again," he told her as he held up a copy of her arrest warrant, "I may not give you another chance and may have to talk to you through a jail cell." Throughout the course of my fieldwork, I learned that the Judge was not a particularly patient man and would often let his impatience manifest in what he said to the defendants who stood in front of him, particularly if they had appeared before him multiple times. This was one of those days. The Judge reiterated the BMC's payment plan rules for defendants – Denise would need to bring her ID and paperwork notarized whenever she came to make a payment. He allowed her to leave after telling her, "You're running out of chances...I'm giving you a big break here...if you're late on a payment, I'll close that door on you."

What I witnessed on this particular Friday, including Denise's case, exemplified what I regularly witnessed while collecting data in BMC – BMC was highly unpredictable and difficult to navigate. Even though BMC symbolizes an important component of Bryan's criminal justice system, everyday case processing was defined by both formal processes that are characteristic of

courts across the country, and also informal institutional practices and individual acts that create unique court experiences for defendants.

BMC is not a large court – it only has 14 staff members in addition to the Judge and City Prosecutor but it is the court that most Bryan residents come into contact with (City of Bryan). It is responsible for processing all Class C Misdemeanors that are filed with BMC and all City Ordinance violations. This includes Class C Misdemeanors that are filed in violation of Texas Education Code, Health and Safety Code, and Transportation Code, among others. BMC processes about 12,000 cases and issues about 5,500 warrants a year (City of Bryan). Despite its size, BMC follows a relatively stable set of patterns of highly subjective informal practices when processing school ticketing cases. Because I spent the bulk of my time observing the *Community Service* and *Juvenile-Now-Adult-Offender* dockets, I focus on the patterns I witnessed when observing cases that were scheduled on these two dockets.

The defining component of court interactions was judicial discretion. Not only did judicial discretion introduce a variety of additional subjective factors and uncertainty to court proceedings, particularly for those who had appeared before this Judge in the past, it also allowed for greater informality in interactions between court actors and defendants. Cases that appeared on *Community Service* and *Juvenile-Now-Adult-Offender* dockets had no jury and I never witnessed a defendant have a lawyer or other legal advocate with them in the courtroom at BMC. Similarly, I never witnessed any other professionals, such as social workers or mental health professionals or even a parole officer, be present in the courtroom. While defendants were everchanging (with rare exceptions), the Judge, his two clerks (usually a man and a woman), and the bailiff were the courtroom actors that were always present.

As Denise’s case demonstrates, case processing itself loosely followed a predictable framework that provided the basis for most of the formal interactions I witnessed. It usually went as follows:

- The bailiff called and escorted each defendant individually into the courtroom.
- The Judge read each citation aloud, including what the citation was for and case number.
- The Judge asked a couple of ‘related’ questions to determine if the it would be “best” for the defendant to serve community service or set up a payment plan to pay for fines related to their citations.⁸
- If the Judge decided that community service was best, he and the defendant would reach an agreement on the number of hours to be completed and in what time frame.
- If the Judge decided that a payment plan was best, he and the defendant would reach an agreement on how much would be paid and in what time intervals.
- The defendant would be excused from the courtroom.

But that’s where the predictable framework would end. Often times, judicial discretion seemed to carry more weight in legal decision making than the facts of each school ticketing case. For example, regarding fines, I witnessed the judge partially or completely eliminate fines associated with school ticketing cases, particularly for those who had no other criminal record or had never had a case in his courtroom. The amount that would be eliminated fluctuated – it ranged from \$100 in the case of a young Latinx woman who was issued a school ticket in 2011 for making too much noise in her class to \$900 in the case of a young Black woman who was issued a ticket for in 2008 using profanity in front of her teacher. While the Judge had tried to explain to me how he justified giving someone who appears before him community service rather than ordering them to pay their fines, he never revealed in any of our conversations why he chose to partially or completely eliminate some fines and not others.

⁸ The “related” questions presented their own issues and will be discussed in the following section.

Defendants who had previously appeared before the Judge fared much worse, particularly those who had defaulted on the fines associated with their school tickets. Not only were they subjected to countless snide comments and reprimands about past mistakes and responsibility, they were also treated much more harshly, as Denise's case demonstrates. For example, the Judge would routinely ask defendants if they had been incarcerated, particularly if he saw a large, years-long gap on their records. In the event that they had been previously incarcerated, he would sometimes grant jail time credit. But much like his decisions to partially or completely eliminate citation fines, it was completely unpredictable who he would grant jail time credit to. In some instances, if the defendant had been incarcerated for over a year, he'd eliminate fines or community service hours completely. Other times, however, he would only eliminate 10-15 hours of what were often hundreds of hours of community service or \$25-50 of what was often hundreds, if not thousands of dollars in fines. Still other times, as Denise's case demonstrates, he would make no effort to grant jail time credit to defendants who had been previously incarcerated.

Furthermore, while the court had formal components, my fieldwork suggests that court actors, the Judge in particular, incorporated informal criteria when making legal decisions but this criteria was hardly ever transparent, easily setting the stage for adversarial and tense interactions between court actors and defendants (Feld 1999; Kupchik 2003; Zatz 1987). While some interactions had formal elements, such as when the bailiff told the young man and woman mentioned above that they were FTA, others did not, particularly within the courtroom. Informal interactions were not limited to off-hand conversations between the Judge and bailiff, or between the Judge and I – they were often central to the ways in which school ticketing cases were processed. Denise's case illustrates that the Judge often interacted with defendants informally while processing their cases in the courtroom. His comments were commonplace, were said in

open court, and were not limited to those who had been in his courtroom before. In his comments, the Judge was never formal or ceremonial – he did not refer to himself as “the court” but instead always used “I,” such as when he told Denise “I’m giving you a big break here...if you’re late on a payment, I’ll close that door on you.”

My fieldwork suggests that because BMC relies so heavily on judicial discretion and the resulting informal practices therein, it is far more offender-driven when processing school ticketing cases, rather than being offense-driven, as most criminal courts are. BMC often afforded the Judge wide discretion and assumed a highly individualized approach in processing school tickets (Feld 1999; Kupchik 2003). This is what Kupchik (2003) has referred to as a *Sequential Justice Model*, which incorporates formal elements of criminal courts with the individualized approach of juvenile courts. While Kupchik (2003) refers to this as “a hybrid form of justice,” (2003:449) his analysis demonstrates that a *Sequential Justice Model* depends heavily on a significant amount of judicial discretion but therein lies the issue. Judges themselves, like other court actors, are not unaffected by dominant racial and gendered ideologies, making discretion itself highly racialized and gendered (Flagg 1993; Haney-Lopez 1996; Matsuda, Lawrence, Delgado, and Crenshaw 1993; Wacquant 2002). As I demonstrate in the following section, wide judicial discretion introduces a considerable number of extra-legal factors that thinly obscure a unique court discourse that intersects with racialized and gendered stereotypes.

“Where are you living now?”: The Use of Extra-Legal Factors in Legal Decision-Making

Jessica Alvarez had three cases scheduled on the 10:00AM *Juvenile-Now-Adult-Offender* docket on a Friday morning in late 2015. The twenty-something Latinx woman sat directly in front of me in the waiting room and was the first one to be called into the courtroom that morning. Her first two cases were school tickets for Class Disruption – Noise. Her first case involved a 2006

ticket she was issued when she was 12. In 2007, she chose to defer this ticket but completed 11 hours of court-ordered community service to bring down the \$275 fine associated with her ticket to \$175. Her second case involved a 2011 school ticket she was issued when she was 17. She didn't defer this ticket but like she did with her 2007 ticket, she completed 18 hours of court-ordered community service to bring down her fine to \$100. Even with the community service she completed, she had \$275 worth of fines for both tickets. Her third case was listed as also being a school ticket for Class Disruption – Noise but the Judge was initially unable to find her case's paperwork. With panic in her voice, Jessica repeated the case number noting that the case was on the paperwork that she brought with her that morning to court. Jessica wasn't picked up for these tickets when she turned 18. Instead she was notified about her outstanding tickets when she came to court to pay more recent traffic tickets. After the Judge fumbled for what I'm sure seemed like an eternity to Jessica, the court clerk decided to print out the additional paperwork to not further delay that morning's docket. Her third case was also a school ticket for Class Disruption – Noise, which she received in 2011. Since she's had done nothing for this ticket, her fines totaled \$275 dollars bringing the grand total of her 3 tickets to \$550. Immediately after reviewing the facts of her cases, the Judge swore Jessica in and began his usual onslaught of personal questions:

- Are you working?
- Do you have children?
- Where do you live?
- Do you live alone?
- Do you receive public assistance?

Jessica worked 40 hours a week but had a seven-year-old daughter. She no longer lived with the father of her daughter and was living alone in Bryan. She didn't receive any sort of public assistance. And even though the judge didn't ask, she felt compelled to divulge additional personal information by adding that she also did not receive financial help from her parents or her daughter's

father. “I don’t want you leave here with huge fines since you’re the sole provider for your daughter,” the Judge told Jessica as he explained his reasoning behind giving her a \$100 credit for the previous community service she completed. For the remaining \$450 in fines, she was put on a payment plan and given until July 2016 to pay her fines.

The Judge made a habit of asking defendants about their homelives but the answers to these questions were rarely simply peripheral information. Instead, defendants’ answers functioned as extra-legal criteria used by the Judge to make decisions about defendants’ cases, as Jessica’s experience demonstrates. In my fieldwork, discussions concerning extra-legal factors often overshadowed discussions about the actual school ticket or other legal facts of defendants’ cases. Additionally, because defendants were rarely accompanied by additional family members and I never witnessed any defendant with legal counsel or any other professional, the Judge’s questions were solely directed at defendants themselves. The Judge generally asked questions about:

- Disability status.
- History of mental health issues.
- If they had a history of mental health issues, history of treatment for mental health issues.
- If they had a history of mental health issues, current treat of mental health issues.
- Presence of family members at hearings.
- Family composition (usually in the form of asking how many kids the defendant had).
- Whether the defendant paid child support.
- Source of income.
- Public assistance benefits.
- Living situation.

The ability to ask these questions reinforced the wide discretion given to Judge by BC/S’s legal system and legitimized the court’s highly individualized approach. Superficially, the Judge’s use of extra-legal factors was often rationalized by a personal ideology focused on being ‘fair’ to defendants. If the Judge knew more about their personal lives – if he was aware about more than what was found in their files – he would be ‘better-equipped’ to find solutions to the problems

their cases presented. As such, these questions allowed the Judge to be the sole determiner of whether or not the life circumstances of any given defendant justified leniency on his part – those defendants whose answers demonstrated greater social and economic resources tended to receive the most leniency. This approach was problematic for two reasons. On the one hand, the use of such questions in legal decision-making increased the uncertainty and subjectivity already present in the ways in which BMC processed school tickets (Kupchik 2003; 2006). On the other hand, these questions indicate that the Judge’s ‘fairness’ ideology was embedded within racialized and gendered misconceptions about the defendants’ that appeared before him. As such, his questions functioned as a ready-made filter through which the Judge would assign culpability, responsibility, and remorse (Carmichael 2010; Desai, Falzer, Chapman, and Borum 2012; Kupchik 2003; Steffensmeier, Ulmer, and Kramer 1998; Ulmer and Kramer 1998; Zatz 1987).

For example, young defendants’ (early twenties to early thirties) were consistently asked if they had kids. Women were asked if their children’s father was still part of the picture while Black and Latinx males were asked if they paid child support. In so many words, the Judge revealed his underlying assumption that ticketed students – i.e. ‘troublemakers’ – were also most likely young parents or teen parents but that in being so, they were probably not beholden to the traditional nuclear model of the family. As such, ‘family situation’ functioned as a direct proxy for the intersection of race and gender, as Black and Latinx families are often stereotyped as dysfunctional (Amott and Mattaei 2004; Davis 1990; Jennings and Kushnick 2004; Langston 2004; Pope and Feyerherm 1993).

Similarly, the Judge consistently demonstrated a preoccupation with women who received public assistance – not only did I witness the Judge ask Jessica a question regarding receiving public assistance, I also witnessed him ask two dozen other women who appeared in court for

school ticketing cases the same question, who, with the exception of one white woman, were all either Black or Latinx. Similar to the ‘family situation’ question, the public assistance benefits question was not benign. Scholars have long investigated the ways in which the construction of “the welfare queen” and the racialized, gendered stereotypes on which it is based, have manifested in various aspects of social life. The Judge’s question established the presence of “the welfare queen” stereotype in his decision making. For example, while Jessica answered no to the question and was minimally affected by “the welfare queen” stereotype, the same could not be said of another Black woman who was asked the same question during her court visit in Spring 2016. In that instance, the woman indicated that she did in fact receive public assistance (WIC). Upon hearing this, the Judge retorted, “Make sure you don’t abuse those benefits; they can be taken away at any time.” In that instance, it became obvious that the Judge had centered on patriarchal heteronormative understanding of the woman in front of him — particularly as it related to her ability to ‘responsibly’ use her WIC benefits. My fieldwork confirms what has been seen in existing literature, as sociolegal scholarship has established that Black and Latinx women are often viewed as ‘atypical’ in both juvenile and criminal courts (Belknap 2001; Chesney-Lind 2006; Daly 1994; Gaarder and Belknap 2002). Both questions demonstrate an underlying fixation with personal responsibility, which represents a subtle and paternalistic form of racial and gender bias (Frazier and Bishop 1995; Leiber 2003; Leiber and Mack 2003).

The findings from my field research stand in sharp contrast to existing research in one fundamental way – existing research argues that individual, informal characteristics do not affect legal decisions once formal factors have been taken into account but I often witnessed extra-legal factors play an important role in legal-decision making at BMC (Kupchik 2003). For example, depending on their answers, defendants risked losing driving privileges, being reported to public

benefits' authorities, being given community service that they could not realistically complete, and forcefully agreeing to an unrealistic payment plan. Fundamentally, the use of racialized and gendered extra-legal factors sent a message that defendants could not receive fair treatment within the courtroom without disclosing a large amount of personal information.

Furthermore, because the Judge's questions covered a broad range of topics, they attempted to minimize the presence of racialized and gendered stereotypes and bias in the Judge's legal decision-making, as they often did not include any explicit mention of race and gender. Instead, these extra-legal factors were viewed a matter of personal choice and life circumstances with very real consequences, rather than the work of long-standing institutional forces (Feld 1999; Zatz 1987). However, the presence of stereotypes and biases and their use by a single or several court actors does not mean that they are not fundamentally systemic, as racialized and gendered stereotypes and biases are rooted institutionalized systems of racism and sexism, thus making them more difficult to identify or 'less obvious' (Bell 1992; Flagg 1993; Haney-Lopez 1996; Matsuda, Lawrence, Delgado, and Crenshaw 1993).

“I Don't Want to Deal With This Ticket Anymore”: Perceptions of Guilt and Culpability

On an early Friday morning in May 2017, Carlos Tejeda, a young Latinx man had a Disorderly Conduct (Fighting) ticket from 2009 on that morning's *Community Service* docket. This was the 4th time I had seen him in court. Carlos was one of only a few defendants who I saw appear at BMC more than once. Not only had I seen him appear at BMC for a total of twelve school tickets, he also had appeared in court for several other non-school related citations that were on his record. That morning, he was the last person to be called into court for the *Community Service* docket. The familiarity between the Judge and Carlos was quickly discernable – even though he didn't have his ID with him, the Judge still heard his case and he wasn't marked as FTA

by the Judge or bailiff. Immediately, before saying or doing anything else, the Judge swore Carlos in. It was obvious that trust in Carlos was limited. While the Judge kept telling Carlos that he was giving him another chance to take care of the fines associated with his ticket, the Judge backhandedly reminded him that he was very close to putting him in jail because of his “irresponsibility.” This was the second time Carlos had appeared before the Judge for this particular ticket and his fines totaled \$3725. Were he to do complete community service to eliminate his fines, Carlos would have to complete 373 hours of community in unknown amount of time. Carlos had made it clear to the Judge that he preferred to be put on a payment plan – since he was employed full-time, he had the resources to pay the fines but not the time to do the community service. “I want to get this ticket over with; I don’t want to keep coming back here for it,” Carlos said as he attempted to convince the Judge that he’d be able to handle a payment plan. The Judge rebutted saying, “I can send you to jail; I can give you 30 days and maybe that will prevent you from being picked up for this again.”

Due to the unique way in which school tickets are processed and who school tickets affect the most, guilt and culpability are complicated concepts within the context of BMC – particularly when school tickets are scheduled on the *Community Service* and *Juvenile-Now-Adult Offender* dockets. When school tickets are scheduled on the *Community Service* and *Juvenile-Now-Adult Offender* dockets, they are processed in a way that resembles what Cotterrell (1992) referred to as “conveyor belt justice” (160) – each case is processed quickly, in about 15 minutes, with each defendant being given only two options on how to resolve their cases, then defendants are excused and everyone moves on. The foundational element of this sort of processing is that defendants are automatically guilty. This assumption has two important implications. On the one hand, it all but eliminates the ability of defendants to insist on their right to trial. Because of this, the somewhat

limited procedural protections they would otherwise have had were virtually nonexistent. On the other hand, it also eliminates the ability of defendants to challenge various aspects of their tickets. For example, it does not allow defendants to challenge the fees associated with their tickets; the amount of credit they are given for past community service; or the amount of jail time credit they can be given. It also severely limits their ability to advocate whether community service or a payment plan is best for them. Like Carlos, the vast majority of defendants whose cases I witnessed do not insist their right to trial nor did they challenge their tickets, instead choosing to ‘get it over with,’ enter a plea, and accept one of the two options presented by the Judge (Doerner and Demuth 2010; Franklin 2015; Steffensmeier, Ulmer, and Kramer 1998; Tonry 1994, 2011; Wundersitz, Naffine, and Gale 1991; Zatz 1987, 2000).

My fieldwork also demonstrates that the court, as a physical location, places further stress on defendants by making pressures to admit guilt even stronger. Admitting guilt and accepting whatever culpability is placed upon defendants by the court and its actors becomes the norm, not the exception. For example, in summer 2016, I witnessed Jennifer Ramirez, a young Latinx woman, appear before the Judge for three school tickets that were on that morning’s *Juvenile-Now-Adult Offender* docket. The first was for Disorderly Conduct (Fighting), issued in 2007 when she was a student at Jane Long Middle School. The two others were for Assault by Contact, one of which was also issued when she was a student at Jane Long Middle school in 2009, and the other which was issued when she was in high school in 2010 and involved a pregnant classmate. Choosing to defer her 2007 ticket since it was the least serious charge of the three school tickets, Jessica initially began to protest her two Assault by Contact tickets, neither of which had been adjudicated yet but the Judge was quick to mention that she only had two options: Either she could simply enter a guilty plea and pay her fine or she had the option to speak with a prosecutor to

schedule a pre-trial hearing if she really intended to challenge her Assault by Contact tickets. Jessica had been nervous the entire time she'd been before the Judge – she fidgeted with her sweater and kept stuttering over her words. Already on probation for something else, Jessica ultimately chose to plead guilty and go on a payment plan for the \$615 worth of fines she had rather than go through the whole process of challenging her tickets.

As Jessica's and Carlos' experiences demonstrate, admitting guilt and accepting the culpability placed upon them by the Judge was not necessarily an indicator that the whole school ticketing process had served its purpose – it had neither served as a deterrent for others who might misbehave nor had it actually provided any evidence that school ticketing contributed positively to school safety. Instead, their experiences demonstrate that the court system itself, including both the formal and informal aspects of it, had worked to collectively produce a guilty plea from them to further disenfranchise them. In many instances, the fear of having to return to court or reappear before the Judge served as enough of an incentive to plead guilty, regardless of what it now meant for their lives.

The fear of going to court seemed to be ever-present, and it was often wrought with anxiety and stress. While there's little evidence to suggest that issuing Class C Misdemeanors resulted in safer schools throughout BISD, Class C Misdemeanors were nonetheless used as instruments of intimidation. Within BMC, fear was manifested in an entirely different way – rather than being afraid of SROs issuing a ticket, defendants feared the Judge himself, his ultimate sentence, and whether the Judge's sentence included unpayable fines or unattainable community service hours. In this sense, defendants did not fear the hyper-surveillance present in BISD schools, they instead feared whatever form criminal justice persecution might take, with court itself still representing an inexplicable source of uncertainty and subjectivity. For example, by pleading guilty, particularly

as adults, these tickets were now, more than ever, a tangible part of their permanent records. Defaulting on court-ordered community service or a payment plan came with a whole new set of legal issues that could plague them for years to come. As Carlos' cases demonstrates, defaulting could result in very real jail time. During my fieldwork, not only did I witness defendants who appeared in court to deal with their tickets for the first time, I had also witnessed a large number of defendants return for tickets they had appeared for years ago. Because the defendants I witnessed had often expressed wanting to have the matter dealt with as quickly and uncomplicatedly as possible, they involuntarily participated in the reproduction and reification of an institutional discourse that labeled them criminally responsible for minor infractions that were not actually criminal in nature (Doerner and Demuth 2010; Franklin 2015; Steffensmeier, Ulmer, and Kramer 1998; Tonry 1994, 2011; Wundersitz, Naffine, and Gale 1991; Zatz 1987, 2000).

The subjective nature of culpability and guilt allowed institutional discourse to subtly cement the racialized and gendered aspects of guilt and culpability while externally embracing a discourse focused on personal responsibility, where everyone was 'free' to make a choice to plead guilty or not. The overwhelming majority of defendants whose cases I witnessed were Black or Latinx and were poor or working class in some way. Several of them had been previously incarcerated, were on parole, or had appeared in court for other citations. In addition to providing evidence for the systemic way in which Black and Latinx youth were targeted by school ticketing practices accounting for their overrepresentation on BMCs dockets, these commonalities also created the impression that certain racialized and gendered social characteristics were determinant of guilt and culpability and thus criminality. Additionally, in instances when defendants defaulted on their payment plans or court-ordered community service, these same social characteristics could again be used to distort images of who within the community continue to have legal issues. Due

to this underlying institutional discourse, poor and working class Black and Latinx defendants symbolically and materially represented criminal guilt within the context of BMC (Doerner and Demuth 2010; Franklin 2015; Steffensmeier, Ulmer, and Kramer 1998; Rios 2011; Tonry 1994, 2011; Wundersitz, Naffine, and Gale 1991; Zatz 1987, 2000).

Conclusion

The long-lasting ramifications of Texas' 'get tough' juvenile justice policies are most evident when looking at Texas courts. Court systems across the state represent an important site of disenfranchisement for Black and Latinx former students who were issued school tickets. BMC is no exception. The use of a local criminal court to punish minor in-school behavior has not only created a literal pathway to the criminal justice system for Bryan's Black and Latinx youth, it has also normalized the use of criminal sanctions for non-criminal behavior. For over two decades, BMC accepted and reinforced the normalization of school ticketing as a legitimate response to school disorder and as an unproven school safety measure.

As a punitive apparatus, BMC has been closely connected and intertwined with school safety in BISD schools. However, the effectiveness of using courts, fines, and community service as a means to ensure or increase school safety remains unclear. Instead, my fieldwork illuminates a legal apparatus attempting to retain the formality of legal processing but which is instead wrought with inconsistencies that negatively affect the defendants who appear in its courtroom. Hidden behind a thinly veiled discourse of personal responsibility and fairness, BMC's processing of school ticketing relies on a set of racialized and gendered stereotypes and biases to not only evaluate defendants but also to assign guilt and culpability. As such, my fieldwork demonstrates that the material realities, faulty stereotypes about, and social identities of defendants are often

deployed when school tickets are being processed in BMC and are used to further reinforce the supposed criminality of the Black and Latinx youth who have received school tickets.

CHAPTER VI

“I NEVER KNEW THIS WASN’T NORMAL”: THE ROLE OF RACE AND GENDER IN SCHOOL TICKETING EXPERIENCES

Gatson (2003) noted, “Apparently, a great deal of social observation takes place when academics are in taxicabs, or otherwise traveling” (20). In spring 2016, on my way to pick up my car from the local Toyota dealership, my white Uber driver attempted to make conversation during what would have otherwise been a completely quiet drive. She first asked if I was a student. I told her I was a graduate student at Texas A&M. I knew exactly where this conversation was going – I’d had it countless times before. “Really? What are you studying?,” she asked. Sociology, I told her. I could tell she didn’t really know or have an idea of what sociology was, so I elaborated. “I mostly focus on school safety, criminology, things like that.” The conversation that followed was more than I bargained for. Everyone has an opinion about school safety. “The schools here aren’t safe,” she told me. The rest of the Uber ride, she recounted how her daughter had been involved in a school fight when she was in 9th grade at Bryan High School and had been issued a ticket for it. She described how her daughter was pushed by a Black girl who had sporadically picked on her since she started high school. Her daughter pushed the girl back and the two started fighting in the hallway until they were pulled apart by a teacher. Both were given tickets for the fight. My Uber driver was quick to tell me, “It wasn’t my daughter’s fault. It was that Black girl that pushed her.” Before I could ask if her daughter had gone to court for the ticket, she said that the whole thing was “foolish and ridiculous” because her daughter hadn’t done anything wrong but had to go to court and pay a huge fine for something she didn’t start. Regardless of her sentiments about her daughter’s experience, she still held her daughter’s school’s punishment policies in high esteem

telling me that she was glad the other girl got a ticket, since she was, "...the real troublemaker" and "deserved" to get ticketed and fined.

In one short Uber ride, my driver's narrative about her daughter highlighted the broader patterns that had emerged from the interviews I conducted as part of my fieldwork. Her daughter's narrative had allowed her to tap into and reinforce a discourse that frames schools as unsafe spaces, thus allowing her to completely disregard existing research that suggests that Texas schools continue to be relatively safe spaces. In doing so, she was given incentive to believe that zero-tolerance policies are the best method for curtailing school violence because even though her daughter had also been ticketed and had to pay a fine, the "real troublemaker" had also been punished. Furthermore, her narrative provided her with a racialized framework through which to view school violence – because the fight was caused, in her perspective, by the Black girl, my Uber driver was able to link school violence and crime with race. In their conversations with me, my participants often highlighted similar themes but differed from my Uber driver in one key way – as Black and Latinx former students and parents, their narratives demonstrate that they were often on the 'receiving end' of the racialized violence my Uber driver had described.

I focus on three patterns that dominated participant narratives. First, I examine the ways in which school punishment experiences reified stereotypes that link danger, trouble, and crime to Black and Latinx students. For former students, these stereotypes were reinforced by a variety of actors that were present in their daily lives including school administrators, teachers, SROs, court actors, and community members. Parents, however, were cognizant of the ways in which their children were perceived. Their narratives establish a clear connection between the normalization of ticketing and everyday practices rooted in racialized fear and social relationships rooted in power inequality. Third, I highlight the safety experiences of my participants. For my participants,

lack of safety was often linked to various forms of state violence, both within school and in their other community contexts. Thus, their narratives demonstrate the systemic inequality surrounding safety and how the interaction of race, class, and gender results in significant differences in safety experiences between minoritized groups and their white counterparts.

I focus my attention on the Black and Latinx former students that were interviewed as part of this study. This is done in order to spotlight the voices of former students who not only are the most silenced, but are also the most invalidated, often due to their age. Their narratives provide critical insight into school discipline practices in Texas.

The Reification of Racialized and Gendered Stereotypes

I met Oscar Williams, a Black man in his 30s, on a Tuesday afternoon in Fall 2016. Earlier that day, Reggie Eames had called me to ask if I had time to interview his Uncle Oscar who had also received tickets in the earlier years of Texas's school ticketing policy. I had established a collegial relationship with Reggie after I approached him at BMC following his hearing and was excited to hear that he'd found someone else who was willing to be interviewed. I immediately dropped what I was doing and headed to the agreed upon location. We met at the same local fast food restaurant where I had interviewed Reggie and his wife just a couple weeks prior. I arrived before they did and set myself up at the same table where I had interviewed Reggie, so as to make it easy for them to find me. I had waited about 10 minutes when Reggie, Oscar, and Reggie's cousin Erik, who had also joined at the last minute, arrived. I was glad that Reggie had joined us, as it would facilitate the conversation between the three of us.

Oscar was definitely the most talkative of the three, even more so than Reggie who I already knew. During our conversation, he was very forthcoming about his experiences and about

everything he'd done in high school that caused him to get ticketed. He had stories about everything, even the legal issues he'd had as an adult.

Oscar had lived in Bryan or College Station for most of his life. He told me that because of his "discipline problems," he had attended a variety of schools including what he referred to as "the state school" because he was "always getting into trouble." At some point, he had also been put in Special Education while at Bryan High even though he was getting A's and B's in his classes. Oscar is the oldest former student in this study. He received his first ticket while he was a student at Edison Jones in the 7th grade. His narrative, however demonstrated a heightened awareness of how race, or as he referred to it, "the color of my skin," had impacted his discipline experiences.

After I finished my usual soliloquy about who I was (and who I wasn't), the study and its purpose, and the reason why I wanted to interview him, I asked a question I already knew the answer to, "Did you receive tickets when you were in school?"

I received more than tickets...I was tight with a white guy, right? We had a little friendship...we was skipping school, right...They had a nature trail back there at the time. So, we was back there, right? So, the teacher come back there; the principle come back there. They told us we were supposed to be in school. So, when we got to the office, you know, he called the authorities and everything, right. They ended up letting him go Scott-free...and gave me a ticket. I caught so much heat when I was in school, 'cause you know, I was young...I had a lot of friends that were white kids and we stayed in trouble, right. They always got off Scott-free, right. I got in trouble so much that I ended up getting sent to a state school and everything...and they ended up with no record, you know? They didn't go to jail or none of that. It was kind of messed up that I was like "wow." But I was so young, I thought they probably had a lawyer or something. That was my thinking. But it wasn't any of that. They got off...you know...I found out later because of the color of their skin...later on as I got older, you know?...Every time I skipped school, every time I got caught...his name was John...me and him was together...Nothing happening to him, everything was just normal. But to me...I'm going through all of this...why is he getting off every time? Every time...I gotta go to jail...I gotta get in the police car and everything. I got on handcuffs. I'm a kid with some handcuffs on. They walking him to the principal office and me to the police car...come on, man...come on, man...both of us come out the woods at the same

time. So he's going into school, they call his parents. I go to the police car...I go to jail....

Skipping school had brought Oscar in direct contact with the criminal justice system. But his experience was particularly problematic – not only had he been ticketed, he had also been handcuffed, put into a police car, and brought to the local jail. Rather than simply ticket him, he'd been made into a spectacle. But it wasn't just any spectacle, it was a highly racialized spectacle, which Oscar himself recognized and which his mother also recognized. He later recounted that only when his mother was called from the police station was he able to go home and much like him, she had also questioned the reason her son was the only student sitting in the local jail when both kids had been skipping school.

By ticketing and bringing Oscar to the local jail, he'd been immediately criminalized and while his behavior was not criminal at all, his actions were made criminal the moment he'd been handcuffed. Oscar was not only criminalized by the police who handcuffed him and brought him to the local jail but also by the school principle who had called the police in the first place and the teacher who did not protest the decision to treat Oscar and his friend disparately. By bringing only Oscar into the local jail, the teacher, the principle and police indicated that only his behavior as a Black male student was criminal. This series of actions reified racialized stereotypes of 'criminal behavior' and their connection to Black men. Not only had the teacher, principle, and police acted in accordance with racialized stereotypes, they also confirmed their presence in yet another social institution – schools (Greenwald, Oaks and Hoffman 2003; Blair, Judd and Fallman 2004; Tonry 1994, 2010; Wacquant 2002).

For skipping school, Oscar was ordered to pay fines and complete community service. When I asked what kind of community service he was ordered, he answered

Pick up trash on the highway....It's humiliating...I mean, people riding by, knowing that...you know, "Okay he had to do something bad,"...you got a kid walking up and down the highway picking up trash, you know?"

At multiple points in our conversation, it was evident that he was cognizant of how he was perceived by others. For skipping school, Oscar had been labeled and treated as a "bad kid" and as a criminal from the beginning when he was first caught by the teacher and principle all the way through to completing his community service. He was aware of the stigma he was living with now that he'd come in contact with the criminal justice system. The way he spoke about his experience indicated that, for Oscar, the handcuffs, sitting in the local jail, appearing before a Judge, and completing community service in such a visible way had not only materially criminalized him and his actions, but these various aspects of his experience had symbolically altered the way he thought of himself while at school. He used the following story to demonstrate:

Let me tell you what happened to me this one time. I'm in this one class, right? And I was looking at the schedule.... I'm in one this one class.... I'm looking at the class, and I'm the only Black kid in the whole classroom, right? And I went to the wrong class, right? So the lady asked me...now after all this other stuff had happened to me.....She asked me if I wanted to sit in the classroom...I was like, "Nah," because I know as soon as something happened in this classroom, as soon as anything go wrong, they're going to point the finger at me...I wasn't even sitting by the rows. I had my chair by the door.... I don't even remember what they talked about it. As soon as I got out of there...nobody was gonna mess with me, no, nothing. All white and one Black dude.

When I asked if he felt like his experiences made him a target, he bluntly told me, "Yeah, because see, once you get those tickets, they like, 'Okay, he's gonna start trouble,'...he's a troublemaker. So, anything that happens, they're gonna focus on you...it get you to the point sometimes that you don't even want to go to school."

While he didn't use any of the academic jargon that scholars in the past have used to describe experiences similar to his, Oscar still described a very explicit criminalization process that was based on his status as a Black man. Throughout his conversation with me, Oscar was clear

in how disparities between his punishment experiences and those of his white friends were impacted by racialized aspects of his identity. Everything about the way in which he recounted his narrative indicated an underlying consciousness of the way in which he'd stepped into the trope of the criminal-Black-man and rather than being an isolated experience, criminalization and stereotyping occurred daily, at every step in the ticketing process, and was perpetuated by a variety of actors that were a regular part of his life (Chiricos, Hogan, and Gertz 1997; Smith 1986; Taub, Talyor, and Dunham 1987; Tonry 1994, 2010; Wacquant 2002).

The connections Oscar had made between the disparate way in which he'd been treated and his being a Black man were not isolated, as many of my participants explained similar connections in my discussions with them. Reggie's cousin Erik, for example, who had also joined us that day, explained, though he was much quieter than Oscar, that he felt he'd been treated disparately, not only in school, but also in court. At 20 years old, Erik was much younger than Oscar but had nodded in agreement with much of what Oscar was recounting. When I asked him about his worst ticketing experience, he told me about an incident in which he'd been ticketed and arrested at school after he'd been accused of breaking a school laptop in 10th grade, a laptop which he has always insisted was not even in his possession. Even though he was 15 at the time, at 20 years old, Erik was still fighting the case and still appearing in court for this particular citation. He appeared in court three months before I interviewed him and had spent several days in the local jail because of this citation. When a warrant went out for his arrest at 18, he wasn't made aware of his citation through official channels – instead, he told me, “I saw my name in the papers. That's how I found out that I had warrant.” But he was explicit in that he didn't think the judicial process had been fair to him; the judicial system was trying to charge him a total of \$12,000 for what he described as an old MacBook. All of this happened to him at Rudder High School, which he

referred to as “the racist school...I had a kid tell me that he hated me, that he was supposed to hate me...when you got in trouble, you knew that was why.”

In very little words, Erik had also connected his experiences to being a Black man but had situated his experiences within the broader context of the school that he'd attended. Not only was he highly aware of the racist school climate in which he found himself, he was also cognizant of the threat he posed simply by being a Black man in a white space. Just like Oscar, Erik connected getting in trouble at school with being Black. Furthermore, because he'd been arrested and his name publicly attached to a criminal warrant, he'd also been actively criminalized as a result of his school ticket. In the experience of both men, they were still circumscribed as troublemakers and criminalized, regardless of their actions. Their narratives, though certainly not isolated, particularly among my own participants, demonstrates how the trope of the criminal-Black-man remains active at every stage in which zero-tolerance policies are executed.

While I engage and focus on the narratives of two Black men, their narratives paralleled what I had been told by my Latinx participants who had also expressed being targeted because they “looked Mexican” or because they had spoken Spanish publicly (Mirande 1985; Navarro-Colon and Salinas 2011; Romero and Serag 2005; Romero 2001). The connection between Mexican appearance and being a ‘troublemaker’ was even touched upon by several of my Black participants, such as Oscar, who included “Mexican kids” when he discussed his punishment experiences. Not only did trouble and trouble maker become racially coded words for Black and Latinx students, the use of those labels operated in the lives of Black and Latinx students in such a way that it justified the disparate punishment they experienced (Blau 2003; Simon 2007, Ferguson 2000, Rios 2011; Giroux 2003). Ultimately, what the experiences of my Black and Latinx participants indicate is a precise and intentional organizational process that relies upon and

solidifies racialized criminal stereotypes (Blau 2003; Ferguson 2000; Giroux 2003; Rios 2011; Simon 2007).

The Normalization of School Ticketing

I met Omar Briggs through a mutually known community member about a month before I interviewed him. Omar had lived in Hempstead most of his life and was born in Hearne but his parents had moved to Bryan when he was in the 10th grade. Though we had only had an initial lunch where I explained the project and its purpose, he had been gracious enough to introduce me to several of his friends who were willing to be interviewed. In Spring 2017, we were finally able find a date and time for Omar to be interviewed. I was originally going to only interview Omar but he had persuaded his friend, Terrance Burroughs, to join us at the last minute. Terrance had lived in Bryan his entire life – his older siblings had attended the same schools he had and it had given him a reputation as a ‘troublemaker’ before he even started school. Omar and Terrance were similar in a lot of ways – Omar was 23 and Terrance was 22; both were Black; and both had graduated from Bryan High (in 2012 and 2014, respectively). They had been friends since Omar moved to Bryan.

We agreed to meet at a local sit-down restaurant on a Friday afternoon. While we discussed a variety of topics during their interview, the way in which both men recounted their ticketing experiences demonstrated the extent to which the school ticketing process had been normalized in their lives. Their narratives also demonstrated that the normalization of the school ticketing was rooted in and facilitated by racialized and gendered imagery which framed Black and Latinx students as ‘perpetual troublemakers.’ For example, when I asked Omar to tell me about some of his ticketing experiences, he told me

Everybody out here getting tickets.... I got in a fight in middle school and they gave me a ticket for it...they pulled me into the office and asked me questions...about

the fight...like how did the fight start and all that. And they told me that I would have to go to court. They made me sit in SAC for three days and I got suspended for 3 days. And when I came back, I had a ticket...I got a ticket for truancy, missing school...It was mainly smelling like stuff and fighting, mostly fighting.... They always checked my bookbag 'cause I smelled like cigarettes...They check everything out. They check numerous times. They're always going to search you...

For Omar, while some tickets stood out in his mind and he was able to recall certain details of those tickets, he spoke about his other tickets in an off-handed manner indicating that they had become a routine part his high school experience. His off-handed manner also indicated that constant surveillance was also a routine part of his high school experience. Because both men were friends in high school, their ticketing experiences were interconnected and often paralleled each other. For example, Terrance spoke about his tickets in a similar way – some he spoke about off-handedly but like Omar, Terrance also had a ticketing experience that stood out the most in his mind. He told me,

I know I had one ticket 'cause when I was in middle school, I wouldn't go to none of my community services. I had like a whole bunch of them. So, they fined my mama. I remember she got mad as hell. She said, "Look, I gotta pay all of this because of you." In middle school, I was getting a lot of BS referrals...all across the board really...disrupting and whatever...talking a lot...It wasn't nothing too serious but like it would be enough for them to write me up, you know what I'm saying. I got another one for something on campus. What's that called when you have like a lighter or something? They call it something with P...paraphernalia...I got a ticket for that too...I got a ticket for.... something with a T...truancy...that's what it was...I got a disruption of class for brushing my hair. I had waves, so I had my brush in class. And he [the teacher] was like, "That's all you're gonna do today, Mr. Burroughs? You're disrupting my class." But in high school, I got a Class C Misdemeanor from the principal. They said I was wrestling him or whatever...What happened was, it was a bad day from the jump. They were supposed to be executing my uncle in Huntsville...and we were all going to go to Huntsville to see my uncle before they did that...and I was in the hallway, I was talking to him [Omar] on the phone and it was something about them not wanting anyone walking down the hallway but it was the main hallway to get to the front door and that's where I was headed...they were trying to stop me. At first they were trying to hold me back like, "You can't walk no farther." And I was already in a messed up mood and I was just trying to get to the front of school. I remember I told them, "Y'all can hold my hand for all I care. I ain't trying to cause no trouble, like I'm just trying to get to the front of school." And they were like, "No you gotta

go all the way around.” It was just the teacher and the principal. So I was walking past the teacher...I just kept walking past both of them...by the time I got to the hallway, they were trying to grab me so I pushed them off and that’s when they were trying to say that I assaulted him. I had pushed him off me and he had fell. And then the assistant principal came and grabbed me....I got sent to jail...my mom bailed me out...it was like \$700 for bail. I just recently got that completely off my back, just recently. I ended up doing like a month and half of jail time, something like that and I was already out of school for like two years....I did that like in the 10th grade.

The way in which Omar and Terrance described their discipline experiences indicated an unnecessary familiarity with the school ticketing process to the point where it had become mundane to them. While seemingly routine to them, their narratives are powerful because they demonstrate the extent to which continuous ticketing skewed their high school experiences – their high school experiences had been pervaded by school tickets which also meant familiarity with SROs, the criminal justice system of Bryan, legal fines, and even jail time (Carvalho and Lewis 2003; Giroux 2003; Nolan 2011). As Omar noted in a later phone conversation that I had with him, “What they’re doing to us is really fucked up but I actually didn’t think it was a problem until you explained it to me.” Omar’s comment was alarming – his nonchalant attitude toward his tickets indicated a level of dehumanization that he may not have been accustomed to or was unwilling to consider but that had certainly been normalized. In this sense, Omar had normalized being surveilled and surveillance no longer represented a personal violation.

Additionally, both men linked their ticketing experiences with feeling as though they had been labeled ‘bad students’ and with feeling targeted, not just by school police but also by teachers and school administrators. In recounting these feelings, their experiences again paralleled each other. For example, Terrance noted

I’m from here. My whole family is from here. They always say, “You a Burroughs.” It already starts off bad because you know, “What do you mean I’m a Burroughs?”...It’s like why are you acting like so much of an asshole to me and I’m not even an asshole back...They have a list of people they don’t play with. If

they know you, they already know your name, they already got it in their head. They already have it out for you because of how they got it in their head. I experienced that extremely hard after I got arrested at school... but I think mainly it's in their head. They got a picture of you in their head and they already set it out for you. I know that's how I experienced it. I was like, "Man, you just got it out for me."

Omar similarly noted

Him [Terrance], they look at his last name and judge him. They don't let you be your own person if they know you. There were some teachers that ask you as soon as you walk in, they tell you, "You not gonna do such and such, right?"...it's like damn let me get in the classroom, can you at least give me a chance? This one woman told me she had a write up on her desk every time I come in – if I do anything, she gonna send it out...They would never let us explain ourselves. They was always right and we was always wrong. That's just how it is...It's really a form of bullying.... School can change your whole life, even for something minor.

The narratives of both men paint a grim picture of school ticketing and highlight an environment in which school ticketing – and thus, the criminalization of Black and Latinx students – becomes part of the everyday lives of students and their parents. Their narratives demonstrate how deep-seated normative assumptions about 'problem students,' including not-so-subtle assumptions about crime and delinquency, facilitate the continuous targeting of certain students. As such, while some students may not experience surveillance and ticketing at all during their school years, others certainly experience it far too often. In this sense, their narratives carry the underwritten notion that some students are synonymous with bad behavior and are thus the intended targets of school ticketing policies. Without explicitly using the words 'safe' or 'dangerous' while recounting their narratives, Omar and Terrance's narratives demonstrate how school ticketing is used to reinforce long-standing assumptions about which students are uncontrollable and unsafe and dangerous. Their narratives demonstrate how school officials reify the supposed appropriateness of zero-tolerance policies when dealing with students they have deemed uncontrollable. In this sense, school buildings – classrooms, hallways, and even the school parking lot – served as a significant

physical location in which the behavior of students like Omar and Terrance was criminalized. In the lives of Omar and Terrance, teachers, SROs, and school administrators frame them as protagonists within the school environment – protagonists who are in direct opposition to school order and safety (Nolan 2011; Lewis 2003; Rios 2011; Simon 2007; Smith 1993).

More importantly, Terrance’s narrative highlighted the way in which bullying became central component of school safety. For him bullying was synonymous with SROs – his experiences had taught him to conflate school safety with SRO bullying. Ultimately, bullying represented surveillance, and Terrance had understood it as an important factor in the quest for school safety.

Furthermore, their awareness of being continuously targeted indicated that zero-tolerance policies succeeded in permanently labeling some students as ‘troublemakers.’ Texas’s school ticketing policy was never touted as rehabilitative and it has been steadfast in its punitive nature. It was however also touted as a policy rooted in deterrence – for students who had been previously ticketed and for any other students who may consider misbehaving. Omar and Terrance’s narratives demonstrate how past ticketing experiences were used to continuously target particular students and to frame any and all their behavior as ‘problem behavior.’ For example, Omar noted that one of his teachers was ready to ticket him as soon as he walked into the door, regardless of whether he had done anything ‘wrong’ that day. Similarly, Terrance noted that his name was enough for him to be targeted and surveilled.

Omar and Terrance’s narratives indicate how a ‘perpetual troublemakers’ discourse forms the foundational logic of normalizing school ticketing. By continuously ticketing the same students, teachers, SROs, and school administrators demonstrate that it isn’t solely the present instance of misbehavior that causes ticketing. Instead, their decisions to ticket students are, in part,

based on past ‘misbehavior’ and on the way in which particular students are viewed by those in authority. As such, their narratives indicate that the material reality of school ticketing had become so common place that they had begun to expect school tickets whenever encountering any sort of authority figure in school.

Implicit in their narratives is the notion that police surveillance and criminal justice prosecution is a part of everyday life for Black and Latinx students, indicating yet another form of state violence against communities of color. In their narratives, Omar and Terrance expressed their frustration with continuously being targeted but their narratives are also underwritten by a sense ‘ordinariness’ about the presence of school tickets in their lives and the lives of their friends. For both men, school ticketing had long been a part of their high school experiences, part of their daily routines, and as such, had lost any potential to scare. Instead they had adapted to living with the possibility of being ticketed (Carvalho and Lewis 2003; Giroux 2003; Nolan 2011).

The Racialized Safety Experience

I first saw Reggie Eames at BMC on an early Friday morning when I’d gone to observe that morning’s *Juvenile-Now-Adult Offender* docket. His grandmother and his wife had accompanied him that morning. I initially didn’t think I’d be able to approach him – his cases were first on the docket and past experience had taught me that by the time the Judge had gone through all of that morning’s docket and I was able to leave, they’d be long gone. But Reggie had been delayed in leaving and by the time I got outside to walk to my car, I saw him coming out of BMC with his grandmother and his wife. I approached the three of them with caution and introduced myself and the explained why I had approached them. No one really said anything, but a look of suspicion never left his wife’s face. When I’d finished, I handed him my card and thanked him for his time. Given how the whole interaction had gone, I didn’t expect him to contact me about an

interview and was shocked when he texted me several days later to set up an interview. We agreed to meet early on a Monday afternoon at a local fast food restaurant. He arrived about 15 minutes after I did and during those 15 minutes I got worried that he had changed his mind about being interviewed. The restaurant only had outdoor seating so I sat in the most visible location I possibly could. I was relieved when I finally saw him drive up. I wasn't sure who would join us but was happy to see that his wife would also be joining us.

Reggie had lived in Bryan his whole life; at 22 years old, he had never lived anywhere else. Even though there was nothing that he really liked about Bryan – he'd "seen it all" he said – he didn't feel compelled to move anywhere else. When I asked which schools he'd attended, he told me that he kind of just "bounced in and bounced out" of schools but named Mitchell Elementary, Sul Ross Elementary, Rudder High School, and Bryan High School among the schools he had attended. I was particularly eager to interview Reggie after observing his court experience. I had seen how he and the Judge interacted within a physical space shaped by unequal power relations and had also witnessed the Judge pry into his personal life. Because of this, though I hadn't had an extended conversation with him prior to interviewing him, I knew details about his personal life I wouldn't have otherwise known. He didn't speak about many of the things I'd heard about in court during our interview, which indicated just how uncomfortable and distressing his court experience had been.

After I getting some initial biographical questions out of the way, I asked him, "What makes you feel unsafe? What is something that if you see it, you're like, 'oh shoot, that's dangerous?'"

The law⁹...I feel intimidated when I see them...because I feel like...I feel like every time I'm moving around somewhere and I see a law, they're looking at me, they're coming for me...it's just an instinct or something that I have. I just feel like every law officer that I see or any law I see, they're looking at me...and whenever I move around, that's when they're going to get behind me or something, just mess with me, anything. I can be walking...I'm sitting on the porch and he looking right at me, I'll go inside the house...you can't turn around and be like, "Hey, sir...you can't sit..." ...It happens anywhere. Even right now. If someone comes by here right now, I'll be thinking he's looking at me.

Reggie immediately linked danger and lack of safety to law enforcement, particularly law enforcement in the community in which he lived. He had conceptualized safety as a negative experience, one in which he had limited agency, where he couldn't question or even speak to law enforcement without feeling open to state violence. His narrative indicated that around law enforcement, he felt immediately targeted and vulnerable. His vulnerability manifested in a such a way that not only did he feel vulnerable to potential, future threats from the police, he also felt vulnerable to immediate threats. For him, thinking about safety rapidly brought anxiety, rather than a sense of calm.

Reggie wasn't alone in how he thought about and experienced safety and danger. For example, Reggie's Uncle Oscar and I had had a similar discussion when I asked him what would make him feel threatening or unsafe. I had interviewed Oscar after I'd interviewed Reggie but Reggie was present during Oscar's interview. During Oscar's interview, Reggie agreed verbally and non-verbally with much of Oscar was saying, even though they were a generation apart from each other and had attended the BISD schools in which they were ticketed more than ten years apart. In describing what caused him to feel threatened the most, Oscar answered

When you standing here talking to an officer and two or three other officers standing behind you...and you're talking to him but you're trying to pay attention to these two that are at your back...if they're gonna hit you upside the head or

⁹ When Reggie spoke about "the law," he was referring to the police and police officers. Referring to the police and police officers as "the law" was common among my participants.

whatnot, saying that you done moved your arm or this kind of stuff. Next time you see someone pulled over, watch how many officers are over there. And now, you see how they killing Black people all on TV. They just gun 'em down, just gunning people down, man, it don't make no sense...it's not just in Bryan, it's everywhere.

Oscar's response paralleled Reggie's but he went a step further by describing not only feelings of anxiety when in the presence of police but also a state of continuous hypervigilance. For him, hypervigilance served as a form of protection – if he was aware of everything going around him, he'd be more safe. He gave me an example of a scenario to make his point

I got something for you...imagine being somewhere to where the police are gonna pull you over, pull over somewhere to where somebody can see them, just in case they might want to try something. The police got behind me one time and I didn't come to a complete stop at the stop sign...it was dark...I turned my hazard lights on. When I turned my hazard lights on, I let him know that I knew he was back there. And I drove a couple of blocks until I got home. And they couldn't get me for resisting arrest or nothing like that. I turned my hazard lights on...which is called the Rodney King Law...a lot people don't know you can do that. You turn your hazard lights on and you drive to a place where you feel safe and then you get out and talk to them, especially out here in all these back roads because next thing you know, you got all these drugs in the car that you know weren't even in your car.

Both men, however, shared another commonality in their narratives – the vulnerability they expressed was rooted and intertwined with the status identities they embodied as Black men living in Bryan. Both had linked themselves to a lack of safety when in the presence of the police. While Oscar was more explicit in making this connection, it was made by both men nonetheless. Neither conceptualized safety in an abstract way or as something that was always guaranteed. For them, safety – or lack thereof – was a concrete experience, something directly connected their own persons and the spaces they occupied, rather than material objects external to themselves (Huey 2012; Stanko 1990). Furthermore, Oscar's mention of seeing Black people being killed on TV was significant as both men had been interviewed several months after the murder of Alton Sterling by police in Baton Rouge, Louisiana, a city less than six hours away. While both men spoke about

themselves individually, their narratives had similarities and Oscar's statement acknowledged that fear of the police and state violence wasn't some sort local phenomenon. It instead indicated an awareness that lack of safety was due to institutional forces, not to the community in which he lived. As such, Oscar's statement revealed the systemic nature of their individual safety experiences – their fear and lack of safety was embedded within larger systems of racial and gender domination, a connection they actively made themselves (Huey 2012; Stanko 1990).

This was not limited to my Black participants, however, as interviews with my Latinx participants revealed a similar discourse in their narratives. For example, in Spring 2017, I interviewed a young Latinx man named Mike Perez, who I met through another participant, Omar Briggs. Like the majority of my participants, he had lived in either Bryan or College Station his entire life. Throughout his life, he'd not only lived in a wide variety of places with different family members, he'd also attended numerous schools in BISD, including Fannin Elementary, Stephen F. Austin Middle School, Sam Rayburn Middle School, and Rudder High School. In his words, he “went to all of them...cause I was moving around so much...I was getting in trouble.” Even though he acknowledged that he had “discipline problems” before reaching high school, he received his first ticket at 16 for driving without a valid license on school property. But in his own words, he had been pulled over by campus police for what he described as “smelling like weed” because he “...wasn't doing nothing wrong...so what was you reason for pulling me over?” Only after he'd been pulled over did campus police realize he had no valid driver's license.

While he was open about what he'd done that got him in trouble as a high schooler, he struggled to find an answer when I asked him what made him feel threatened and unsafe. Finally, he answered

Probably the only that get in my heart, that gets me jumpy is when the law is behind me...I just kind of get a nervous feeling like...you know what I'm saying...I don't

panic...but I stay on my toes...I might get pulled over...I might not...So I just stay on my toes...Not if they're like just driving, you know what I'm saying...I'm not worried about them...But if he walks up on me, I ain't gonna lie...if I see you like that and you're looking at me and you stop your car, I'm gonna take off...you not gonna catch me.

Much like Reggie and Oscar, for Mike, a lack of safety was rooted in fear of the police and fear of state violence. He was explicit that his fear stemmed from having been pulled over at 16 and now, he continuously lived with that fear whenever he drove anywhere. Like Oscar, his main strategy to remain safe and limit his vulnerability to state violence was hypervigilance.

Furthermore, all three framed safety as fundamental to their individual states of being but their narratives indicated an awareness that safety functioned as a privilege, one which they were denied as Black and Latinx men (Marshall 1950; Foucault 1980; Pain and Francis 2004; Wood and Dupont 2006). They were unable to manage their fear and safety from a place of equality – they recognized that when they found themselves in the presence of police, in a space that was intrinsically unequal and constrained by their identities as Black and Latinx men. Being around police officers gave them no sense of control or agency and limited what Kern (2005) has referred to as “privilege of confidence” – to be able to challenge threats and not fall victim to state violence (Kern 2005:266; see also Carvalho and Lewis 2006; Tulloch 2003). For Mike and Oscar, being in an unsafe space (i.e. in the same space as police officers) triggered an instinct to remove themselves from that space – Oscar noted he'd drive until he felt he was in a safe space while Mike noted that he'd simply take off so as to not give the police any opportunity to be in the same space as him.

By living in fear of state violence, all three men were limited in their ability to “to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society” (Marshall 1950:11). While safety itself is often touted as a necessity, with society continuously adopting policies to ensure safety (including the very policy that put

Oscar, Reggie, and Mike in direct contact with the criminal justice system of Bryan), the very mechanisms used to ensure safety were what caused their fears in the first place. Their narratives indicate a fundamental disconnect between the value placed on individual and public safety and the way in which safety is ultimately distributed (Huey 2012). This disconnect is not random or coincidental but instead represents careful maneuvering intended to continue to disenfranchise Black and Latinx people in the most crucial ways.

Conclusion

As a state-wide policy, school ticketing was embedded within the everyday lives of my participants and as such, was able to permeate areas of their lives beyond their years on school campuses. My participants' narratives demonstrate that the impact of school ticketing policies, while certainly incredibly vast and enduring, go beyond legal, financial, and educational ramifications to include numerous hidden consequences. These consequences may seem highly individualized but their presence in multiple narratives, their connection to broader institutional forces, and their interconnectedness with various axes of oppression indicate a systemic nature. While the effectiveness of zero-tolerance policies in ensuring school safety is still contested within the literature and my fieldwork demonstrates that school ticketing did not serve as any sort of deterrent and did not necessarily increase school safety, zero-tolerance policies were nonetheless effective in several other ways, all of which were rooted in the powerful influence of racialized and gendered stereotypes.

My participants' narratives demonstrate that school ticketing was a fear and intimidation tactic and as such, was highly instrumental in reifying the connection between school crime and delinquency and racialized and gendered stereotypes – the 'criminal-Black-man,' 'gang-banger-Mexican,' or the 'perpetual troublemaker.' While the wording of the policy itself was race and

gender neutral, it was its implementation that provided the opportunity to evoke and reinforce long-held assumptions and beliefs about school disorder and Black and Latinx students – not only was it implemented within an institution wrought with race and gender inequality but it was also implemented by teachers, school administrators, and SROs who are not immune from racist and patriarchal ideology.

As I outlined in this chapter, my fieldwork indicates that school ticketing facilitated the ability of teachers, school administrators, and SROs to attribute the ‘criminal-Black-man,’ ‘gang-banger-Mexican,’ or the ‘perpetual troublemaker’ stereotypes to Black and Latinx students. Because of this, school ticketing was able to effectively do two specific things. First, by using racialized and gendered stereotypes, teachers, school administrators, and SROs established school ticketing as part of everyday life, and thus normalized continuous criminal justice contact to the extent that it was no longer seen as problematic. Second, school ticketing experiences became directly intertwined with how my participants understood and experienced personal safety – their fear of State violence and of police was rooted in and then fueled by their school ticketing experiences and was present in their lives long after they left high school. Because safety is considered fundamental to learning and to the wellbeing of not only students, but also school personnel, it is particularly damning that the very actors intended to ensure school safety are what personifies danger and threat to my participants (i.e. SROs and school police). This indicates that scholars need to think beyond conventional ramifications of the school-to-prison pipeline – it is not simply about school climate, academic achievement, or rates of suspension and expulsion, it also about the normalization of the presence of the criminal justice system in the lives of Black and Latinx youth and the effect of continuous criminal justice contact on central aspects of their livelihoods.

CHAPTER VII

CONCLUSION: WHAT NOW?

Throughout this dissertation, I have centralized safety – not only by focusing on the policies that are enacted and implemented to ensure safety but also the way in which safety is conceptualized by different groups of people. The discourse surrounding safety has often framed it as a fundamental right and crucial for individuals to live their lives fully. When individuals feel safe, they are free from the constant worry of danger to their personhood and are able to engage fully in society (Foucault 1980; Huey 2012; Marshall 1950; Pain 1997; 2000; Pain and Francis 2004; Wood and Dupont 2006). Fundamentally, however, safety is a vital public good. But as with many with many public goods, it is not immune from systems of intersecting inequality – for example, race, class, gender, sexuality, ability, and immigration status all affect safety. Systems of inequality affect safety in two specific ways: First, some individuals have too much safety while others do not have enough; and second, safety itself is defined and experienced differently by different people. As it is a central component of everyday life, a lack of safety is often debilitating, if not deadly. Because safety is crucial, numerous steps are often taken to ensure it in various aspects of social life – various types policies with differing foci are not only enacted, they are equipped with tangible tools and embedded within everyday life.

One such type of policy is zero-tolerance policies, which have been the focus of this dissertation. Drawing on three major sources of data, this dissertation interrogated Bryan ISD’s school ticketing policy and the effect the policy has had in the lives of Black and Latinx students who have been ticketed. Anchoring my guiding theoretical framework in CRT, this dissertation centralizes the voices and experiences of Black and Latinx students and their families. My argument has been two-fold. First, Bryan ISD’s school ticketing policies have played a pivotal role

in the criminalization of Black and Latinx students. The criminalization process itself has been complex and multifaceted but has ultimately been rooted in distorted images not only of Black and Latinx students themselves but also of their homelives. These distorted images have allowed school districts, local law enforcement, and even other parents and students to continuously pathologize Black and Latinx students and label them as ‘troublemakers’ and ‘bad kids.’ As such, they have facilitated the ability of school districts, local law enforcement, and the local court system to repeatedly make Black and Latinx students the targets of harsh discipline practices.

Second, Bryan ISD’s school ticketing policy has been instrumental in reinforcing racialized constructions of safety. On the one hand, because Black and Latinx students were labeled and treated as ‘troublemakers’ and ‘bad kids,’ they were positioned as being parallel to violence and danger within schools. On the other hand, however, this positionality affected their safety experiences substantially. Black and Latinx students were cognizant that for their teachers, school administrators, and SROs, they epitomized danger and trouble. Because of this, they were in constant contact with the criminal justice system of Bryan. This continuous contact substantially influenced the way they experienced safety. For the Black and Latinx students who were part of this study, SROs, police, and the criminal justice system itself came to personify lack of safety and danger – the very tools that are often touted as essential for maintaining safety were the embodiment of danger and threat for Black and Latinx students.

Future Research: How Do We Build a School Safety Research Agenda?

Due to the nature of this research, and the very public complaint that prompted this dissertation, the findings presented here have numerous research and policy implications. However, the falling out from the original complaint presents a very bleak picture of the future of zero-tolerance policy research.

In January 2014, during the Obama administration, the Department of Education’s Office for Civil Rights and Department of Justice’s Civil Rights Division issued what is now known as the *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* (see Appendix B). The *Dear Colleague Letter* was groundbreaking – it directly addressed the school-to-prison pipeline, citing data that demonstrated existing racial disparities in school discipline rates between Black and white students that could not be explained by differing rates of misbehavior. Relying on the concept of disparate impact, the *Dear Colleague Letter* noted that while schools themselves may not be explicitly racially biased, schools nonetheless could racially discriminate if their school discipline policies resulted in racially disparities between Black and white students (U.S. Department of Education 2014). The *Dear Colleague Letter* bluntly stated, “In short, racial discrimination in school discipline is a real problem” (U.S. Department of Education 2014).

The *Dear Colleague Letter* was not a policy *per se* but instead provided a set of guidelines for school districts on how they could alter their existing school discipline policies to “identify, avoid, and remedy” discriminatory practices (U.S. Department of Education 2014). The *Dear Colleague Letter* also advised school districts to examine their discipline data to look for any racial disparities that violated federal civil rights laws or could trigger federal review (U.S. Department of Education 2014). More significantly, however, the *Dear Colleague Letter* made room for civil rights reviews and complaints to identify systemic patterns in discipline data, rather than limiting complaints and reviews to individual, explicit instances of racial bias.

The *Dear Colleague Letter* was issued almost four months after the Dallas office of the U.S. Department of Education’s Office for Civil Rights agreed to investigate the complaint filed by the Brazos Valley NAACP, the NAACP – LDF, Texas Appleseed, and the NCYL regarding Bryan ISD’s school ticketing policy. The *Dear Colleague Letter* nonetheless hinted at the possible

framework investigators might employ when conducting their investigation, particularly because it was issued within the standard period during which most complaints are resolved.

In December 2018, however, the Trump administration and U.S. Secretary of Education, Betsy DeVos recommended the reversal of the *Dear Colleague Letter*. The move came days after the Federal Commission on School Safety, of which DeVos is Chair, published its final report on school safety. While the *Dear Colleague Letter* was intended to ensure that Black students were not unfairly punished, DeVos and conservative critics argued that the guidelines made schools less safe and contributed to a rise in school violence because they ‘eased’ school punishment and limited the ability of schools to continue using harsh zero-tolerance policies to address student misbehavior (Barnum and Var-Orta, 2018; Goldberg 2018; Green and Benner 2018; Kamenetz 2018; Meckler 2018; Vara-Orta 2018; Waldman 2018).

Numerous news outlets covering the reversal of the *Dear Colleague Letter* highlighted the numerous criticisms lodged against it. For example, several news reported noted that teachers were frustrated with the *Dear Colleague Letter* because they were no longer able to use school suspensions for students who misbehaved (Goldberg 2018; Green and Benner 2018; Kamenetz 2018; Meckler 2018; Waldman 2018). A *New York Times* article reported that, “Other educators told Ms. DeVos that they felt powerless to manage bad behavior in their classrooms and were pressured by administrators to turn a blind eye to dangerous incidents” (Green and Benner 2018). Similarly, several news reports noted that school superintendents felt that the *Dear Colleague Letter* had limited their autonomy when it came to dealing with school violence and misbehaving students (Goldberg 2018; Green and Benner 2018; Kamenetz 2018; Meckler 2018; Waldman 2018).

The Commission itself was formed in response to the February 2018 shooting at Stoneman Douglas High School in Parkland, Florida. Conservative critics argued that because Broward County (where Stoneman Douglas High School is located) used a non-punitive discipline program called PROMISE, Stoneman Douglas High School administrators had not been able to “appropriately” discipline Nikolas Cruz for any earlier offenses. PROMISE served as an alternative to harsh zero-tolerance policies and suspensions and was significant because it was often used a model for school districts across the country on how they could restructure their school discipline policies to create alternative programs that were not punitive. PROMISE received the blame for the shooting at Stoneman Douglas High School and conservative critics linked it to the *Dear Colleague Letter*. PROMISE, however was launched by Broward County in 2013, a year before the Obama administration issued the *Dear Colleague Letter*. Had they been able to, conservative critics argued, harsh punishment policies could have prevented the school shooting that occurred in February 2018 (Barnum and Var-Orta, 2018; Goldberg 2018; Green and Benner 2018; Kamenetz 2018; Meckler 2018; Vara-Orta 2018; Waldman 2018).

More significantly however, when DeVos rescinded the *Dear Colleague Letter*, the U.S. Department of Education closed at least 65 school discipline investigations that were opened during the Obama administration – including the investigation into Bryan ISD’s school ticketing policies. Justifying its decision to close those investigations, the U.S. Department of Education argued that the allegations were “moot” and complaints had provided insufficient evidence to support their claims. In their report about the changes to the BISD school ticketing investigation, ProPublica reported that this was the explanation that BISD was given (Waldman 2018). In a statement given to ProPublica about the U.S. Department of Education’s decision to drop the investigation, Bryan ISD’s superintendent wrote

Our school district prides itself on our diversity and inclusive practices. We fully complied with the 2013 Office for Civil Rights investigation regarding student discipline. It closed with no findings of discrimination on the district's part. We will continue to comply with all Federal and State laws and maintain positive learning environments for our students... We are a proactive district that continually seeks ways to address the needs of all students. Going forward, we will continue to proactively monitor our discipline data, implement positive discipline interventions and character education programs. We are also in the process of hiring additional support staff and increasing guidelines for parental involvement and home visits (Waldman 2018).

This statement is erroneous for several reasons. First, my fieldwork directly contradicts the Superintendent's statement that the district values diversity and that it takes pride in its inclusive practices, though whether or not the district actually has inclusive practices is also arguable. As I demonstrated in previous chapters, Black and Latinx students repeatedly described feeling unwelcome on campus and within the classroom; they also felt as though discipline practices were intentionally used to push them out of school. A prime example of this would be my interviews with Erik and Terrance, who were introduced in Chapter VI. In his interview, Erik described Rudder High School as "the racist school...where I heard it was the all-white school...they hate it...they don't want any Black kids there." Similarly, in Terrance's words, "Any day, I got it on my mind that I'm not gonna do shit today and I'm gonna do right but then you coming in and you're picking at me, so I can start you up, so you can say, 'Alright get out my class.' That's what you want to do, you want to get me out of here."

Second, the Superintendent's statement that the OCR had closed its investigation with no findings that the district had been systemically discriminating against Black students creates a false dichotomy – closing the Bryan investigation didn't necessary mean that the OCR had found no evidence of discrimination. Instead, I argue that closing the Bryan ISD investigation is not necessarily an absolution of Bryan ISD but is instead indicative of change within the OCR itself, a change that can be directly connected to U.S. Department of Education's decision to reverse the

Dear Colleague Letter. By rescinding the *Dear Colleague Letter*, the U.S. Department of Education effectively did away with race-conscious investigations that were based on complaints of systemic racial discrimination (Barnum and Var-Orta, 2018; Goldberg 2018; Green and Benner 2018; Kamenetz 2018; Meckler 2018; Vara-Orta 2018; Waldman 2018). This signaled that the U.S. Department of Education would instead focus on investigating individual complaints of explicit discrimination. The complaint filed by the Brazos Valley NAACP, the NAACP – LDF, Texas Appleseed, and the NCYL argued that racial discrimination against Black students was systemic and often covert. The complaint was rooted in the experiences of individual students and their families, when coupled with district data, it illuminated broader patterns of racial discrimination in the way in which Bryan ISD implemented its school ticketing policy. But the discourse surrounding the reversal of *Dear Colleague Letter* sent the message that schools should be more focused on partnerships with local police to keep schools safe rather than being mindful of the long-documented racial disparities in school discipline (Goldberg 2018; Green and Benner 2018; Meckler 2018; Waldman 2018). This was reified in several interviews DeVos did in the days leading up to the reversal. For example, in an 60 Minutes interview, DeVos refused to concede race often plays in fundamental role in how school discipline policies are implemented and carried out (60 Minutes 2018; see also Goldberg 2018). As such, the argument that the complaint against Bryan ISD was ultimately too race conscious for the U.S. Department of Education under the new administration is far stronger than Bryan ISD being completely absolved of all allegations of racial discrimination.

More significantly, however, the reversal of the *Dear Colleague Letter* was indicative of something else entirely - coupled with conservative criticisms that the *Dear Colleague Letter* had made schools less safe, its reversal indicated that schools could only be safe so long as school

administrators and school personnel could continue to use harsh discipline practices against their most problem students (Barnum and Var-Orta, 2018; Goldberg 2018; Green and Benner 2018; Kamenetz 2018; Meckler 2018; Vara-Orta 2018; Waldman 2018). If existing data and my own fieldwork is any indicator, Black and Latinx students are constructed and treated as the ‘most problem’ students. In this sense, the reversal of the *Dear Colleague Letter* not only reifies but also promotes the idea that Black and Latinx students are what cause school violence and what makes schools dangerous places.

Furthermore, in an attempt to justify its rejection of the possibility of systemic racial discrimination in school discipline, the Federal Commission on School Safety (2018) argued that, “Research indicates that disparities that fall along racial lines may be due to societal factors other than race” (70). Using the example of student suspensions, the Commission argued

For example, using data from the Early Childhood Longitudinal Study Kindergarten Class (ECLS-K), researchers replicated the racial gap in student suspensions, but then analyzed the specific circumstances underlying these suspensions and discovered that “the racial gap in suspensions was completely accounted for by a measure of the prior problem behavior of the student—a finding never before reported in the literature (Federal Commission on School Safety 2018:70).

This information, however, was provided to the Commission by several elected officials in Alabama from their August 2018 testimonies (Federal Commission on School Safety 2018). The Commission itself noted that this was a finding not previously reported in the academic literature – and for good reason as this finding could easily be scrutinized. Of course, instances of past behavior result in higher rates of suspension. The problem becomes, however, that “misbehavior” is itself racialized – as my fieldwork indicates, race plays a significant role in the ways in which past misbehavior is viewed by school administration and personnel, making it even more likely for Black and Latinx students to be labeled and treated as ‘problem students.’ The inclusion of this

example attempts to lend credibility to the false narrative that Black and Latinx students are suspended at higher rates because they misbehave more but this narrative has been repeatedly debunked in the research literature (Beger 2002; Peguero and Shekarkhar 2011; Raffaele Mendez, Knoff, and Ferron 2002; Skiba 2013; Skiba and Peterson 2000; Skiba, Michael, Nardo, and Peterson, 2002).

In light of this, it is important to ask: How do we build a school discipline research agenda from such a bleak foundation? On the one hand, the reversal of the *Dear Colleague Letter* has limited the ability of researchers and policy makers to make systemic arguments about various aspects of discipline. On the other hand, however, the reversal of the *Dear Colleague Letter* has opened the door for researchers and policy makers shift the focus of their investigations and research. I argue that rather than focus on ‘traditional’ aspects of school discipline such as suspension, and expulsion, and even the ways in which academic achievement is affected by school discipline, it is important to now consider the alternate ways in which school discipline policies affect the lives of Black and Latinx students. For example, future research should examine the ways in which school discipline contributes to safety discourse. Because school discipline is enacted by evoking school safety, it important to continue to deconstruct what school safety actually means and how it is being defined by any given policy and school district. Similarly, school discipline policies have been rooted in a sense in personal victimhood and have been enacted to limit the likelihood of being a victim of violent crime (Garland 1999; Simon 2007). However, I argue that future research should shift its focus to consider the racial implications underpinnings of victimhood – we should instead ask how victimhood is affected systems of inequality such as race, class, gender, sexuality, ability, and immigration, among others. Doing so will expand our understanding of victimhood and of what violent crime means to different

communities. Ultimately, there is so much that researchers and policy makers can continue to learn about school discipline and its effects, and it is to the detriment of the communities we study to limit our foci to a few choice areas that have already been investigated. If safety is as highly valued as we continue to say it is, it is imperative that we investigate every aspect of it, including the inequalities surrounding it.

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APPENDIX A

BISD SCHOOL TICKETING COMPLAINT

U.S. Department of Education
Office for Civil Rights
Dallas Office
1999 Bryan Street, Suite 1620

February 20, 2013

RE: The Bryan Independent School District's ticketing practice violates Title VI of the Civil Rights Act of 1964 and its implementing regulations

Dear Dallas Office:

Like many school districts in Texas and across the country, The Bryan Independent School District ("Bryan ISD"), a mid-sized school district located in Brazos County, Texas, stations police officers in each of its middle and high schools. These officers, known as "School Resource Officers" ("SROs"), are provided to the school district through a written agreement with the local police department and they have the same powers as any other police officer, including the ability to issue criminal citations to students for criminal conduct that occurs within schools. All too often, however, the important distinction between matters of school safety that might warrant police involvement and matters of school discipline that should be handled at the school level has been blurred.

As detailed below, Bryan ISD's SROs have not focused on school safety or criminal activity. Instead, they have been used improperly to sanction typical student misbehavior by issuing "Class C" misdemeanor tickets, particularly to African-American students, for minor non-violent offenses. The SROs essentially function as the disciplinary arm for Bryan ISD, addressing minor misconduct that should be handled by parents, teachers and school leaders—not the criminal justice system. Specifically, Bryan ISD utilizes SROs to enforce routine school rules by issuing tickets for two Class C misdemeanor violations—"Disruption of Class" and "Disorderly Conduct – Language."¹ This pervasive practice of using criminal sanctions to address minor student misbehavior has led to the criminalization of youthful misbehavior in the district, and created a direct pathway from schools into the criminal justice system.

This complaint alleges that Bryan ISD's ticketing practice violates Title VI of the Civil Rights Act of 1964. First, the practice disproportionately affects African-American students; their chances of receiving a ticket for either of these offenses is *more than four times greater* than the risk faced by students of all other races. Second, the ticketing practice is not educationally necessary. Third, there are equally effective, less discriminatory alternatives for preventing and/or responding to minor student misbehavior.²

¹ Texas Penal Code § 42.01, "Disorderly Conduct," has several subsections; we will refer to §42.01(a)(1) as "Disorderly Conduct – Language." For further discussion, *see* section III(C), *infra*.

² The United States Department of Education, Office for Civil Rights ("OCR") has investigated the disparate impact of other districts' disciplinary procedures on African-American students. *See, e.g.*, Letter from Arthur Zeidman, Director, OCR San Francisco, to Superintendent Anthony Smith, Oakland Unified School District,

I. INTRODUCTION

Bryan ISD has, by written agreement, contracted with the Bryan Police Department (“BPD”) to provide officers to serve as SROs on its school campuses, and has, in many respects, delegated to these SROs the authority to enforce school rules by issuing Class C misdemeanor tickets to students under the Texas Penal Code. During the 2011-12 school year, a total of 621 “Class C” misdemeanor tickets were issued to students in Bryan ISD by SROs stationed on school campuses. Well over half (61%) of these tickets were issued for the kind of school-based behavior that should be handled by an internal school discipline system, rather than for dangerous or criminal acts that pose a threat to the school or community. For example, 271 of these misdemeanor tickets were issued to students who were charged with the mundane and common adolescent behavior of “Disruption of Class.” Another 105 tickets were issued for “Disorderly Conduct – Language,”—in other words, using bad words, which by itself hardly merits judicial intervention, let alone the possibility of a criminal record. In a very real sense, the Bryan ISD is using its SROs as disciplinarians, rather than as a method of ensuring school safety.

Class C tickets are not merely a slap on the wrist. These citations can have an immediate and lasting impact on the students who receive them, far beyond what a student might experience after receiving a detention or in-school suspension for similar behavior. Students who receive Class C misdemeanor tickets in Bryan are required to attend court to face a judge—often removing the student from school and his or her parent from work. These students can then face sentences including fines, court costs, community service, probation and mandatory participation in “First Offender” programs. To make matters worse, Bryan ISD students who receive Class C misdemeanor tickets for school-based conduct often receive school-based disciplinary sanctions *in addition* to these criminal sanctions. In other words, they face a double punishment.³

The practice of criminalizing minor misbehavior also exposes students to a host of other consequences. For example, under Texas State law, if a student fails to appear in court, or if the student or parent cannot afford to pay the court-imposed fines, the student can be arrested when he or she reaches the age of seventeen. (Students who are seventeen or older may face immediate sanctions.) And because these tickets are processed through a municipal court or justice of the peace, students receiving tickets are not entitled to the protections of juvenile court,

(Sept. 27, 2012), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/09125001-a.pdf> (regarding OCR Case No. 09-12-5001) (affirming OCR’s commitment to investigating the disparate impact of a district’s disciplinary procedures on students of a protected class by noting: “The administration of student discipline can result in unlawful discrimination based on race in two ways: first, if students are subject to different *treatment* based on their race, and second, if a policy is neutral on its face and administered neutrally but has a disproportionate and unjustified *effect* on students of a particular race.”) (emphasis in original).

³ While not the subject of this complaint, data related to exclusionary school discipline shows many similar patterns. Taking this into account with the disparities in ticketing, this data paints a stark picture of a district that undermines educational opportunities for African-American students. African-American students in Bryan ISD are more likely to receive referrals to in-school suspension (“ISS”) and out-of-school suspension (“OSS”), and referrals to Disciplinary Alternative Education Programs (“DAEPs”). And they have the highest risk ratios for discretionary disciplinary referrals. See Appendix A (Data responsive to Texas Public Information Act Requests filed by Texas Appleseed with Bryan Independent School District (2011-12)).

including confidentiality.⁴ Therefore, tickets for “disrupting” a classroom or using bad language can follow students past high school into their adult lives with many of the same consequences as a criminal conviction for a more serious offense, including having to report their convictions on applications for college, the military or employment.

While the criminalization of non-dangerous, minor adolescent behavior in the Bryan ISD is in itself troubling, the school district’s practice of addressing school-related discipline through ticketing students for non-violent, minor misbehavior also disproportionately affects African-American students. During the 2011-12 school year, African Americans comprised only 21 percent of the students in Bryan ISD, yet they received 46 percent of all tickets issued to students. The racial disparity was particularly acute for two specific categories: African-American students received 53 percent of the 271 tickets issued to Bryan ISD students for “Disruption of Class” and 51 percent of the tickets issued for “Disorderly Conduct – Language” in the 2011-12 school year. African-American students’ risk of receiving a ticket for either of these two categories was four times as high as the risk faced by students of other races in Bryan ISD.

In addition to having a racially adverse impact, Bryan ISD’s ticketing practice is inconsistent with sound pedagogical practices. Research demonstrates that imposing punitive sanctions, especially those that remove students from the classroom, do more to undermine academic achievement than to support it.⁵ The use of ticketing for minor school misbehavior may also impede educational progress for the school as a whole, including those students who do not receive tickets.⁶ The practice of imposing criminal sanctions for minor misbehavior and relying on exclusionary discipline methods do not make schools safer, more orderly or more academically successful, especially when the behavior being criminalized does not pose a danger to other students in the first place. In fact, relying on police to address minor student misbehavior can foster a highly restrictive, distrustful environment that makes it more difficult to maintain school order and safety. Moreover, as set forth below, there are equally effective, less discriminatory alternatives available to respond to disruptive classroom behavior.

⁴ Indeed, Bryan Municipal Court docket sheets are posted online, resulting in the publication of the names of children who receive citations. *See, e.g.* Bryan Municipal Court, Docket for Feb, 11-15, 2013, *available at* <http://www.bryantx.gov/departments/court/dockets.pdf> (last visited Feb. 15, 2013).

⁵ *See* M. Karega Rausch & Russell J. Skiba, *The Academic Cost of Discipline: The Relationship Between Suspension/Expulsion and School Achievement* 6 (2006), *available at* <http://www.agi.harvard.edu/Search/download.php?id=45>.

⁶ Catherine Y. Kim, *Policing School Discipline*, 77 *Brook. L. Rev.* 1, 26-27 (2012), *available at* <http://ssrn.com/abstract=2037579>.

II. PARTIES

The organizational complainants bring this complaint on behalf of African-American students who have been and will continue to be disproportionately harmed by the ticketing policies in Bryan ISD. The complainants are Texas Appleseed and the Brazos County (TX) NAACP Branch.

The Brazos County NAACP is a local branch of the NAACP, the nation's oldest and largest civil rights organization. Among the members of the Brazos County NAACP are parents, grandparents, educators and other community members who advocate for civil rights in their communities. The Brazos County NAACP monitors equal opportunity in the public and private sectors, including in the areas of education and policing.

Texas Appleseed is a public interest law center headquartered in Austin, Texas. Appleseed has published several major reports documenting systemic problems with exclusionary discipline in Texas school districts, including over-representation of African-American students in exclusionary disciplinary referrals (such as suspensions, expulsions and disciplinary referrals to Alternative Education Programs) as well as ticketing and arrest by SROs. Appleseed has worked at the local and state level to encourage stakeholders to address racial disparities in disciplinary methods and to adopt alternative approaches to student discipline that work to improve school climate for all students.

Counsel for the complainants are the NAACP Legal Defense and Educational Fund, Inc. ("LDF") and the National Center for Youth Law ("NCYL"). LDF is a non-profit legal organization established under New York law that has worked for over seven decades to dismantle racial segregation and ensure equal educational opportunities for all. NCYL is a non-profit legal organization that has worked for over four decades to ensure that low-income children have the resources, support and opportunities they need for healthy and productive lives.

Respondent Bryan ISD is the local educational agency responsible for the administration and operation of Bryan, Texas, public schools. Bryan ISD is a recipient of federal funding from the U.S. Department of Education.⁷ Bryan ISD school officials are responsible for implementing discipline, school safety and security policies for all schools under its jurisdiction.

⁷ See Bryan ISD, *2011-12 Budget*, adopted Aug. 15, 2011, http://ci.bryanisd.org/docs/2011_12Budget.pdf; Bryan ISD, *2011-12 Summary of Budgeted Funds, Budget Amendment 2011-12*, Aug. 20, 2012, http://www.bryanisd.org/finance_docs/Budget_Information/2011_12FinalAdoptedBudget.pdf; Bryan ISD, *2012-13 Budget*, adopted Aug. 20, 2012, http://www.bryanisd.org/finance_docs/Budget_Information/2012_13Adopted_Budget.pdf.

III. BACKGROUND

A. The History of Policing in Texas Schools

People who attended public schools just a couple of decades ago remember a time when police officers were not a daily presence on campus. The increase in police presence on Texas school campuses began in the mid-1990s.⁸ Today, approximately 170 school districts in Texas have commissioned their own police forces and many others contract for a police presence, as does Bryan ISD. The increased presence of police on school campuses is reflected in school districts' spending on "security and monitoring." During the 1997-98 school year, Texas school districts reported spending \$103,877,919 on security;⁹ by 2010-11, though the student population had only increased 26 percent, districts' spending on security had more than tripled to \$327,376,988.¹⁰

The increased presence of police officers in Texas schools has resulted in what has been called the "passing of the paddle."¹¹ This term describes the shift from reliance on principals, teachers and school administrators to handle student discipline toward reliance on school police or SROs, to discipline students. In Texas, the consequence of this policy shift over a relatively short time period has been the overuse of the court system to punish students for engaging in behavior that bears little resemblance to what most people think of as "criminal."¹²

Texas students bear the brunt of the consequences of the "passing of the paddle." Last year, more than 229,000 non-traffic citations were issued to juveniles in Texas.¹³ Many—if not most—of these tickets are issued to students by school-based police officers.¹⁴

⁸ See Appendix B (Texas Appleseed, *Texas' School to Prison Pipeline: Ticketing, Arrest & Use of Force in Schools* 38 (2010)) (documenting the rise of police/student contact in Texas schools).

⁹ Division of Performance Reporting, Texas Education Agency, *Academic Excellence Indicator System, State Performance Report* (1997-98), <http://ritter.tea.state.tx.us/perfreport/aeis/98/state.html>.

¹⁰ Division of Performance Reporting, Texas Education Agency, *Academic Excellence Indicator System, State Performance Report* (2010-11), <http://ritter.tea.state.tx.us/perfreport/aeis/2011/state.html>.

¹¹ Ryan Kellus Turner & Mark Goodner, *Passing the Paddle: Nondisclosure of Children's Criminal Cases, Juvenile Law Section, State Bar of Texas* 13 (2010), available at <http://www.juvenilelaw.org/Newsletters/201012.pdf>.

¹² *Id.* ("In a little over two decades, a paradigm shift has occurred in the Lone Star State. The misdeeds of children – acts that in the near recent past resulted in trips to the principal's office, corporal punishment, or extra laps under the supervision of a middle school or high school coach, now result in criminal prosecution, criminal records, and untold millions of dollars in punitive fines and hefty court costs being imposed against children ages 10 through 16.").

¹³ This figure is based on juvenile cases filed in municipal and justice courts statewide – however some courts do not report data to the Office of Court Administration (such as specialized courts for "failure to attend school" Class C misdemeanor cases), so this figure is conservative. See Office of Court Administration, *Annual Report for the Texas Judiciary, FY 2012* (Jan. 2013), <http://www.courts.state.tx.us/pubs/AR2012/toc.htm>

¹⁴ Appendix B at 76-79.

B. Bryan ISD’s Contractual Relationship with the BPD

Bryan ISD is a mid-sized school district located in the city of Bryan, Texas, the county seat of Brazos County and the city adjacent to College Station, home of Texas A&M University. Bryan ISD operates 16 elementary schools, four middle schools and four high schools, and educates a relatively diverse student body:¹⁵

Table 1: Student Demographics, 2011-12

Total Student Enrollment	15,611
African-American	3,252 (21%)
Hispanic	7,955 (51%)
White	4,123 (26%)
Other	281 (2%)

Bryan ISD has contracted with the BPD to provide School Resource Officers since 1988.¹⁶ Under the terms of the contract, a Memorandum of Understanding (“MOU”), the BPD provides eight officers and one sergeant whose duties include “assist[ing] District staff in maintaining order on school property” and working “in concert” with school principals.¹⁷ The contract also requires SROs to make “follow-up home visits when needed as a result of school-

¹⁵ Data related to various measures of academic success and opportunity show that Bryan ISD’s entire student body does not receive the same education. While not the subject of this complaint, this data combines with the disparities in ticketing to paint a stark picture of a district that undermines educational opportunities for African-American students. African-American students in Bryan ISD score significantly lower than their peers on standardized tests, are underrepresented in the Gifted and Talented program and are less likely to be placed in advanced courses or attend schools that prepare students for higher education. Of the 1,772 students enrolled in “Gifted and Talented” in Bryan ISD schools in the 2011-12 school year, only 9 percent were African-American, while more than half (55 percent) were white and about 33 percent were Hispanic. Similarly, of the 141 eighth grade students in Bryan ISD who were enrolled in Algebra I, only 10 percent were African-American, while 59 percent were white and 28 percent were Hispanic. And while white students make up only about 26 percent of Bryan ISD high school students, they comprise approximately 69 percent of the students enrolled in advanced courses during the 2011-12 school year. District-wide, African-American students are less likely to be college ready and they score significantly lower on SAT and ACT tests than their peers. *See* Appendix A.

¹⁶ *See* Video Testimony of Chief Eric Busky, Bryan City Council Workshop (Nov. 8, 2011), *available at* <http://bryantx.pegcentral.com/player.php?video=e2031f448dbfdff54a1c8c7eb3d705a>, at 0:51 (discussing history of Bryan Police Department’s SRO program).

¹⁷ Appendix C-1 at 4 (City of Bryan, Bryan Police Department and Bryan Independent School District School Resource Officer Program Memorandum of Understanding (2011-12)); Appendix C-2 at 4 (City of Bryan, Bryan Police Department and Bryan Independent School District School Resource Officer Program Memorandum of Understanding (2012-13)). The contract outlines other SRO duties, including a program of “education leadership” by speaking with students about various law enforcement issues and providing information programs to parents and district staff on issues related to drugs, gangs, and tobacco. Appendix C-1 at 4; Appendix C-2 at 4. The terms of the contract have, upon information and belief, remained consistent over time. In fact, the relevant provisions of the MOUs executed for the 2011-12 and 2012-13 school years are identical.

related student problems.”¹⁸ During the 2011-12 school year, SROs were assigned to every middle and high school in Bryan ISD. The school district is responsible for half the salaries of the SROs along with fringe benefits, for a total cost to the district of \$376,789.08 in the 2011-12 school year and a projected cost of \$405,427 in the 2012-13 school year, as well as “necessary training specific to the function of the SRO[s].”¹⁹ Through this contractual arrangement, SROs function as agents of the Bryan ISD.

The MOUs state that an SRO “shall not act as a school disciplinarian.”²⁰ Nonetheless, Bryan ISD cannot eschew responsibility for the actions of the campus-based SROs. Texas school districts have the discretion to determine the function of SROs and the ambit of their authority either via an MOU (as in Bryan ISD) or through a policy approved by the school district’s superintendent. Tex. Educ. Code § 37.081. Some school districts in Texas and elsewhere have opted to rein in the authority of police to issue tickets or arrest students for minor misbehavior through policy directives or through specific language in an MOU.²¹ But Bryan ISD has not done so.²²

This is all the more noteworthy because Texas law does not require Bryan ISD or any other public school administrators to call the police for minor offenses that amount to little more than a violation of a student code of conduct. Rather, the Texas Education Code mandates notification of law enforcement only for those offenses that the legislature determined might threaten school or student safety. Tex. Educ. Code §37.015 (mandating reporting by school officials of offenses including deadly conduct, terroristic threat, use, sale or possession of a controlled substance and possession of weapons). The Texas Legislature did not include

¹⁸ Appendix C-1 at 6; Appendix C-2 at 6.

¹⁹ Appendix C-1 at 10; Appendix C-2 at 10.

²⁰ Appendix C-1 at 4; Appendix C-2 at 4.

²¹ For example, in Texas during the 2011-12 school year the Waco Independent School District (“Waco ISD”) began its “Positive Policing” program, which included a change in policy that set guidelines to limit the number of tickets issued to students. This program requires school officials to use other alternatives unless the student’s behavior poses an immediate threat or danger to the community. The policy change and the alternatives implemented by Waco ISD reduced ticketing by 77 percent. See section V(C)(3), *infra*. Several years ago, Austin Independent School District (“Austin ISD”) adopted a policy allowing ticketing to be used only as “a last resort.” Austin ISD, Board Policy CKE, *Safety Program/Risk Management – Security Personnel/Peace Officers 3* (Sept. 1, 2011), [http://pol.tasb.org/Policy/Download/1146?filename=CKE\(REGULATION\).pdf](http://pol.tasb.org/Policy/Download/1146?filename=CKE(REGULATION).pdf). While ticketing has fluctuated in Austin ISD since the policy was introduced, a renewed focus on alternatives significantly reduced ticketing in Austin ISD during the 2011-12 school year. McAllen and Brownsville ISDs have severely restricted the use of ticketing, resulting in the complete elimination of ticketing for “Disruption of Class” and “Disorderly Conduct” in McAllen and very low ticketing numbers in Brownsville ISD. Email from Chief Cris Esquivel, Police Chief, McAllen ISD, to Deborah Fowler, Deputy Director, Texas Appleseed (Sept. 28, 2012) (on file with Texas Appleseed); Email from Chief Oscar Garcia, Police Chief, Brownsville ISD, to Deborah Fowler, Deputy Director, Texas Appleseed (Sept. 27, 2012) (on file with Texas Appleseed).

²² Bryan ISD’s Student Code of Conduct lists “referral to an outside agency or legal authority for criminal prosecution in addition to disciplinary measures imposed by the district” alongside disciplinary “techniques” ranging from “cooling off time or ‘timeout’” to expulsion with no indication as to which disciplinary techniques should be applied to which type of disciplinary incident. Appendix D at 9 (Bryan Independent School District, Student Code of Conduct, 2012-13 (2012)).

“Disruption of Class” and “Disorderly Conduct – Language” as offenses requiring law enforcement notification. *Id.* Therefore, although the MOU disclaims the SRO’s role as a “school disciplinarian,” the reality is quite different. Through the BPD’s contractual arrangement with Bryan ISD, SROs function in both letter and spirit as disciplinary agents of the school district.

C. Bryan ISD’s Use of SRO Ticketing to Discipline Students for “Disruption of Class” and “Disorderly Conduct – Language”

While ticketing is an unfortunately common practice in many Texas school districts, Bryan ISD’s rate of ticketing still stands out as unusually high. In a sample of 2010-11 ticketing data from 42 school districts recently analyzed by Texas Appleseed, Bryan ISD had the second highest ticketing rate, with 59.6 tickets issued per 1,000 students.²³ It was nearly tied with Galveston ISD, the district with the highest rate at 59.9 per 1,000 students.²⁴ For Bryan ISD, this marked a significant increase from the prior year, 2009-10, when the ticketing rate was 44.4 per 1,000 students.²⁵ Though the number of tickets issued in Bryan ISD decreased somewhat during the 2011-12 school year, the ticketing rate has remained high at about 39.4 tickets per 1,000 students.²⁶ Overall, while the number of tickets and rate of ticketing are subject to episodic spikes and declines, they remain consistently high. And there has been no change in Bryan ISD’s practice or policy that would ensure that any particular decrease represents a trend, rather than merely an aberration.

While students in Texas are ticketed for a range of misbehavior, “Disruption of Class” and “Disorderly Conduct” are the two most commonly ticketed offenses in many school districts. Appendix A at 82. “Disruption of Class” is named as a Penal Code offense, although it is located in the Texas Education Code. “Disrupting the conduct of classes” includes:

- Emitting noise of an intensity that prevents or hinders classroom instruction;
- Enticing another student away from class;
- Preventing a student from attending class; or
- Entering a classroom without permission and disrupting class.

Tex. Educ. Code § 37.124. To be actionable under the “Disruption of Class” statute, a student’s behavior must have been intentional—in other words, the student must have acted with the intent to disrupt class. *Id.*

²³ Texas Appleseed, *Ticketing and Arrest Data Update* 27, 29 (2012), available at <http://www.senate.state.tx.us/75r/senate/commit/c530/handouts12/1030-TexasAppleseed-2.pdf> (hereinafter “*Ticketing and Arrest Data Update*”).

²⁴ *Id.* at 5, 14.

²⁵ See Appendix E at 3 (Documents responsive to Texas Public Information Act Requests filed by Texas Appleseed with Bryan Police Department (2011-12)) (reporting 691 citations among a student population of 15,579).

²⁶ See *id.* at 9 (reporting 621 citations among a student population of 15,611); *Ticketing and Arrest Data Update*, *supra* note 23, at 29.

The “Disorderly Conduct” statute is found in the Texas Penal Code and includes a range of behavior that constitute offenses if committed in public, such as:

- Using profanity or abusive language;
- Making an offensive gesture;
- Creating “by chemical means” a noxious and unreasonable odor;
- Abusing or threatening a person in an obviously offensive manner; or
- Making unreasonable noise in a public place “other than a shooting range.”

Tex. Penal Code § 42.01.

Bryan ISD’s enforcement of “Disruption of Class” and “Disorderly Conduct – Language” statutes through student ticketing is particularly troubling because it represents a complete misuse of the statutory provisions in question. The Texas Legislature never intended for these penal code provisions to be used as a mechanism for punishing garden-variety, school-based misbehavior. They were instead drafted to address behavior so disruptive that it posed a risk to a peaceful and productive community – whether in a school (as in the case of “Disruption of Class”)²⁷ or in the larger community (“Disorderly Conduct”).²⁸

²⁷ In 1969, at the height of the Vietnam War era and amid ongoing student protests, the Texas Legislature passed a bill that criminalized “disruptive activities” on school campuses in response to “the increase in frequency and intensity of disruptive activity against institutions of higher education . . . illustrated by such actions . . . developing within the State of Texas.” Committee on Criminal Jurisprudence, Bill Analysis: HB 141, Tex. Leg. 61st R.S. (1969). The Legislature added the offense of “Disruption of Class” to the Code the following session, in response to concern that existing law “[did] not give enough authority to law enforcement officers to deal with persons who willfully disrupt school activities.” Committee on Criminal Jurisprudence, Bill Analysis: HB 186, Tex. Leg. 62nd R.S. (1971).

²⁸ While a person may be charged with “Disorderly Conduct” for using profanity or “abusive language,” he or she may only be properly charged if he or she “intentionally or knowingly” uses language that “by its very utterance tends to incite an immediate breach of the peace.” Tex. Penal Code § 42.01(a)(1). To act intentionally or knowingly, a student must have the conscious objective or desire to engage in the conduct or cause the result, Tex. Penal Code § 6.03(a) (defining intentionally), or must be aware that his conduct is reasonably certain to cause the result, *id.* at 6.03(b) (defining knowingly). The test for determining a “breach of the peace” is whether the words or gestures at issue are “inherently likely to provoke a violent reaction.” *Coggins v. State*, 123 S.W.3d 82, 90 (Tex. App.—Austin 2003); see *Texas v. Johnson*, 491 U.S. 397, 408-10 (1989). Language that is merely harsh and insulting does not violate the statute. *Duran v. Furr’s Supermarkets, Inc.*, 921 S.W.2d 778, 785 (Tex. App.—El Paso 1996, writ denied) (“Derisive and annoying words can be taken as coming within the purview of the statutes only if they have this characteristic of plainly tending to excite the addressee to a breach of the peace.”).

Typically, when a student utters profanity among his or her peers or even uses profanity with a teacher or administrator, this behavior does not cause a “breach of the peace” that would be likely to provoke a “violent reaction.” *Coggins*, 123 S.W.3d at 90. Analyzing a student’s use of profanity with a teacher under a similar statute, the Arizona Supreme Court noted, “We do not believe that the natural reaction of the average teacher to a student’s profane and insulting outburst . . . would be to beat the student.” *In re Nicholas S.*, 245 P.3d 446, 447-48 (Ariz. 2011). Similarly, a Texas Appellate court recognized that a student who extended his middle finger under his school principal’s nose at a graduation ceremony may have engaged in “foolish, childish” behavior, but had not breached the peace for purposes of the “Disorderly Conduct” statute. *Estes v. Texas*, 660 S.W.2d 873, 877 (Tex. App.—Ft. Worth 1983).

Yet students in Bryan ISD are routinely ticketed for using profanity, even when it is clear that the use of profanity is neither intended to nor does provoke a violent reaction. Criminal sanctions are thus being used improperly as a method of school discipline rather than as a law enforcement tool. And Bryan ISD leadership has been brazen about its efforts to issue criminal sanctions for behavior that could not possibly constitute a violation of Texas law. For example, in a recent interview with PBS NewsHour, the Bryan ISD Superintendent defended this ticketing practice by saying: “If a student tells a teacher to go ‘f’ themselves, calls them a ‘b,’ ... *those are all ticketable offenses*, and we’ve got to have order in the classrooms.”²⁹ Contrary to the practice in Bryan ISD, while this type of adolescent behavior may fairly warrant *within*-school discipline, it does not warrant issuance of a *criminal* citation that results in children being hauled into court and faced with a criminal record that can follow them throughout their lives.

The juvenile docket at the Bryan Municipal Court regularly includes cases exemplifying this misuse and overuse of the “Disruption of Class” and “Disorderly Conduct” statutes.³⁰ For example, during recent observations of public court proceedings, Texas Applesseed staff encountered the following students who had received tickets for “Disruption of Class”:

- A 13-year-old Bryan middle school student was overheard by his teacher using profanity before class started. The teacher sent the student to the principal, who, in turn, called the SRO and asked the officer to issue a ticket to the student based on the teacher’s referral. In addition to the ticket, the student also received a referral to in-school suspension for the behavior.
- A 16-year-old Bryan high school student was sent to the principal’s office after she got into a verbal argument with a classmate. The principal asked the SRO to write a ticket based on the teacher’s referral.
- A Bryan middle school student got into a verbal argument with a second student after the second student hit him in the face with his student identification badge during class. Both students were sent to the principal’s office and the SRO was called, resulting in the first student receiving a “Disruption of Class” ticket.

These cases demonstrate the common and ongoing pattern through which ticketing is improperly used by school administrators and SROs as a mechanism for disciplining students for behavior that may violate school rules, but does not threaten individual or school safety.³¹

²⁹ Mike Fritz & Kelly Chen, *Early Punishments Can Have Lasting Impact for Some Students*, PBS NewsHour, (June 26, 2012, 11:47 AM) video at 3:08-3:33, http://www.pbs.org/newshour/updates/american-graduate/jan-june12/tx-ticketing_06-21.html (interview with Dr. Tommy Wallis) (emphasis added).

³⁰ The Bryan Municipal Court generally holds a juvenile non-traffic docket on Monday and Thursday afternoons. Complainants and/or their counsel have observed these court proceedings on five different occasions: May 24, 2012, November 8, 2012, December 13, 2012, February 11, 2013 and February 14, 2013.

³¹ Although these examples involve schools officials requesting that SROs issue tickets, equally problematic are instances in which SROs issue tickets for mundane misbehavior without prompting by school officials.

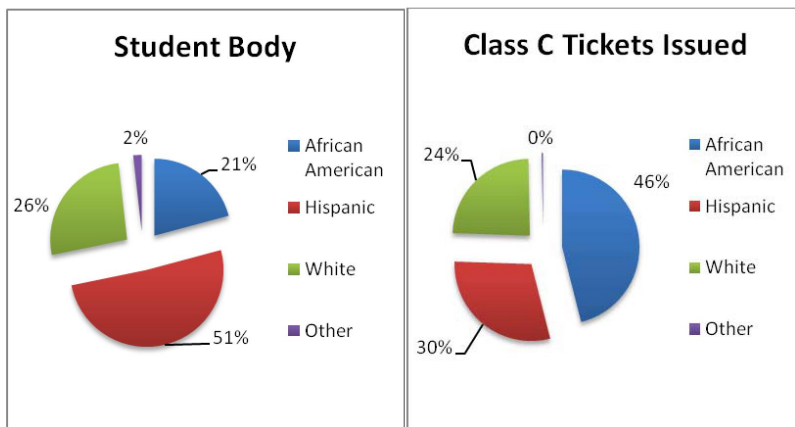
Imposing criminal sanctions on children is not only unnecessarily harsh, it also drains valuable law enforcement and judicial resources that could be used to address legitimate safety concerns. During a recent visit to Bryan Municipal Court, one frustrated judge lamented that he felt like his courtroom was “the vice principal’s office”—a reference to the school administrators who traditionally have served as disciplinarians.

Bryan ISD has chosen to rely upon SROs as *de facto* disciplinarians and has effectively “passed the paddle” from the principal’s office to the Bryan Police Department. By failing to distinguish between law enforcement functions and school discipline functions in its MOUs with the Bryan Police Department, and by directing, encouraging or allowing SROs to issue tickets at a high rate year-after-year for minor student misbehavior, Bryan ISD is using criminal sanctions as an integral part of its disciplinary process. This alone is objectionable, but it is all the more troubling because of its racially disparate consequences.

D. Racial Disparities in the Issuance of Class C Misdemeanor Tickets

Data provided by the Bryan Police Department in response to an open records request made by Texas Appleseed³² clearly demonstrates that Bryan ISD’s use of law enforcement officers to discipline students for common, youthful misbehavior has a large and ongoing disparate impact on African-American students. Data from the 2011-12 school year, the most recent year for which data is available, shows that African-American students received nearly half of all Class C misdemeanor tickets in Bryan ISD, although they constituted less than a quarter of the overall student population:

Figure 1: Comparison of Student Body Demographics to Class C Tickets Issued by Race, 2011-12



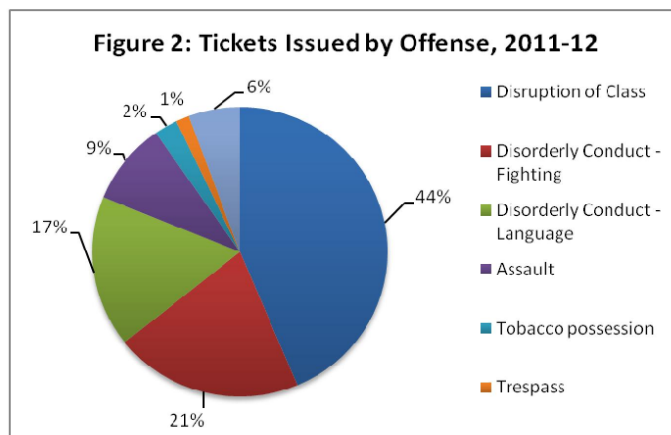
³² Appendix E. The Bryan Police Department responded to two open records requests made by Texas Appleseed, providing data for three school years: 2009-10, 2010-11 and 2011-12.

This disparity has persisted over time. In fact, over the last three school years African-American students received just over half of the total number of tickets issued:

Table 2: Total Number of Tickets Issued by Race/Ethnicity

School Year	African-American	Hispanic	White	Other ³³	Total Tickets
2009-10 ³⁴	360	(N/A) ³⁵	312	1	673
2010-11 ³⁶	444	165	271	1	881
2011-12 ³⁷	286	183	150	2	621
TOTAL	1090	348	733	4	2175

This racial disparity is even more evident when the ticketing numbers are disaggregated by specific offense. A review of the data illustrates how African-American students bear the brunt of the ticketing burden because they are most significantly overrepresented in two of the most highly-ticketed offenses—“Disruption of Class” and “Disorderly Conduct – Language.” As illustrated in Figure 2 below, “Disruption of Class” and “Disorderly Conduct – Language” were two of the three offenses most frequently cited by Bryan ISD SROs in the 2011-12 year.



³³ The “Other” category includes tickets issued to Asian students and students whose race was unknown or otherwise recorded as “other” in data provided by the Bryan Police Department.

³⁴ Appendix E at 27.

³⁵ The Bryan Police Department SROs’ disaggregation of tickets by race/ethnicity did not include tickets issued to Hispanic students until 2010-11. Additionally, the very low numbers in 2010-11 and 2011-12 may indicate that Hispanic students may have not been accurately counted in the first two years that this category was added.

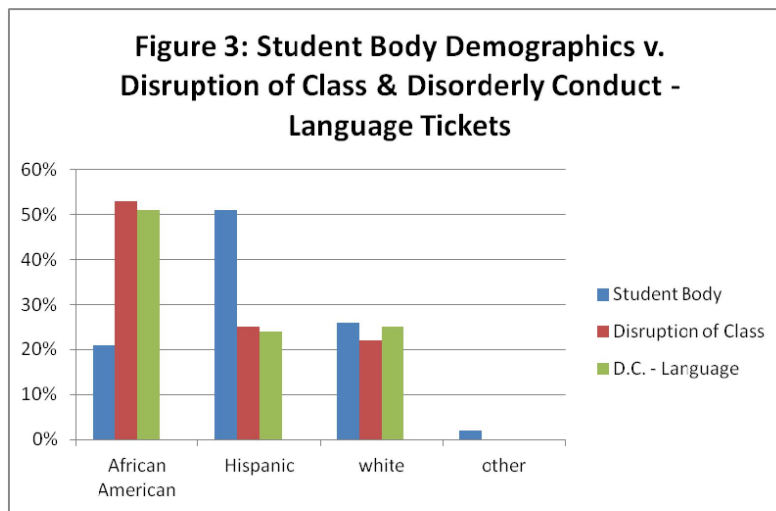
³⁶ Appendix E at 45.

³⁷ *Id.* at 9.

And *within* these highly-ticketed categories, African-American students were significantly overrepresented. Table 3 and Figure 3 below illustrate the scope of the disparity:

Table 3: Comparison of Student Body Demographics to “Disruption of Class” and “Disorderly Conduct – Language” Tickets by Race, 2011-12³⁸

	African-American	Hispanic	White	Other	TOTAL
Bryan ISD Student Body	3,252 (21%)	7955 (51%)	4123 (26%)	281 (2%)	15,611
“Disruption of Class” Tickets	143 (53%)	68 (25%)	59 (22%)	1	271
“Disorderly Conduct – Language” Tickets	54 (51%)	25 (24%)	26 (25%)	0	105



³⁸ *Id.* at 9.

The racial disparity can also be understood by considering the “risk ratio”, a technique that allows one to compare the risk of receiving a ticket faced by one group of students to the risk faced by all other students.³⁹ A risk ratio of 1.0 indicates that the risk between the two groups is equal, whereas a risk ratio of *greater than one* indicates that the risk for the comparison group is higher than the risk for all other students.⁴⁰ Conversely, a risk ratio of *less than one* indicates that the risk for the comparison group is lower than the risk for all other students.⁴¹

The risk ratios for two specific offense categories—“Disruption of Class” and “Disorderly Conduct – Language”—show that significant racial disparities result from Bryan ISD’s practice of criminalizing the most minor student misbehavior. For example, as reflected in Table 4 below, the risk ratio for African-American students receiving “Disruption of Class” tickets is 4.25 and the risk ratio for “Disorderly Conduct – Language” tickets is 4.02. This means that the likelihood that an African-American student will receive a ticket for either of these offenses is *more than four times greater* than the risk faced by all other students.

Table 4: Risk Ratios by Race/Ethnicity for “Disruption of Class” and “Disorderly Conduct—Language,” 2011-12⁴²

Offense	African-American	Hispanic	White
“Disruption of Class”	4.25	0.32	0.78
“Disorderly Conduct – Language”	4.02	0.30	0.92

Furthermore, although there is minor variation in the number of tickets issued each year, the racial disparities in these categories persist. For example, though the total number of tickets issued has fluctuated, data from the two school years preceding 2011-12 show that the risk ratio for African-American students remained consistently high in tickets issued for “Disruption of Class” and “Disorderly Conduct – Language”:

Table 5: Risk Ratio for African-American Students for “Disruption of Class” and “Disorderly Conduct—Language,” 2009-10 to 2011-12⁴³

Offense	2009-10	2010-11	2011-12
“Disruption of Class”	4.45	3.75	4.25
“Disorderly Conduct – Language”	4.76	4.93	4.02

³⁹ See Julie Bollmer, *Using Risk Ratio to Assess Racial/Ethnic Disproportionality in Special Education at the School-District Level*, 41 J. Special Educ. 186, 187 (2007), available at <http://www.eric.ed.gov/PDFS/EJ785951.pdf>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See Appendix F (Methodology) for a step by step explanation of the calculations in this Table.

⁴³ *Id.*

Similarly, while there is some variation across school campuses, it is important to note that the racial disparities in ticketing, both overall and for specific categories, exist district-wide. In fact, on *every* middle school and high school campus in Bryan ISD, African-American students are ticketed at rates that exceed their representation in the student body. As Table 6 illustrates, the overrepresentation of ticketing for African-American students is largely driven by tickets issued for “Disorderly Conduct – Language,” “Disruption of Class,” or both. At each of the middle and high schools in Bryan ISD, tickets issued for these two offense categories represented close to, or more than, half of all the tickets issued at that campus. And African-American students were significantly overrepresented in ticketing for those offenses:

Table 6: Comparison of Student Body Demographics to Ticketing of African-American Students in all Bryan ISD Middle Schools and High Schools, 2011-12⁴⁴

School	Percentage of African Americans in Student Body	Percentage of all Tickets Issued to African Americans	Percentage of “Disruption of Class” and “Disorderly Conduct – Language” Tickets Issued to African Americans
A. Davila MS	18%	39%	45%
J. Long MS	19%	42%	40%
S. Rayburn MS	28%	63%	91%
S.F. Austin MS	19%	39%	41%
Bryan HS	21%	50%	62%
Bryan Collegiate HS	4%	47%	49%
J.E. Rudder HS	28%	42%	46%

⁴⁴ See Appendix E at 10-26.

IV. JURISDICTION

Because Bryan ISD receives federal funding, the U.S. Department of Education’s Office for Civil Rights has jurisdiction over complainants’ allegations that Bryan ISD’s policies or practices violate Title VI through their discriminatory effect on African-American students. *See* 34 C.F.R. § 100.2; 34 C.F.R. § 100.13(i) (for purposes of Title VI, a recipient of federal funds includes any “instrumentality of any State or political subdivision, [and] any public or private agency, institution, or organization, or other entity . . . to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof . . .”).

Specifically, OCR has jurisdiction over a claim involving the discriminatory impact of Bryan ISD’s historical and ongoing criminalization of minor student misbehavior through its use of SROs as disciplinarians. It has long been understood that, for Title VI purposes, a funded entity cannot avoid its obligations under Title VI by hiring a contractor or agent. 34 C.F.R. § 100.3(b)(2); U.S. Dep’t of Justice, *Title VI Legal Manual* 25-26 (2001). That is the case where, as here, law enforcement officers function as the agents of a school district. As set forth in section III(B), *supra*, SROs operate in Bryan ISD through a Memorandum of Understanding between Bryan ISD and the BPD.⁴⁵ In this case, the MOU requires BPD to assign uniformed police officers and marked patrol cars to Bryan ISD’s middle and high schools. The contract provides *inter alia* that the SROs “will work with school administrator(s) to . . . maintain a peaceful campus environment, and take appropriate action regarding illegal activity occurring on-campus or at school related functions.” In exchange for its services, Bryan ISD paid BPD an estimated \$405,427 for salary, benefits and vehicle operations costs during the current school year and supplies the SROs with offices on school campuses.

With respect to what qualifies as a “program or activity” where a school district is involved, Title VI extends to “*all the operations of . . . a local educational agency.*” 42 U.S.C. § 2000d-4a(2)(B); 34 C.F.R. § 100.13(g)(2)(ii) (emphasis added). This includes security and discipline operations, whether the school district opts to handle these matters internally or through contracts with an outside entity, as does the Bryan ISD. The activities of school-based police officers, whose presence on campus is the result of a district-initiated contract, and whose school-based work is partially funded with district funds, fall well within the ambit of “operations of a local education agency.”

⁴⁵ *See generally* Appendix C.

V. BRYAN ISD’S PRACTICE OF USING CRIMINAL SANCTIONS TO DISCIPLINE STUDENTS FOR MINOR MISBEHAVIOR VIOLATES TITLE VI OF THE CIVIL RIGHTS ACT

Title VI of the Civil Rights Act of 1964 provides that recipients of federal financial assistance may not discriminate on the basis of race, color, or national origin. 42 U.S.C. § 2000d. The regulations promulgated by the U.S. Department of Education to implement Title VI prohibit a recipient of federal funds from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.” 34 C.F.R. § 100.3(b)(2). Thus, OCR may bring enforcement actions against recipients of federal funds that implement disciplinary policies or practices that result in a disparate impact, regardless of whether the policy or practice in question was motivated by discriminatory intent. Bryan ISD’s practice fails the three-pronged test used to analyze disparate impact claims and thus violates Title VI.

First, a prima facie case of a Title VI disparate-impact violation is established if a recipient of federal funds institutes a policy or practice that disproportionately affects students of a particular racial or ethnic group. *See Larry P. ex rel. Lucille P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984); U.S. Dep’t of Justice, *Title VI Legal Manual* 49-50 (2001). While there is “no rigid mathematical threshold” for demonstrating a prima facie case of disparate impact, *Groves v. Alabama State Bd. of Educ.*, 776 F. Supp. 1518, 1526 (M.D. Ala. 1991) (citing *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994-95 (1988) (plurality)), federal courts use “one of several forms of statistical analysis to reach reliable inferences about racial disparities in a population based on the performance of a particular sample.” *Id.* at 1527. As discussed in section III.A., Bryan ISD’s practice of using criminal sanctions to discipline students for minor misbehavior clearly has a disproportionately negative effect on African-American students.

Second, once a prima facie case is established, the burden shifts to the respondent to demonstrate that the policy or practice is “required by educational necessity.” *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1412 (11th Cir. 1993). To meet this burden, the recipient of federal funds must show that the challenged practice bears a manifest relationship to an objective that is “legitimate, important, and integral to [its] educational mission.” *Id.* at 1413; U.S. Dep’t of Justice, *Title VI Legal Manual* 50-53 (2001). Therefore, justifications that do not further or run counter to the respondent’s educational mission, or that are superficial or nominal, are entirely insufficient to satisfy this standard. Because Bryan ISD cannot show that its ticketing practice has a manifest relationship to a legitimate educational goal, it cannot justify its practice through educational necessity.

Third, even when a recipient of federal funds can justify a policy or practice through educational necessity, the recipient may still be held accountable under Title VI if there are alternative practices available that would be equally effective in serving the recipient’s educational mission while having less of a racially disparate impact. *See Elston*, 997 F.2d at 1413; U.S. Dep’t of Justice, *Title VI Legal Manual* 53 (2001). Even if Bryan ISD could show an educational necessity for its ticketing practice, there are less discriminatory alternatives that are at least equally effective, if not more effective, in achieving its educational purpose.

A. Bryan ISD’s Ticketing Practice Disproportionately Harms African Americans

Bryan ISD’s African-American students are significantly overrepresented as recipients of “Disruption of Class” and “Disorderly Conduct – Language” tickets. This disparity can be demonstrated in two distinct ways, both of which have been recognized by courts as reliable measures of statistical proof of disparate impact.

1. “Proportion Comparison” Method

The first method compares a group’s representation within an overall population to its representation within the affected population (here, those being ticketed for “Disruption of Class” and “Disorderly Conduct – Language”). Absent discrimination, one might expect that the percentages should be comparable. This rough approximation is considered the “expected outcome.” When the difference between the expected and actual outcomes for particular racial or ethnic groups is substantial, a prima facie case of discrimination may be established.

In *Castaneda v. Partida*, 430 U.S. 482, 496-97 (1977), the Supreme Court considered the percentage-point difference between expected and actual outcomes and found that a difference of 40 percentage points between expected and actual outcomes was *more than sufficient* to make out a prima facie case of disparate impact.⁴⁶ In other cases, the Court has found that even much smaller differences are sufficient to establish a prima facie case.⁴⁷

Similarly, in Bryan ISD, the percentage point difference between African-American representation in the student population and African-American representation among those who receive “Disruption of Class” and “Disorderly Conduct – Language” tickets is substantial enough to establish a prima facie case. In the 2011-12 school year African Americans represented 21 percent of the student population, yet received 53 percent of the tickets issued for “Disruption of Class”, representing a 32 percentage point difference, and 51 percent of the tickets issued for “Disorderly Conduct – Language”, representing a 30 percentage point spread. *See* Table 3 and Figure 3, *supra*.

In addition to calculating the percentage point difference, the *Castaneda* Court described in a footnote how the concept of “standard deviation” could be used to evaluate the strength of

⁴⁶ In *Castaneda*, while a county’s population was 79.1 percent Mexican-American, for over a decade only 39 percent of those summoned for grand jury service were Mexican-American, a difference of just over 40 percentage points.

⁴⁷ *See, e.g., Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 337, 339-42 (1977) (noting, in an employment discrimination case where 5 percent of employees were Black and 4 percent were “Spanish-surnamed Americans” but only 0.4 percent of line drivers were Black and only 0.3 percent of line drivers were Latino, that the Court has “repeatedly approved the use of statistical proof, where it reached proportions comparable to those in this case, to establish a prima facie case of racial discrimination in jury selection cases” and that statistics are equally as relevant in employment discrimination cases); *Turner v. Fouche*, 396 U.S. 346, 361 (1970) (holding that a the 23 percentage point difference between African Americans in the general population and those on grand jury lists was sufficient to establish a prima facie case of disparate impact); *Whitus v. Georgia*, 385 U.S. 545 (1967) (holding that the percentage point disparity of African Americans listed on the tax digest (27.1 percent) and their percentage of the grand jury venire (9.1 percent) was sufficient to make out a prima facie case of disparate impact);

proof for a prima facie case of disparate impact. It noted that a difference greater than 2 to 3 standard deviations between the actual and the expected results is sufficient to establish that an outcome is not the result of random chance, and is thus likely to be the result of discrimination.⁴⁸

In Bryan ISD, the dramatic gap between African-American representation in the student population and African-American representation among those who receive Class C misdemeanor tickets is substantial enough to establish a prima facie case. In the 2011-12 school year, Bryan ISD issued 271 class C misdemeanor tickets for “Disruption of Class” and 105 tickets for “Disorderly Conduct – Language.” Based on this data, one should expect that African-American students would have been issued tickets in an amount proportionate to their share of the student population of about 21 percent. That would mean approximately 56 tickets for “Disruption of Class” and 22 for “Disorderly Conduct – Language.”

However, the actual results were grossly out of line with these expected values. *See* Table 3 and Figure 3, *supra* and Table 8, *infra*. African-American students received more than twice as many tickets than should have been expected for both offense categories. Put another way, these gaps translate to 12 *standard deviations* between the expected number and actual number of “Disruption of Class” tickets issued to African-American students, and 7 *standard deviations* between the expected number of tickets and the actual number of “Disorderly Conduct – Language” tickets issued to African-American students. Both figures significantly exceed the benchmarks for establishing disparate impact noted by federal courts. *See, e.g., Hazelwood Sch. Dist.*, 433 U.S. at 309 (noting in dicta that a disparity of 2 or 3 standard deviations is “suspect”).

⁴⁸ The *Castaneda* Court set out the standard deviation analysis as follows:

Given that 79.1% of the population is Mexican-American, the expected number of Mexican-Americans among the 870 persons summoned to serve as grand jurors over the 11-year period is approximately 688. The observed number is 339. Of course, in any given drawing some fluctuation from the expected number is predicted. The important point, however, is that the statistical model shows that the results of a random drawing are likely to fall in the vicinity of the expected value. The measure of the predicted fluctuations from the expected value is the standard deviation, defined for the binomial distribution as the square root of the product of the total number in the sample (here 870) times the probability of selecting a Mexican-American (0.791) times the probability of selecting a non-Mexican-American (0.209). Thus, in this case the standard deviation is approximately 12. ... [I]f the difference between the expected value and the observed number is greater than two or three standard deviations, then the hypothesis that the jury drawing was random would be suspect to a social scientist.

430 U.S. at 496 n.17 (internal citations omitted); *accord Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 309 n.14 (1977).

Table 8: Expected Outcomes, Actual Outcomes and Standard Deviations for Tickets Issued to African-American Students⁴⁹

	“Disruption of Class”	“Disorderly Conduct – Language”
Total tickets issued to all students	271	105
<i>Expected</i> number of tickets for African Americans	56.45	21.87
<i>Actual</i> number of tickets issued to African Americans	143	54
Difference between expected and actual tickets	86.55	32.13
Number of Standard Deviations between expected and actual number of tickets issued	12.95	7.72

2. “Risk Ratio” Method

Complainants can also establish a prima facie case through a second method—an analysis of risk ratios. For purposes of this complaint, risk ratio means the chance African-American students have of receiving a ticket for “Disruption of Class” and “Disorderly Conduct – Language” compared to the chance of students of other racial groups receiving a ticket for the same offenses.

While courts have not set a specific threshold over which a risk ratio can be said to be significant for purposes of establishing a racially disparate impact, one court has noted by way of example that the Pennsylvania Department of Education uses a risk ratio of 3.0 to judge disparities and the United States Department of Education has reported that a risk ratio of 1.5 indicates over-representation. *See Blunt v. Lower Merion Sch. Dist.*, 826 F. Supp. 2d 749, 756 (E.D. Pa. 2011). Courts have also examined risk ratios in the context of epidemiological causation and in at least one case held that a risk ratio of 2.0 is sufficient to show causation. *In re Breast Implant Litig.*, 11 F. Supp. 2d 1217, 1226-27 (D. Colo. 1998).

Compared to all other students in Bryan ISD, the risk ratio for African-American students receiving a ticket for “Disruption of Class” is 4.25 and the risk ratio for receiving a ticket for “Disorderly Conduct – Language” in the 2011-12 school year was 4.02. *See* Table 4, *supra*. This means that the likelihood that an African-American student will receive a ticket for either of these offenses is more *than 4 times greater* than the risk faced by all other students. The same was true in the 2009-10 and 2010-11 school years. *See* Table 5, *supra*. Given the number of students in Bryan ISD, both forms of ticketing and their corresponding risk ratios for the 2011-12 school year more than satisfy accepted standards for statistical significance.⁵⁰

⁴⁹ Appendix E at 9. Numbers in these tables have been rounded to the second decimal place. *See also* Appendix E.

⁵⁰ *See* Appendix F (outlining the application of chi-square test to risk ratios from 2011-12 school year. The chi-square test is an accepted method to determine the statistical significance of a risk ratio. The statistical significance of a risk ratio created using duplicated counts can be tested using the chi-square test. *See, e.g., Russell*

B. Bryan ISD Cannot Demonstrate that its Practice of Using Criminal Sanctions to Discipline Students For Minor Behavioral Infractions Constitutes an Educational Necessity

Because Bryan ISD's ticketing practice disproportionately harms African-American students, the district must show specifically a "manifest demonstrable relationship" between this practice and either "classroom education" or "an important educational goal." *Elston*, 997 F.2d at 1394, 1413; *Georgia State Conference of Branches of NAACP v. State of Georgia*, 775 F.2d 1403, 1418 (11th Cir. 1985). Bryan ISD cannot demonstrate such a relationship to any one of a number of possible education-related goals or justifications.

Bryan ISD cannot show that its ticketing practice furthers the aims of maintaining order, promoting school safety or any effort to quell criminal activity among students in district schools. As discussed in section III(C), *supra*, the behaviors for which Bryan ISD students commonly receive "Disruption of Class" and "Disorderly Conduct – Language" tickets often do not rise to the level of criminal behaviors even according to those statutes. Moreover, available data on juvenile Class C misdemeanor cases collected since 2000 shows that ticketing in Bryan ISD has increased independent of statewide rates of juvenile or school-based crime, which have decreased.⁵¹

In addition, the ticketing practice does not further Bryan ISD's stated mission of providing "positive educational experiences that ensure high school graduation and post-secondary success."⁵² While there are many factors that inform academic success, high ticketing and exclusionary discipline rates have the opposite effect. These practices have been linked to higher rates of grade retention and dropout.⁵³ And students who have police or court involvement are significantly less likely to graduate than their peers who do not have such involvement.⁵⁴ Moreover, the use of ticketing for minor school misbehavior may also impede

J. Skiba et al., *Disproportionate Minority Contact: Qualitative Analyses Final Report*, Submitted to the Indiana Criminal Justice Institute Title II Grant, 2006-2007 (June 30, 2007), available at www.indiana.edu/~equity/docs/ICJI_FinalReport2007.pdf.

⁵¹ See Appendix B at 4-5, 23-24.

⁵² Bryan ISD, District Mission, http://www.bryanisd.org/apps/pages/index.jsp?uREC_ID=180519&type=d&pREC_ID=375550 (last visited February 17, 2013).

⁵³ See Appendix G (Tony Fabelo et al., The Council of State Governments Justice Center, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* 54-60 (2011)) (hereinafter "Council of State Governments"); Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 *Justice Quarterly* 462, 473-477 (December 2006), available at http://www.nocurfews.org/yahoo_site_admin/assets/docs/Who_Will_Graduate_Sweeten.235183607.pdf (hereinafter "Who Will Graduate?").

⁵⁴ See *Who Will Graduate?*, *supra* note 53, at 473-77; Jon Gunnar Bernburg & Marvin D. Krohn, *Labeling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood*, 41 *Criminology* 1287, 1311 (2003), available at <http://www.colorado.edu/ibs/pb/thornbery/socy7004/pdfs/Labeling,%20Life%20Chances,%20and%20Adult%20Crime.pdf>.

educational progress for the school as a whole, including those students who do not receive tickets. Schools with highly restrictive school climates have not been shown to have lower rates of problem behavior than other schools.⁵⁵ Instead, relying on police to address student behavior can foster a highly restrictive, distrustful environment that diminishes students' views of teachers' authority and can make it more difficult to maintain school order, safety and academic achievement.⁵⁶ As detailed below, the cumulative negative academic and life outcomes have a significant impact on the economic and civic well-being of schools as a whole, individual students and even entire communities.

1. Impact on students and school as a whole

Reliance on school police to address school discipline does not increase, and may negatively impact, the safety, order and educational progress of the school as a whole.

While the MOU between Bryan ISD and the BPD requires SROs to “assist District staff in maintaining order on school property,”⁵⁷ there is no evidence that ticketing students for minor offenses improves school order. A recent meta-analysis of 178 individual studies assessing the effectiveness of different school-based disciplinary interventions determined that the use of police to handle school disorder does not reduce the occurrence of problem behavior in schools.⁵⁸ Indeed, relying on police to address student behavior may hinder Bryan ISD's efforts to maintain order on school property. Highly-restrictive efforts to control students by involving police in school disciplinary matters actually cause higher levels of school disorder by diminishing students' belief in the legitimacy of school staff authority.⁵⁹ Aggressive security measures produce alienation and mistrust among students which, in turn, can disrupt the learning environment and create an adversarial relationship between school officials and students.⁶⁰ Because students often perceive school police practices as fundamentally unfair, the actions of

⁵⁵ See Matthew J. Meyer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 *Education and Treatment of Children* 333, 349 (1999) (creating a highly scrutinized school environment may result in higher levels of disorder), available at http://www.popcenter.org/problems/bomb_threats/pdfs/mayer%26leone_1999.pdf; cf. Philip J. Cook, et al., *School Crime Control and Prevention* 74-76 (Mar. 23, 2009), <http://ssrn.com/abstract=1368292> (draft) (finding that “little high quality evaluation research has been conducted to assess SRO effectiveness, but it seems reasonable that the increased presence of SRO officers in schools at the very least increases the referral of problem behaviors to law enforcement agencies.”).

⁵⁶ See Kim, *supra* note 6, at 26; Meyer & Leone, *supra* note 55, at 352.

⁵⁷ Appendix C-1 at 4; Appendix C-2 at 4.

⁵⁸ Kim, *supra* note 6, at 26; Cook, et al., *supra* note 55, at 74-76.

⁵⁹ See Meyer & Leone, *supra* note 55, at 352. The frequent use of exclusionary discipline for students who have also been ticketed can exacerbate these negative impacts: schools that regularly rely upon exclusionary discipline, particularly for minor offenses, have lower overall scores on state tests and lower overall student connectedness. M. Karega Rausch & Russell Skiba, Center for Evaluation & Education Policy, *Unplanned Outcomes: Suspensions and Expulsions in Indiana*, 2 *Education Policy Briefs* 1, 5 (2004), available at http://ceep.indiana.edu/projects/PDF/PB_V2N2_UnplannedOutcomes.pdf (hereinafter “*Unplanned Outcomes*”); Rausch & Skiba, *supra* note 5, at 14-17.

⁶⁰ Randall R. Beger, *The Worst of Both Worlds*, 28 *Crim. Just. Rev.* 336, 340 (2003).

school police can serve to trigger, not curb, misbehavior.⁶¹ Fostering such restrictive environments may lead to violence, thus jeopardizing, instead of promoting, school safety.⁶²

In addition, reliance on ticketing for minor offenses does not support schools' educational progress. Negative interaction with SROs on school campuses can damage students' views of teachers' authority and thus disrupt the learning environment.⁶³ Increased school police presence leads students to a "shared sense of grievance" which decreases student ratings of school climate and academic engagement.⁶⁴ Additionally, by diverting resources that might otherwise be used to improve academic instruction and school culture, employing highly-restrictive security measures may impede school improvement.⁶⁵ Consequently, rather than improving school-wide academics and behavior, Bryan ISD's reliance on "Disruption of Class" and "Disorderly Conduct – Language" ticketing harms the overall school environment.

Increasingly, other school districts provide evidence that reliance on ticketing is unnecessary. A district can simultaneously support school safety and academic achievement while reducing reliance on ticketing, suspension and expulsion. For example, six schools operated by the New York City Department of Education ("NYCDOE") improved academic achievement, graduation rates and school safety by limiting the role of New York City's school police (School Safety Agents or "SSAs") in responding to school discipline incidents.⁶⁶ These six schools all served similar percentages of at-risk youth as nearby NYCDOE schools and several served as "transfer schools" for students who had been removed from other NYCDOE schools due to disciplinary reasons.⁶⁷ However, the six schools that limited the use of SSAs had

⁶¹ Kathleen Nolan, *Police in the Hallways: Discipline in an Urban High School* 53 (2011).

⁶² Meyer & Leone, *supra* note 55, at 349; see Gary D. Gottfredson et al., *School Climate Predictors of School Disorder: Results from a National Study of Delinquency Prevention in Schools*, 42 *J. of Research in Crime & Delinquency* 412, 433 (2005), available at www.joanmaher.com/my_documents/courses_hs_english_012/unit_2/sidcra/resources/schoolclimatepredictors.pdf. (finding students rate their schools higher on scales of student delinquency and victimization when they report unfair implementation of arbitrary rules).

⁶³ See Arrick Jackson, *Police-school Resource Officers' and Students' Perception of the Police and Offending*, 25 *Policing: Int'l J. Police Strategies & Mgmt.* 631, 634 (2002) (finding that officers' presence on school campuses posed obstacles for free and open learning environments by damaging students' view of teachers' authority).

⁶⁴ See Rachel Garver & Pedro Noguera, *For Safety's Sake: A Case Study of School Security Efforts and Their Impact on Education Reform*, 3 *Journal of Applied Research on Children* 23-24 (2012), available at <http://digitalcommons.library.tmc.edu/childrenatrisk/vol3/iss2/5/>.

⁶⁵ *Id.* at 25. Cf. Texas Appleseed, *Breaking Rules, Breaking Budgets: Cost of Exclusionary Discipline in 11 Texas School Districts* 13-14 (2012), available at http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=867&Itemid= (finding that during the 2010-2011 school year Bryan ISD spent approximately the same amount on SROs as it did on school social workers).

⁶⁶ Udi Ofer et al., New York Civil Liberties Union, *Safety with Dignity: Alternatives to the Over-Policing of Schools* 12-13 (2009), available at <http://www.nyclu.org/content/safety-with-dignity-alternatives-over-policing-of-schools-2009>.

⁶⁷ *Id.* at 12.

higher attendance and graduation rates as well as significantly lower rates of suspension and criminal incidents compared to other NYCDOE schools.⁶⁸ While each school took an individual approach to improving school climate, many of their strategies represent evidence-based, commonsense practices, including making educators (instead of police officers) responsible for maintaining school discipline and order;⁶⁹ implementing school-wide approaches to discipline that anticipated instances of school disruption, reduced confrontation and resolved conflicts in positive, proactive ways;⁷⁰ involving students in revising the schools' discipline codes and in resolving conflicts between students;⁷¹ addressing students' non-academic needs through in-house services or partnerships with community organizations;⁷² supporting innovative teaching and teacher leadership and creating a culture of respect that welcomed and valued all students.

Schools can, therefore, improve school climate, academic performance and student safety without relying on ticketing for minor offenses.

2. Impact on academic and life outcomes for individual students

Because Bryan ISD's use of ticketing for school-based incidents reduces instructional time, school connectedness and opportunities for pro-social development, it fosters negative academic outcomes for individual students.⁷³

⁶⁸ *Id.* at 13.

⁶⁹ Sample memoranda and materials for limiting police involvement to matters of school safety – not discipline – are available free of charge on the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative's website, <http://www.jdaihelpdesk.org>.

⁷⁰ For example, School-Wide Positive Behavior Support (SWPBS) is an evidence-based approach to school discipline that monitors trends in student behavior to anticipate disciplinary incidents and encourages schools to implement positive interventions at school-wide, targeted and individual levels. SWPBS is currently being implemented in over 12,000 schools across the country and has been shown to reduce disciplinary referrals and improve student attendance, academic achievement and staff perceptions of school safety. Technical assistance is available through the Technical Assistance Center on Positive Behavioral Interventions and Supports housed at the U.S. Department of Education Office of Special Education Programs. *See* OSEP Technical Assistance Center on Positive Behavioral Interventions & Supports, <http://www.pbis.org> (last visited Feb. 16, 2013).

⁷¹ Involving both students and teachers in school leadership and governance are hallmarks of successful education reform efforts. Training and technical assistance on such efforts are available in Texas from the Intercultural Development Research Association ("IDRA") in San Antonio, one of ten Equity Assistance Centers funded by the U.S. Department of Education. *See* IDRA, South Central Collaborative for Equality, http://www.idra.org/South_Central_Collaborative_for_Equity/ (last visited Feb. 16, 2013).

⁷² The U.S. Department of Education's Promise Neighborhoods initiative encourages partnership between schools and community-based service providers to address students' non-academic needs. *See* U.S. Dep't of Ed., Promise Neighborhoods, Program Overview, <http://www2.ed.gov/programs/promiseneighborhoods/index.html> (last visited Feb. 16, 2013).

⁷³ When students also receive exclusionary discipline on top of ticketing, these negative outcomes can be compounded. *See generally* Appendix G at 59; D. Mark Anderson, *In School and Out of Trouble? The Minimum Dropout Age and Juvenile Crime* 33 (2012), available at http://dmarkanderson.com/MDA_crime_9_26_2012.pdf (finding that interventions to keep kids in school reduce the amount of time available for delinquent acts).

- a. Bryan ISD’s ticketing practice reduces students’ chances to succeed by decreasing their instructional time.

Bryan ISD’s ticketing practice immediately impedes disciplined students’ educational progress because mandatory court appearances require absences from school to attend municipal and justice of the peace court proceedings, which are in session during the school day. Unnecessarily removing students from instructional settings runs counter to the research which consistently documents a positive relationship between instructional opportunity and student achievement.⁷⁴ In the long term, lost instructional time makes future academic tasks more difficult and, consequently, incentivizes student misbehavior to avoid increasingly difficult academic work.⁷⁵ This interruption of educational opportunities makes it more likely that a student will leave school before graduating. Studies show that a first-time court appearance nearly quadruples the likelihood that a student will drop out.⁷⁶ As a result, Bryan ISD’s reliance on “Disruption of Class” and “Disorderly Conduct – Language” ticketing to discipline students for behavior that could be remediated without impacting instructional time increases the ticketed students’ risk of academic failure.

- b. Bryan ISD’s ticketing practice stunts academic progress by weakening students’ sense of connectedness to their schools, decreasing their academic motivation and limiting students’ opportunities for pro-social development at school.

Bryan ISD’s reliance on “Disruption of Class” and “Disorderly Conduct – Language” ticketing endangers ticketed students’ school connectedness—students’ belief that adults within the school care about them and their educational progress. That sense of connectedness is critical to protect against a number of risk factors for poor academic and life outcomes.⁷⁷ By reducing the ticketed student’s sense of belonging in the school community, Bryan ISD’s ticketing practice increases the probability of academic failure and poor life outcomes.

For students to feel connected to a school community, they must perceive school authorities to be caring and fair. However, reliance on ticketing undermines these relationships.⁷⁸ Because ticketing decisions are often subjective, both on the part of the police

⁷⁴ Rausch & Skiba, *supra* note 5, at 6.

⁷⁵ Aaron Kupchik, *Things are Tough All Over: Race, Ethnicity, Class and School Discipline*, 11 *Punishment & Society* 291, 307, available at <http://www.suspensionstories.com/wp-content/uploads/2010/10/things-are-tough-all-over.pdf> (finding that lost instructional time served to aggravate students’ academic deficits because they fell further behind their classmates).

⁷⁶ *Who Will Graduate?*, *supra* note 53, at 473-77.

⁷⁷ See Centers for Disease Control and Prevention, *School Connectedness: Strategies for Increasing Protective Factors Among Youth* 3 (2009), available at <http://www.cdc.gov/healthyouth/adolescenthealth/pdf/connectedness.pdf> (hereinafter “CDC”).

⁷⁸ See Jaana Juvonen, RAND, *School Violence: Prevalence, Fears and Prevention* 3 (2001), available at http://www.rand.org/pubs/issue_papers/IP219.html (concluding that the presence of police on campus can “breed a sense of mistrust among students”).

officer issuing the ticket and the school staff who may have requested the police intervention, a ticketed student may view school and police authorities as unfair and untrustworthy.⁷⁹ Moreover, where students of color disproportionately receive police intervention within schools, students are “likely to interpret the disparity as rejection and, as a result, develop a collective, self-fulfilling belief that they are incapable of abiding by schools’ social and behavioral codes.”⁸⁰

The consequences of reduced school connectedness are significant, both inside and outside the school environment. Students with high levels of connectedness to school have better attendance, higher grades, higher standardized test scores and fewer behavioral incidents than their peers who are less connected to school. Indeed, middle school students with high degrees of school connectedness were 75 percent more likely to do well on measures of academic achievement and school attendance than their peers who were less engaged.⁸¹ School connectedness functions as a critical factor in supporting academic achievement for economically disadvantaged students and also protects against health risks that reduce students’ focus on academics and achievement.⁸² School connectedness also influences how students

⁷⁹ See Johanna Wald & Lisa Thureau, *First Do No Harm: How Educators and Police Can Work Together More Effectively To Preserve School Safety and Protect Vulnerable Students* 8 (2010), available at <http://www.jjcmn.com/public/2010/10/First-Do-No-Harm-article.pdf>. Even police officers stationed at schools report that requests by school staff to intervene are often driven more by the student involved rather than the seriousness of the offense. Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. Sch. L. Rev. 977, 1015 (2009), available at http://www.nyls.edu/user_files/1/3/4/17/49/1001/Thureau%20&%20Wald%2054.4.pdf. Cf. Clea A. McNeely et al., *Promoting School Connectedness: Evidence from the National Longitudinal Study of Adolescent Health*, 72 Journal of Sch. Health 138, 145 (2002), available at <http://www2.gsu.edu/~wwwche/Promoting%20School%20Connectedness%20Evidence%20from%20the%20Nat%20Longitudinal%20Study%20of%20Adolescent%20Health.pdf> (finding that, in secondary schools where harsh discipline is widely used for minor rule infractions students rate their teachers as less caring and report feeling less belonging in school).

⁸⁰ Advancement Project & The Civil Rights Project at Harvard University, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline* 9-10 (2000), available at <http://www.advancementproject.org/resources/entry/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and> (hereinafter “*Opportunities Suspended*”); cf. Amanda Petteruti, Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools* 21-22 (2011), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf (hereinafter “*Education Under Arrest*”) (students of color experience police intervention at disproportionate rates).

⁸¹ Adena M. Klem & James P. Connell, *Relationships Matter: Linking Teacher Support to Student Engagement and Achievement*, 74 J. of Sch. Health 262, 266 (2004), available at <http://www.fifeschools.com/fhs/documents/RelationshipsMatterLinkingTeacherSupporttoStudentEngagementandAchievement.pdf>; CDC, *supra* note 77, at 5; Richard F. Catalano et al., *The Importance of Bonding to School for Healthy Development: Findings from the Social Development Research Group* 74 Journal of School Health 252, 256, 259 (2004), available at <http://thepinnaclesgroup.com/wp-content/uploads/2010/09/importance-of-bonding-with-schools-copy.pdf> (hereinafter “Catalano”).

⁸² See Bronwyn E. Becker & Suniya S. Luthar, *Social-Emotional Factors Affecting Achievement Outcomes Among Disadvantaged Students: Closing the Achievement Gap*, 37 Educ. Psychologist 197-214 (2002), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3523355/>; Dorian Wilson, *The Interface of School Climate and School Connectedness and Relationships with Aggression and Victimization*, 74 Journal of School Health 293, 298 (2004), available at http://www.jhsph.edu/departments/population-family-and-reproductive-health/_archive/wingspread/Septemberissue.pdf.

behave in school. Students with high levels of school connectedness are less likely to be aggressive or to feel victimized within school and increased school connectedness has been shown to reduce problem behaviors in school.⁸³ Furthermore, school connectedness protects against a range of negative behaviors beyond the classroom. Students with high degrees of school connectedness are less likely to attempt suicide, abuse illegal substances, engage in early sexual conduct, participate in violent or delinquent behavior or affiliate with gang members.⁸⁴ Additionally, school connectedness has a positive relationship with a student's overall level of life satisfaction.⁸⁵ Therefore, to the extent Bryan ISD's ticketing practice decreases individual student's school connectedness, it puts students at greater risk for poor academic and life outcomes.

Similarly, ticketing practices such as Bryan ISD's can undermine the necessary predicates for adolescent development within the school environment. If students believe that they have been ticketed unfairly or that their punishment is disproportionate to their behavior, they may withdraw from relationships with school staff, lose trust in school authorities and perceive that they do not have efficacy within school.⁸⁶ When students' developmental needs are unmet within school structures, they lose motivation to engage in school,⁸⁷ so they seek counterproductive supports for their developmental needs, including associating with antisocial peers and redefining punishment as a positive experience, which reinforce their growing alienation from school.⁸⁸

⁸³ Wilson, *supra* note 82, at 299; *see also* Cook et al., *supra* note 55, at 359.

⁸⁴ CDC, *supra* note 77, at 5; Catalano, *supra* note 81, at 256.

⁸⁵ *See, e.g.,* Sukkyung You et al., *Relations Among School Connectedness, Hope, Life Satisfaction, and Bully Victimization*, 45 *Psychology in the Schools* 446, 456 (2008), available at http://education.ucsb.edu/sharkey/documents/PITS_Bullying_Published.pdf.

⁸⁶ *See* Russell Skiba et al., American Psychological Association, Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations* 69-70 (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf> (hereinafter "APA"); *Opportunities Suspended*, *supra* note 80, at 9-10; Jackson, *supra* note 63, at 634 (finding that officers' presence on school campuses was psychologically damaging to students, particularly in their view of authority and supportiveness of the learning environment); *see also* Karen F. Osterman, *Students' Need for Belonging in the School Community*, 70 *Rev. of Educ. Res.* 323, 361 (2000), available at http://people.hofstra.edu/Karen_F_Osterman/Student%20need%20for%20belonging%20in%20the%20school%20community.pdf (discussing the importance of students developing a sense of community in their schools).

⁸⁷ Jacquelynn S. Eccles & Robert W. Roeser, *Schools, Academic Motivation, and Stage-Environment Fit*, 3 *Handbook of Adolescent Psychol.* 404, 408 (Richard M. Lerner & Laurence Steinberg eds. 2009), available at <http://www.rcgd.isr.umich.edu/garp/articles/eccles09.pdf>; *cf.* McNeely et al., *supra* note 79, at 138.

⁸⁸ *See* Peter E. Leone et al., Nat'l Ctr. on Educ., Disability and Juvenile Justice, *School, Failure, Race and Disability: Promoting Positive Outcomes, Decreasing Vulnerability for Involvement with the Juvenile Delinquency System* 11 (2003), available at http://www.edjj.org/Publications/list/leone_et_al-2003.pdf (hereinafter "School Failure").

3. Impact on the community at large

Bryan ISD's reliance on ticketing, particularly for minor offenses that could be handled without excluding a youth from school, produces negative outcomes and a high cost for the Bryan community as a whole. The greater likelihood that students who have police or court involvement will leave school before graduating has a large impact on a community's economic future. Because students who do not graduate are more likely to be unemployed, they are also substantially more likely to require government assistance and incur uninsured medical expenses than high school graduates.⁸⁹ The impact on the African-American community is particularly stark since, among students who leave school before graduating, African Americans are significantly less likely to be employed than Latinos or whites.⁹⁰ Those who drop out (or are pushed out) of high school are also significantly more likely to be incarcerated than high school graduates.⁹¹

Due to these negative life outcomes, the net public benefit, conservatively estimated, of preventing one high school student from dropping out is \$127,100.⁹² If half of any given year's cohort of dropouts were to graduate, tax revenues would likely increase by \$713 million in an average year.⁹³ Less tangibly, high school graduation promotes community ties and civic responsibility in young adults.⁹⁴ Ultimately, therefore, Bryan ISD's reliance on "Disruption of Class" and "Disorderly Conduct – Language" ticketing is not only counterproductive for the progress of Bryan's students and schools, but it also damages future outcomes for the entire community.

C. There Are Equally Effective, Less Discriminatory Alternatives Available for Bryan ISD to Promote Safety and Order While Fulfilling its Educational Mission

Even if Bryan ISD could demonstrate that its ticketing practice is justified by educational necessity, it is still in violation of Title VI if there are alternative practices available that would be equally effective in serving the district's educational mission while having less of a racially disparate impact. *See Elston*, 997 F.2d at 1407; *Cureton v. Nat'l Collegiate Athletic Ass'n*, 37 F. Supp. 2d 687, 713-14 (E.D. Pa. 1999), *rev'd on other grounds*, 198 F.3d 107 (identifying at least three successful alternative practices to prohibiting freshman athletic competition that met the

⁸⁹ John M. Bridgeland et al., Civic Enterprises, *The Silent Epidemic: Perspectives of High School Dropouts* 2 (2006), available at (hereinafter "Bridgeland"); APA, *supra* note 86, at 82.

⁹⁰ See Paul Hirschfield, *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*, 82 Soc. of Educ. 368 (2009), available at <http://search.asanet.org/images/journals/docs/pdf/soc/oct09soefeature2.pdf>.

⁹¹ Bridgeland, *supra* note 89, at 2; cf. Becky Pettit & Bruce Western, *Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration*, 69 Am. Soc. Rev. 151, 153 (2004), available at <http://www.wjh.harvard.edu/soc/faculty/western/pdfs/ASRv69n2p.pdf>.

⁹² Henry Levin et al., *The Costs and Benefits of an Excellent Education for All of America's Children* 18 (2006), available at http://www3.nd.edu/~jwarlick/documents/Levin_Belfield_Muennig_Rouse.pdf.

⁹³ Alliance for Excellent Education, *Education and the Economy: Boosting the Nation's Economy by Improving High School Graduation Rates* 2 (2011), available at http://www.all4ed.org/files/NationalStates_seb.pdf.

⁹⁴ *Education Under Arrest*, *supra* note 80, at 24.

NCAA's goal of raising student-athlete graduation rates); U.S. Dep't of Justice, *Title VI Legal Manual* 53 (2001).

In recent years, a number of school districts have recognized the harm of criminalizing school-based behavior and have accordingly acted to limit police involvement in matters that should be handled by a school's internal discipline system. Two school districts in particular, Clayton County School District in Georgia and Denver Public Schools in Colorado, warrant deeper review for their use of model, replicable practices that are less discriminatory and appear to be at least equally effective at preserving school safety and supporting academic achievement. More recently, Waco Independent School District in Texas has replicated many aspects of the Clayton County and Denver programs, resulting in a dramatic reduction in ticketing during the first year of the program.⁹⁵

1. Clayton County School District, Georgia

The unchecked expansion of a SRO program in Clayton County, Georgia, led to an astounding 1248 percent increase in local schools' court referrals, almost all of which were for misdemeanors, according to the juvenile court.⁹⁶ To reduce reliance on court referrals, the Clayton County School District partnered with the local juvenile court, law enforcement and mental health providers to develop a "school offense protocol" that allows officials to better distinguish less serious offenses from more serious offenses, and to respond to each accordingly.⁹⁷ By drawing a line between *safety* matters, to be handled by law enforcement, and *discipline* matters, to be handled by school officials, Clayton County reduced its court referrals by 86 percent⁹⁸ and effectively eliminated racial disparities in court referrals per enrollment.⁹⁹

⁹⁵ For further discussion of the practices in each of these districts, *see* Appendix H (Less Discriminatory Alternatives). In addition to these school districts, we note other nascent reform efforts at the state level. Colorado and Florida have recently enacted laws that limit the use of law enforcement to address school-based offenses to serious offenses. Colo. H.B. 1345 (2012) (requiring school districts to develop and enforce discipline codes in a manner designed to reduce referrals to law enforcement and minimize students' exposure to the juvenile and criminal justice system); Fla. S.B. 1540 (2009) (discouraging arresting students for minor offenses such as classroom disruption and fighting). In response to concerns about law enforcement action on school campuses, the Indiana Legislature established a study group to evaluate when and how schools and law enforcement should collaborate. Ind. H.B. 1193 (2010). The Maryland Board of Education adopted regulations that limit the types of disciplinary incidents that warrant reporting to law enforcement. Those regulations expressly provide that "conduct which has been traditionally treated as a matter of discipline to be handled administratively by the particular school" should not trigger law enforcement involvement. Md. Regs. Code tit. 13A.08.01.15 (2012).

⁹⁶ Judge Steven C. Teske & Judge J. Brian Huff, *The Court's Role in Dismantling the School-to-Prison Pipeline*, *Juv. & Fam. Justice Today*, Winter 2011, at 14, 16, available at <http://www.ncjfcj.org/sites/default/files/Today%20Winter%202011Feature%20%282%29.pdf>.

⁹⁷ Cooperative Agreement between the Juvenile Court of Clayton County, the Clayton County Public School System, the Clayton County Police Department, the Riverdale Police Department, the Jonesboro Police Department, the Forest Park Police Department, the Clayton County Department of Family & Children Services, the Clayton Center for Behavioral Health Services, Robert E. Keller, District Attorney, and the Georgia Department of Juvenile Justice (2004), <http://publichealth.lsuhs.edu/iphj/pdf/solibrary1.pdf>.

⁹⁸ Court referral data was provided by the Clayton County Juvenile Court. Judge Steven C. Teske, *A Study of Zero Tolerance Policies in Schools: A Multi-Integrated Systems Approach to Improve Outcomes for Adolescents*, 24 *J. of Child & Adolescent Psychiatric Learning* 88, 93 (2011), available at <http://www.ncjfcj.org/sites/default/files/Zero%20Tolerance%20Policies%20in%20Schools%20%282%29.pdf>.

Clayton County’s reforms resulted in safer, more successful schools. The district’s graduation rate increased by 20 percent after instituting the protocol and rates of weapons possession fell by 73 percent.¹⁰⁰ Technical assistance is available for localities interested in replicating the protocol as well.

2. Denver Public Schools, Colorado

In 2005, after a 70 percent increase in the number of students referred to law enforcement by Denver Public Schools (“DPS”)—nearly half of whom were referred for “other violations of the code of conduct” like use of obscenities—advocates launched a multi-year campaign that led to an immediate drop in referral rates and culminated in revisions to DPS’ discipline code.¹⁰¹ The revised code established a graduated series of consequences and interventions designed to reduce reliance on both exclusionary punishment and referrals to law enforcement.¹⁰² The code encouraged the use of Restorative Justice, a method for resolving conflict and improving bonds among students and between students and teachers.¹⁰³ Since implementing the code, DPS’ referrals have dropped to their second lowest number in ten years, even though the district experienced a 12 percent increase in enrollment during this same period.¹⁰⁴ Referral rates for African-American students are at their second lowest rate in ten years and currently stand at half the peak referral rate in 2002-03¹⁰⁵ and Latino students and white students have both

⁹⁹ Appendix H (outlining the impact of the protocol on racial disparities).

¹⁰⁰ *Id.*

¹⁰¹ Advancement Project et al., *Education on Lockdown: The Schoolhouse to Jailhouse Track 23-24* (2005), available at http://b.3cdn.net/advancement/5351180e24cb166d02_mlbrqxlh.pdf.

¹⁰² Advancement Project, *Test, Punish, and Pushout 35* (2010), available at http://b.3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf.

¹⁰³ *Id.*

¹⁰⁴ DPS referred 512 students to law enforcement in the 2011-12 school year, down significantly from the 1,399 students referred to law enforcement in the 2003-04 school year. Colo. Dep’t of Educ., *Suspension/Expulsion Statistics for 2011-12*, <http://www.cde.state.co.us/cdereval/suspend-expelcurrent.htm>; Colo. Dep’t of Educ., *Suspension/Expulsion Statistics for 2003-04*, <http://www.cde.state.co.us/cdereval/rv2004SDIIncidents.htm>. DPS’s enrollment rate increased from 72,361 in fall 2001 to 80,890 in fall 2011. Colo. Dep’t of Educ., *Fall 2001 Pupil Membership by School, Ethnicity, Gender & Grade Level*, <http://www.cde.state.co.us/cdereval/rv2001pmlinks.htm>; Colo. Dep’t of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/rv2011pmlinks.htm>.

¹⁰⁵ In the 2002-03 school year, the rate of African-American students referred to law enforcement peaked at 2.81 percent (387 African-American students referred out of 13,749 African-American students enrolled). Colo. Dep’t of Educ., *Suspension/Expulsion Statistics for 2002-03*, <http://www.cde.state.co.us/cdereval/rv2003SDIIncidents.htm>; Colo. Dep’t of Educ., *Fall 2002 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/rv2002pmlinks.htm>. In the 2011-12 school year, the rate of African-American students referred to law enforcement dropped to 1.39 percent (159 African-American students referred out of 11,452). Colo. Dep’t of Educ., *Suspension/Expulsion Statistics for 2011-12*, <http://www.cde.state.co.us/cdereval/suspend-expelcurrent.htm>; Colo. Dep’t of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/rv2011pmlinks.htm>.

experienced a near three-fourths reduction in referral rates.¹⁰⁶ While the continued racial disparities in Denver's referral data indicate that reforms are far from complete, the significant reductions in referral rates suggest meaningful harm reduction for students of all races. Moreover, in collaboration with Padres y Jovenes and Advancement Project, DPS and the Denver Police Department are now entering into a new Intergovernmental Agreement to further reduce referral of DPS students to law enforcement for routine student behavior.¹⁰⁷ Finally, DPS appears to be more orderly and more academically successful since revising its code as well: the district has dramatically reduced suspensions¹⁰⁸ and expulsions and graduation rates are up district-wide.¹⁰⁹

¹⁰⁶ In the 2003-04 school year, the rate of Latino students referred to law enforcement peaked at 2.39 percent (982 Latino students referred out of 41,166 Latino students enrolled). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2003-04*, <http://www.cde.state.co.us/cdereval/rv2004SDIIncidents.htm>; Colo. Dep't of Educ., *Fall 2003 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/download/pdf/2003PM/20032004PMBYDISTRICT%25MINORITY.pdf>. In the 2011-12 school year, the rate of Latino students referred to law enforcement dropped to 0.6 percent (283 Latino students referred out of 47,109). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2011-12*, <http://www.cde.state.co.us/cdereval/suspend-expelcurrent.htm>; Colo. Dep't of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/rv2011pmlinks.htm>. In the 2001-02 school year, the rate of white students referred to law enforcement peaked at 1.20 percent (181 white students referred out of 15,124 white students enrolled). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2001-02*, <http://www.cde.state.co.us/cdereval/download/pdf/2002SDI/2001-02SDIWhite.pdf>; Colo. Dep't of Educ., *Fall 2001 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/download/pdf/2001PM/2001DenverCountyPM.pdf>. In the 2011-12 school year, the rate of white students referred to law enforcement dropped to 0.32 percent (53 white students referred out of 16,506). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2011-12*, <http://www.cde.state.co.us/cdereval/download/PDF/2012SDI/WhitebyDistrict.pdf>; Colo. Dep't of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/download/PDF/2011PM/PupilMembershipbyCountyDistrictRace-EthnicityandPercentMinority.pdf>.

¹⁰⁷ Nirvi Shah, *With New Effort, Denver Tackles School-to-Prison Pipeline*, Education Week, Rules for Engagement Blog (Feb. 19, 2013, 7:09 AM), <http://blogs.edweek.org/edweek/rulesforengagement/IGA%20with%20summary.pdf>.

¹⁰⁸ In 2007-08, DPS enrolled 73,053 students, suspended 10,161 students (a 13.90% suspension rate) and expelled 123 students (a 0.17% expulsion rate). Colo. Dep't of Educ., *Fall 2007 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/download/PDF/2007PM/District/Dist%25Minority.pdf>; Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2007-08*, <http://www.cde.state.co.us/cdereval/download/PDF/2007-2008SDI/TotalRaceData.pdf>. DPS enrolled 80,890 students in the 2011-12 school year, suspended 7,523 (a 9.30% suspension rate) and expelled 63 students (a 0.078% expulsion rate). Colo. Dep't of Educ., *Suspension/Expulsion Statistics for 2011-12*, <http://www.cde.state.co.us/cdereval/download/PDF/2012SDI/2012AllbyDistrict.pdf>; Colo. Dep't of Educ., *Fall 2011 Pupil Membership by County, District, Race/Ethnicity, and Percent Minority*, <http://www.cde.state.co.us/cdereval/download/PDF/2011PM/PupilMembershipbyCountyDistrictRace-EthnicityandPercentMinority.pdf>.

¹⁰⁹ DPS' four-year graduation rate has increased from 49 percent in 2007-08, the year before the changes to the discipline code went into effect, to 59 percent in 2011-12. Colo. Dep't of Educ., *Graduates and Completers by District, Gender, Race/Ethnicity, Class of 2008*, <http://www.cde.state.co.us/cdereval/rv2008GradLinks.htm>; Colo. Dep't of Educ., *Graduates and Completers by District, Gender, Race/Ethnicity, Class of 2012*, <http://www.cde.state.co.us/cdereval/gradcurrent.htm>.

3. Waco Independent School District

In 2010, Texas Governor Rick Perry's office partnered with Waco ISD to implement a "positive policing" pilot project during the 2011-12 school year. The aim of the Waco ISD pilot project was to create a model for school districts with high ticketing rates, and ideally to identify alternatives to the use of Class C ticketing while supporting school safety. Drawing upon the success of Clayton County, Waco ISD created a three-tiered intervention system with school-wide prevention programs, targeted services for at-risk students and intensive interventions for students who needed additional supports.¹¹⁰ Waco ISD also amended its policy to limit the use of Class C ticketing, requiring the use of the three-tiered intervention system before ticketing unless the student posed a safety threat to the campus or general public.¹¹¹ The policy specifically required alternatives in lieu of ticketing for "Disorderly Conduct" violations if the student's behavior did not pose a threat or represent a willful violation after a warning.¹¹²

Prior to implementation of the pilot project, Waco ISD's ticketing numbers were similar to Bryan ISD's, with 649 tickets issued in 2010-11.¹¹³ Although this program is only in its second year of implementation, early data analysis provided by the Texas A&M Public Policy Research Institute is very promising. In 2011-12, during the first year of the pilot's implementation, only 148 tickets were issued, a 77 percent drop from the prior year.¹¹⁴ Given these positive results, Waco ISD is expanding the pilot to include alternatives to exclusionary school discipline this school year.

D. Replacing Police Ticketing with Out-of-School Suspension and Other Forms of Exclusionary Discipline is Not a Less Discriminatory Alternative

It is essential to note that replacing Class C citations with suspension and expulsion is *not* a less discriminatory alternative. Approaches that rely upon excluding students from the classroom environment have yielded similarly negative results and racial disparities. There are instead replicable practices for reducing reliance on police-student contact, suspension and expulsion that support school safety and promote academic achievement. Funding, training and technical assistance for implementing many of these best practices is available from the U.S.

¹¹⁰ See Appendix I (Office of the Governor, Criminal Justice Division, Waco ISD & Public Policy Research Institute of Texas A&M University, *Positive Policing in Waco ISD: Re-thinking Law Enforcement in Texas Schools*, PowerPoint presentation).

¹¹¹ See Appendix J at 4 (Waco ISD, Law Enforcement Operations Policy Section 7.26, Title – Juvenile Offender Guidelines (2012)).

¹¹² *Id.*

¹¹³ See Appendix I. This is substantially lower than the number of tickets issued when Texas Appleseed conducted its data analysis of school-based ticketing. The data provided for that analysis showed more than 1,000 tickets issued during the 2006-07 school year.

¹¹⁴ See Appendix I. While the number of African-American students ticketed is still disproportionate to their representation within the student body, the number of African-American students who received tickets fell 77 percent after the pilot was implemented, with 209 African American students receiving tickets the year prior to implementation and 48 receiving tickets after implementation.

Department of Education or the Center for Elimination of Disproportionally and Disparities in Texas.

In addition to ticketing, other forms of exclusionary discipline, including suspension and expulsion, substantially impede the educational progress of individual students and schools and fail to promote school safety. Reliance on exclusionary discipline methods harms all students, but particularly harms African-American students, who are three-and-a-half times as likely as their white peers to be suspended or expelled.¹¹⁵ In Bryan ISD, these disparities are already apparent in internal disciplinary referrals. *See supra* fn.15. Relying on suspension and expulsion as the sole alternative to ticketing would only exacerbate those disparities.

As with ticketing, suspension and expulsion impede students' academic achievement. The lost learning time and lack of school connectedness discussed in section V(B), *supra*, are also associated with suspension and expulsion.¹¹⁶ The academic harms of suspension and expulsion on Texas students are especially troubling. According to a study analyzing the disciplinary records of over one million Texas secondary school students, Texas students who received discretionary disciplinary removals were twice as likely to repeat a grade as similar peers who did not receive such removals.¹¹⁷ Texas students who received exclusionary discipline are also significantly at risk for negative life outcomes, including involvement with the juvenile or criminal justice systems.¹¹⁸

The impact of exclusionary discipline on academic success and safety extends beyond individual students. Schools with high rates of exclusionary discipline have lower overall standardized test scores and score worse on measures of school climate than schools with lower rates of exclusionary discipline, even when adjusting for demographic differences in enrollment.¹¹⁹ Reliance on suspension, expulsion and other forms of "zero tolerance" discipline policies have not been shown to make schools safer.¹²⁰

Relying on exclusionary discipline to address classroom disruption and similar adolescent behavior is no less discriminatory than relying on police ticketing to do so. African-American

¹¹⁵ U.S. Dep't of Educ., Office for Civil Rights, *The Transformed Civil Rights Data Collection 2* (Mar. 12, 2012), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf> (summarizing the disciplinary data contained in the 2009-10 Civil Rights Data Collection, a national collection sampling half of the nation's school districts).

¹¹⁶ *See generally* APA, *supra* note 86, at 49-51 (summarizing research showing that a student receiving exclusionary discipline is a predictor of school dropout).

¹¹⁷ Appendix G at 59.

¹¹⁸ *Id.* at 70 (finding that a discretionary disciplinary removal almost tripled the likelihood of a student's juvenile justice contact in the subsequent academic year and that each additional discretionary disciplinary removal exponentially increased the likelihood of juvenile justice involvement). The impact of juvenile justice involvement additionally magnifies the risk of leaving school. Hirschfield, *supra* note 90, at 384.

¹¹⁹ Rausch & Skiba, *supra* note 5, at 14-17 (summarizing research showing that instructional time is positively related to academic achievement); APA, *supra* note 86, at 44-48.

¹²⁰ *See generally* APA, *supra* note 86.

students are disproportionately more likely to receive exclusionary discipline than are their white peers. However, this disproportionality is not explained by differences in student behavior or socioeconomic status.¹²¹ African Americans are more likely than their white peers to be referred by teachers to the school disciplinarian.¹²² Once they get there, African-American students are likely to receive a harsher punishment than their white peers for similar behavior.¹²³ Moreover, African Americans are disproportionately more likely to be disciplined for “subjective” offenses like “disrupting class” than their white peers, who are disproportionately likely to be disciplined for “objective” offenses like smoking cigarettes on school grounds.¹²⁴ These disparities are perhaps at their starkest in Texas, where 83 percent of African-American middle and high school students had been suspended or expelled at least once from 2001 to 2007, leading the Council of State Governments to conclude that race is a predictive factor in whether a student will be discretionarily disciplined at school—even when controlling for poverty and other factors.¹²⁵

Therefore, in examining and implementing alternatives to its current ticketing practice, Bryan ISD should not turn to an increased reliance on exclusionary discipline, which has been proven to result in similar negative repercussions for students, schools and communities.

¹²¹ See, e.g., Russell Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 Urb. Rev. 317, 335 (2002), available at <http://www.indiana.edu/~safeschl/cod.pdf>; APA, *supra* note 86, at 41-44; John M. Wallace, Jr. et al., *Racial, Ethnic, and Gender Differences in School Discipline Among U.S. High School Students: 1991-2005*, 59 Negro Educ. Rev. 47, 52-58 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2678799/>.

¹²² Russell Skiba et al., *Race is Not Neutral: a National Investigation of African American and Latino Disproportionality in School Discipline* 40 Sch. Psychol. Rev. 85, 92-93 (2011), available at <http://www.indiana.edu/~atlantic/wp-content/uploads/2011/12/Skiba-et-al.-Race-is-not-neutral.pdf>.

¹²³ *Id.* at 95.

¹²⁴ *Unplanned Outcomes*, *supra* note 59, at 6.

¹²⁵ Appendix G at 40-46.

VI. REMEDIES

Complainants respectfully request that OCR require Bryan ISD to engage an independent expert consultant, approved by all parties, to develop and implement a plan that contains strategies, objectives and timelines to accomplish the following:

1. Revise the Memorandum of Understanding (“MOU”) between Bryan ISD and the Bryan Police Department regarding SROs to:
 - Include clear guidelines for the kind of school-based behavior that is properly handled by SROs, including a specification that ticketing should not be used to address minor misbehavior;
 - Require additional training for SROs, and corresponding training for school administrators; and
 - Require annual training for school administrators, teachers, staff and SROs on what types of school incidents warrant referral to SROs.
2. Establish a complaint process to report the misconduct of SROs or other officers involved in a school-related incident.
3. Collect and publicly report data on police/student contact, including the issuance of Class C misdemeanor tickets and school-related arrests. All data should be sortable by charge, disaggregated by race and disability status and cross-tabulated by gender.
4. Revise the Bryan Student Code of Conduct to:
 - Emphasize keeping students within the learning environment;
 - Establish a system of graduated consequences that minimize loss of classroom time; and
 - Limit police/student contact, suspension and expulsion to only the most serious offenses.
5. Solicit and employ the feedback of affected community members, including ticketed students and their families, in the process of revising the MOU, complaint process and Student Code of Conduct.
6. Conduct an annual comprehensive review and issue a report analyzing all data regarding SRO issued Class C misdemeanor tickets to ensure that a revised ticketing practice align with the revised MOU and Student Code of Conduct as well as any Resolution Agreement that results from this investigation.
7. Implement evidence-based practices, such as School-Wide Positive Behavior Supports, shown to properly address minor misbehavior while improving school safety and academic achievement: <http://www.pbis.org>.
8. Implement early intervention programs for students who receive multiple Class C citations and/or disciplinary referrals and who are at risk of being retained in grade or dropping out of school.

VII. CONCLUSION

Bryan ISD's current ticketing practice results in the ongoing, improper and harmful criminalization of the district's African-American students. As set forth in this complaint, this practice disproportionately affects African-American students, is not required by educational necessity and is in fact antithetical to the district's goal of providing a safe learning environment in which all students can thrive. For the foregoing reasons, there is a pressing need for OCR to review the district's Class C Misdemeanor ticketing practice and to remedy the district's violation of Title VI and its implementing regulations.

Respectfully submitted,

/s/ Damon T. Hewitt
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Dated: February 20, 2013

Enclosures

APPENDIX B

‘DEAR COLLEAGUE’ LETTER



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

December 21, 2018

Dear Colleague:

The purpose of this letter is to inform you that the Department of Justice and the Department of Education are withdrawing the statements of policy and guidance reflected in the following documents:

- Dear Colleague Letter on Nondiscriminatory Administration of School Discipline dated January 8, 2014; and
- Overview of the Supportive School Discipline Initiative dated January 8, 2014.

Additionally, the Department of Education is withdrawing the following related documents:

- *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, dated January 8, 2014;
- Appendix 1: *U.S. Department of Education* Directory of Federal School Climate and Discipline Resources, dated January 8, 2014;
- Appendix 2: Compendium of School Discipline Laws and Regulations for the 50 States, Washington D.C., and Puerto Rico, dated January 8, 2014; and
- School Discipline Guidance Package FAQs, dated January 8, 2014.

The Dear Colleague Letter on Nondiscriminatory Administration of Discipline (“Guidance”) discussed the legal framework that the Departments employ to analyze complaints of discrimination under Title IV of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. §§ 2000c *et seq.*, and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulations, 34 C.F.R. Part 100. Title IV authorizes the Attorney General in certain circumstances to institute a lawsuit against public school boards, colleges, and universities upon receiving a complaint

of discrimination. Title VI prohibits discrimination based on race, color, or national origin by recipients of Federal financial assistance. The Guidance presented and analyzed, under Titles IV and VI, a number of factual scenarios involving the application of school discipline, and indicated what conclusions the Departments might reach in each scenario.

On March 12, 2018, President Trump announced the formation of a Federal Commission on School Safety. President Trump directed the Commission to study and make recommendations regarding several issues, including whether the Guidance and associated documents should be rescinded. On December 18, 2018, the Commission recommended that the Departments rescind the Guidance and associated documents.

States and local school districts play the primary role in establishing educational policy, including how to handle specific instances of student misconduct and discipline, and in ensuring that classroom teachers have the support they need to implement appropriate discipline policies. States and local school districts must also comply with the antidiscrimination protections contained in federal law, including Title VI. The Departments have concluded that the Guidance and associated documents advance policy preferences and positions not required or contemplated by Title IV or Title VI.

Accordingly, the Department of Education and the Department of Justice have decided to withdraw and rescind the Guidance and associated documents. The Departments are firmly committed to vigorously enforcing civil rights protections on behalf of all students. The robust protections against race, color, and national origin discrimination guaranteed by the Constitution, Title IV, and Title VI remain unchanged, and continue to be vital for educational institutions in the United States.

This letter does not add requirements to applicable law and is not intended to, and does not, create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. If you have questions or are interested in commenting on this letter, please contact the Department of Education at ocr@ed.gov or 800-421-3481 (TDD: 800-877-8339); or the Department of Justice at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Sincerely,

/s/
Kenneth L. Marcus
Assistant Secretary for Civil Rights
U.S. Department of Education

/s/
Eric S. Dreiband
Assistant Attorney General
U.S. Department of Justice

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