

# Chapter 3

## Discipline: A Legal Perspective

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### **ABSTRACT**

*The concepts of discipline and law are linked together. Laws are often constructed to define what is considered acceptable conduct, and a form of discipline is often used to align unacceptable conduct to those laws. This is especially evident in the K-12 setting. Schools promote their brand of laws or “policies” to allow for an efficient education process with minimal disruption. However, when you are dealing with children who are not in full control of their impulses, disruptions are bound to occur. In the U.S., given the disproportionate sentencing and incarceration rates between whites and minorities, it can be reasonably deduced that the same phenomenon occurs within the K-12 school space as well. In consideration of these discrepancies, and U.S. constitutional concepts such as due process and equal protection are referenced. What exactly are they, and how do they come into play to correct these inequities? How do landmark cases argued in front of the U.S. Supreme Court citing these concepts help to frame what is considered acceptable discipline in the K-12 school space?*

### **K-12 SCHOOL DISCIPLINE: A LEGAL PERSPECTIVE**

This chapter explores theories of punishment and their relationship to school discipline. First, school discipline is placed in a legal context; the author traces legal history from the Magna Carta to 1776 to demonstrate how the idea of “Due Process” became etched into the fabric of the U.S. Constitution. Second, this chapter

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illustrates how a legal analysis of U.S. Constitutional provisions can be a mechanism for combating school discipline disparities. Specifically, Due Process and the Equal Protection Clauses of the United States Constitution can be instruments of social change to mitigate school discipline disparities helping to shape the current K-12 school discipline landscape and how they can alter school policies and eliminate practices responsible for school discipline disparities. The following section examines two essential theories of punishment related to school discipline.

## **THEORIES OF PUNISHMENT**

There are multiple purposes used to justify the use of punishment (Young, 1983). The main functions of punishment are cited below. They include:

1. Education. The teaching of the general public what is acceptable (or unacceptable) behavior by openly punishing an offender for their wrongdoings.
2. General Deterrence. The effect of a particular punishment on the public to deter others from committing the same or similar offense.
3. Specific Deterrence. The effect of a particular punishment on the individual offender to deter future similar (or the same) offenses.
4. Rehabilitation. The reformation of an offender's behavior through personal development to prevent the offender from committing future offensive acts.
5. Retribution. The punishment of a wrongdoer for committing the offense, i.e., "an eye for an eye."

There are also two prevailing theories regarding punishment in the U.S. The first is the retributive theory, and the other is the utilitarian theory (Young, 1983). Although these theories of punishment are mainly from the viewpoint of criminality, they form the basis for punishment in schools across the United States.

### **Retributive Theory**

The retributive theory's main concern is that individuals are punished for their illegal acts. It is often considered backward-looking, it fails to consider the future ramifications of the punishment, and it only respects the past transgressions of the individual offender (Young, 1983). Retributive theory gives very little (if any) consideration to the reduction of similar offenses committed in the future, nor does it consider whether the public has been educated through the punishment levied on the offender. Retributive theory's main preoccupation is with the offense committed and the sentence. The penalty should be in proportion to the offense. Retribution theory is

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