

Young children's perceptions of due process in schools' disciplinary procedures

Lotem Perry-Hazan* and Natali Lambrozo

Department of Leadership and Policy in Education, Faculty of Education, University of Haifa, Israel

This study explored how children of lower primary school grades perceive due process in schools' disciplinary procedures. While many studies have explored how adolescents perceive school discipline, only a few studies have examined the perceptions of primary school pupils, and no study has investigated lower primary school grades. The qualitative research design was based on semi-structured interviews and focus groups with 70 children, aged 7 to 10, recruited from 19 public schools in Israel. In addition, we recruited a children's advisory group that participated in the research process. The findings revealed that while many of the study participants had internalised a formalistic approach to due process (i.e. meting out uniform punishments in similar cases, in accordance with a closed system of rules), others objected to this approach, providing various reasons for their concerns. Participants' criticisms of a formalistic due process policy included lack of compassion and lack of understanding of pupils' social, academic or other difficulties, disregard of pupils' voice, the complex task of discerning the truth, apprehension over a uniform punitive system and low efficacy of punishments. We argue that the right to due process in schools lies at the intersection of legal and educational narratives. Even young children are able to recognise the inherent incongruity of these narratives, as they constitute a significant part of their daily routine in school. We also argue that this incongruity engenders a distorted due process, thus imparting faulty lessons about the right to due process and its justifications.

Keywords: children's rights; due process; primary school; school discipline

Introduction

On one hand he is right, on the other hand they are right, and on the third hand no one is right.
(Dana, 7-year-old girl, School 6)

This quotation from a 7-year-old girl who analysed a vignette of a conflict between primary school children reflects the complexities of fair decision-making in schools' disciplinary dilemmas. This study explored how children of lower primary school grades perceive due process in schools' disciplinary procedures. While many studies have explored how adolescents perceive school discipline, only a few studies have examined the perceptions of primary school pupils, and no study has focused on pupils of lower primary school grades.

*Corresponding author. Department of Leadership and Policy in Education, Faculty of Education, University of Haifa, Abba Khoushy Ave 199, Haifa 3498838, Israel. E-mail: lotem.perry@edu.haifa.ac.il.

The next section of this article examines the contours of the right to due process in school and the challenges that are embedded in this right. The third section reviews studies examining pupils' perceptions of school discipline, and seeks to identify common concerns and perspectives. The fourth section focuses on the interconnections between school discipline and children's rights consciousness. The fifth section details the qualitative research design, which was based on semi-structured interviews and focus groups with 70 child participants, aged 7 to 10, recruited from 19 public schools in Israel. In addition, we recruited a children's advisory group that participated in the research process.

Further sections present and discuss the findings. While many of the participants in our study have internalised the formalistic approach to due process (i.e. meting out uniform punishments in similar cases, in accordance with a closed system of rules), others expressed their objection to such an approach and provided various reasons for their concerns. The criticism voiced by the participants included lack of compassion and lack of understanding of pupils' social, academic or other difficulties, disregard of children's voice, the complexities of discerning the truth, apprehension over a uniform punitive system and low efficacy of punishments. We argue that the right to due process lies at the intersection of legal and educational narratives. Even young children are able to recognise the inherent incongruity of these narratives, as they constitute a significant part of their daily routine in school. We also argue that this incongruity engenders a distorted due process, which imparts faulty lessons about the right to due process and its justifications.

The right to due process in schools' disciplinary procedures

Due process in schools: Definition and regulation in different countries

The right to due process in schools incorporates both *substantial aspects*, relating to the fairness of the disciplinary rules and decisions, and *procedural aspects*, relating to the fairness of the disciplinary procedures (Fries & DeMitchell, 2007; Brown, 2009; Black, 2015). Substantial aspects of due process in schools may include equality, proportionality, rationality and consideration of intent, culpability and harm (Rokeach & Denvir, 2006; Black, 2015). Procedural aspects may include established rules, notice, the right to be heard, disclosure of pertinent records and representation by parents or others (Rokeach & Denvir, 2006; UN Committee on the Rights of the Child, 2009, para. 65, 67, 113).

For the current article, we adopted the term *due process*, which is anchored in the US Constitution, as this term is widely used in Israeli case law (Barak, 2014, pp. 868–869). In Israel, the right to due process is considered part of the constitutional right to human dignity and is applied to criminal, civil and administrative proceedings (p. 863). Accordingly, the term 'due process' appears 25 times in the Israeli Ministry of Education's school discipline regulations (2015).

Although this term is less widely used in Europe, the Council of Europe's (2010) guidelines on child-friendly justice require the implementation of children's right to due process in criminal and administrative proceedings (Articles I[1]–[2], II[c], III [e2]). These guidelines elaborate various aspects of due process including, *inter alia*,

participation, protection from discrimination, legality, proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal (Article III[a][d][e2]). The guidelines reflect a cross-fertilisation between the international children's rights standards and the case law of the European Court of Human Rights with regard to the legal status of children (Liefwaard, 2016).

The justifications for due process in criminal law are grounded in the importance of defendants' rights to protection from the sovereign's potentially arbitrary exertion of power (Dancig-Rosenberg & Gal, 2013). Additionally, the right to due process is embedded in the assumption that perceived procedural fairness enhances the perceived legitimacy of legal institutions as well as citizens' commitment to legal rules (Zimmerman & Tyler, 2010). Indeed, several studies have shown that when pupils perceive school discipline as unfair, they are more likely to engage in disruptive behaviour (Arum, 2003; Way, 2011; Free, 2014) and are less likely to trust their country's government and most people in general (Way, 2011).

Various countries have adopted regulatory schemes that seek to assure due process in school disciplinary procedures. In England, under section 89(4) of the Education and Inspections Act (2006), maintained schools should have a behaviour policy comprising rules and provision for disciplinary penalties. The imposition of the penalty should be 'reasonable' (Section 90(3)); namely, it should be proportional to the circumstances of the case and take into account personal factors, particularly the pupil's age, special educational needs, disability and religious requirements (Section 90(6)). Fixed-period or permanent exclusions are regulated by a detailed statutory guide (Department of Education, 2017), set according to the Education Act (2002, 2011) and the School Discipline (Pupil Exclusions and Reviews) (England) Regulations (2012), which mandate various substantial and procedural obligations.

In the USA, the Supreme Court determined that pupils are entitled to be notified of the charges against them, granted an opportunity to refute the charges and provided with an explanation of the evidence (*Goss v. Lopez*, 1975; see Brown, 2009; Black, 2015). Meyer and Bratge (2011), in their analysis of US Supreme Court rulings on pupil-administration conflict, noted that the *Goss* decision contributed to the formalisation of school disciplinary policies and produced complex procedural regulations that pervade the daily administrative practices in schools. Many states and schools in the USA have adopted such practices as part of zero-tolerance policies, which include strict rules imposing mandatory consequences for certain acts, irrespective of the context (Kupchik, 2010).

In Israel, the Ministry of Education (2015) requires schools to adopt a behaviour policy (p. 33). The regulations set mandatory consequences for certain behaviours and suggest discretionary responses to other behaviours (pp. 39–78). They require the responses to be uniform and consistent, but also adapted to the pupil's age and ability to function, proportional and reasonable (pp. 34–35). Detailed procedural proceedings are required by law in cases of permanent exclusions (Pupil's Rights Act, 2000, Articles 6–7) and by regulations, in cases of fixed-period exclusions (Ministry of Education, 2015, pp. 36–38). Other punishments are not required to follow detailed procedures, but they need to accommodate pupils' right to due process (p.

13). The regulations do not define the term ‘due process’ but, as noted, they highlight the centrality of due process by repeating this term 25 times.

The United Nations Convention on the Rights of the Child (1989, UNCRC) determined in Article 28(2) that ‘[s]tates Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention’. The UN Committee on the Rights of the Child (2001, para. 8) noted in regard to Article 28(2) that ‘[c]hildren do not lose their human rights by virtue of passing through the school gates’, and that education must be provided ‘in a way that respects the strict limits on discipline reflected in Article 28(2) and promotes non-violence in school’. However, the committee did not refer to behaviour policies and procedural requirements. It determined that ‘[t]he participation of children in school life, the creation of school communities and pupil councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realisation of rights’. This vision of the committee appears to reject strict punitive policies, preferring alternative approaches. In a 2009 general comment on the right to be heard, the committee noted that in the course of administrative proceedings in school discipline, such as suspensions and expulsions, children should not only be heard but also be entitled to other procedural rights, such as notice, disclosure and representation (UN Committee on the Rights of the Child, 2009, para. 65, 67, 113). UNCRC provisions relevant to the right to due process include the prohibition on discrimination (Article 2), the right to participate in decision-making (Article 12[1]), the right to be heard in administrative proceedings (Article 12[2]), the right to be protected from violence and abuse (Article 19) and the right to education that is directed towards the development of the child’s personality, talents and mental and physical abilities to their fullest potential (Article 29[1][a]). In addition, the UNCRC determines that ‘[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’ (Article 3). As we will elaborate below, this provision has implications on the tension between formalistic and substantial equality in the implementation of school rules.

Due process in schools: Points of tension and challenges

The implementation of the right to due process in school discipline tends to generate several points of tension and challenges. First, due process is required when school discipline is based on punitive approaches. Such approaches have been criticised for being ineffective—paradoxically increasing misbehaviour, inhibiting the development of responsibility in pupils and distracting them from their schoolwork (Lewis, 2001; Lewis *et al.*, 2005; Way, 2011; Kupchik & Catlaw, 2015; Payne, 2015). Implementation of punitive school discipline policy has also been criticised for discriminating against minority and disempowered pupils (e.g. Kinsler, 2011; Skiba *et al.*, 2011). Another type of condemnation concerned the parallels between school discipline and the criminal justice system, which can produce a criminalised self and social identity (Kupchik, 2010; Kayama *et al.*, 2015). These contentions are related to the extensive

use of criminal justice terminology (Kayama *et al.*, 2015) and of school security measures (Perry-Hazan & Birnhack, 2016, 2018; Birnhack *et al.*, 2018).

Second, due process in schools implies complex tensions between two different kinds of equality: a formalistic equality that is embedded in uniform responses to similar disciplinary incidents and a substantial equality that entails granting attention to the unique circumstances of each case and each child (Fries & DeMitchell, 2007; Brown, 2009). Black (2015) noted in this regard that substantive due process is violated when either individuals are similarly situated in relevant aspects, but treated differently, or when they are dissimilar in relevant aspects, but treated similarly. Teachers face daily dilemmas due to this complex dissonance. Fries and DeMitchell (2007) found that teachers struggled to find adequate balance between the strict school policies and various factors they viewed as imperative, including context, intent and history. This is a 'paradox of fairness', Fries and DeMitchell (2007) noted: treating pupils fairly by treating them the same or treating them fairly by considering the context of each case (p. 228). Such a paradox may also be analysed as a potential conflict between pupils' right to non-discrimination (UNCRC, Article 2) and pupils' best interests (UNCRC, Article 3).

Third, due process in schools may lead to an excessive use of the human rights discourse by individual children who may undermine the rights of other children enrolled in their school. In their study on American pupils' rights jurisprudence, Meyer and Bratge (2011) criticised the language of rights for being the language of no compromise, of winner and losers. They argued that the institutional and legal traditions prevailing in the US legal and political philosophy comprise a strong mitigating factor against the construction of reasonable, accommodative conflict-resolution practices in public education.

Pupils' perceptions of school discipline

Scholars examined pupils' perceptions of school discipline in various countries, including the UK (Osler, 2000; McCluskey, 2008; McCluskey *et al.*, 2013), the USA (Kupchik & Ellis, 2008; Bracy, 2011; Preiss *et al.*, 2016), Canada (Raby & Domitrek, 2007; Raby, 2008), Sweden (Thornberg, 2008), Finland (Honkasilta *et al.*, 2016) and South Africa (Geldenhuis & Doubell, 2011).

Most of these studies examined the perceptions of secondary school pupils (Osler, 2000; Raby & Domitrek, 2007; Kupchik & Ellis, 2008; McCluskey, 2008; Raby, 2008; Bracy, 2011; Geldenhuis & Doubell, 2011; McCluskey *et al.*, 2013; Honkasilta *et al.*, 2016; Preiss *et al.*, 2016). Several studies have examined the perceptions of primary school pupils (Osler, 2000; Thornberg, 2008; McCluskey *et al.*, 2013; Honkasilta *et al.*, 2016), but only a few studies included data on the perceptions of pupils enrolled in the lower primary grades (Thornberg, 2008; McCluskey *et al.*, 2013). None of these studies focused their conclusions on this younger age group.

Many of the cited studies showed that pupils perceive punitive school discipline based on sanctions and rewards as unfair (McCluskey, 2008; Bracy, 2011; McCluskey *et al.*, 2013; Honkasilta *et al.*, 2016). Several studies measured pupils' perceptions of school discipline fairness. Preiss *et al.* (2016) asked American pupils to respond to questions that mirrored the rights outlined in the *Goss v. Lopez* decision,

indicating whether they believe they are entitled to various protections under specific disciplinary circumstances. The quantitative findings showed that pupils who perceive they are entitled to more due process rights than their peers believe that school discipline is less fair. A related finding, which may elucidate the previous one, was that moderate levels of school rule strictness were associated with pupils' perceptions of greater fairness. Another quantitative study that measured pupils' perceptions of school rule fairness showed that African-American pupils perceive less fairness of school rules and their enforcement than do White pupils (Kupchik & Ellis, 2008). The findings further indicated that participation in extracurricular activities and high grades were associated with a relatively higher degree of perceived fairness.

Studies exploring pupils' perceptions of school discipline revealed that pupils were particularly concerned about inconsistent and discriminatory application of the rules (Raby & Domitrek, 2007; Thornberg, 2008; Bracy, 2011; McCluskey *et al.*, 2013). Yet, objections to applying school rules inconsistently were at times accompanied by the converse view, that the context of a rule infraction should be taken into account (Raby & Domitrek, 2007).

Pupils also raised concerns with regard to their voice and participation in school discipline. They complained that educators do not listen to them sensitively enough to understand the events under discussion (McCluskey *et al.*, 2013), and that their minds are made up before they hear the pupil's perspective (Bracy, 2011). Similarly, Raby (2008) found that pupils had only little expectation that they would be able to influence school rules beyond the basic parameters of following or breaking the rules. The pupil participants in Osler's (2000) study desired high standards of justice in the administration of discipline (for example, a thorough investigation before judgements are made and punishments are given), and offered mechanisms for pupil consultation and representation in school discipline.

Another prominent pupil criticism regarding school discipline was its ineffectiveness, namely its inability to deter pupils who constantly disobey the rules (McCluskey, 2008; Geldenhuys & Doubell, 2011). Honkasilta *et al.* (2016), interviewing attention deficit hyperactivity disorder (ADHD)-diagnosed Finnish pupils, found that pupil resistance was constructed as a justified reaction to their negative evaluation of teacher classroom management strategies as disproportionate, traumatising, neglectful or unfair. The authors termed this phenomenon the 'vicious cycle of coercive classroom management strategies' (p. 100).

Other studies explored distinctions that pupils make between different kinds of school rules. Thornberg (2008) found that primary school pupils perceived *relational rules* (e.g. do not bully others, do not tease others, be nice to each other) as the most important in the school. Many pupils also valued *protecting rules* (e.g. do not run in the corridor, be careful when you play on ice) and *structuring rules* (e.g. no talking during deskwork, raise your hand if you want to speak, be careful with school property) as important. In contrast, *etiquette rules* (e.g. no caps in the classroom, no chewing gum) were valued as the least important, or even unnecessary, by the pupils. Similarly, Raby and Domitrek (2007) found that pupils were more committed to the 'big' rules, such as no drugs and no weapons, while they viewed more 'minor' rules as impractical. In addition, they found that pupils were more critical towards rules

which were seen to be in the interests of the administration, such as dress codes, than rules seen to be in their own interests, such as rules against bullying.

School discipline and rights consciousness

Several scholars indicated that school discipline conveys powerful socialisation messages relevant to children's social and identity development and their future place in society (Kayama *et al.*, 2015; Kupchik & Catlaw, 2015). Some of these messages impact the development of children's *rights consciousness*—the process that motivates individuals to define problems and obstacles in terms of rights (e.g. Engel & Munger, 2003; Merry, 2003). Several studies have discussed the crucial role of schools' organisational practices in shaping children's rights consciousness (e.g. Brown, 2009; Covell, 2010; Almog & Perry-Hazan, 2011; Perry-Hazan, 2015; Birnhack *et al.*, 2018).

A proximate term, offered by Tyler *et al.* (2014), is *legal socialisation*—the developmental process by which children, adolescents and young adults internalise the norms of the law through their direct and vicarious interactions with law and legal actors (p. 757). Tyler *et al.*'s study examined the influence of police-initiated street stops on the legal socialisation of young men and showed that the respondents' perceptions as to the fair and lawful use of police authority shaped the impact of stops on their general judgements about police legitimacy. They noted that '[e]ach of these police–citizen contacts is potentially a “teachable moment” about policing for both citizens and police' (p. 752). Similarly, Kupchik and Catlaw (2015) argued that strict school discipline teaches pupils a lesson about their powerlessness relative to governing bodies, thereby socialising them into cynical and disengaged citizens.

Research design

The current study explored how children of lower primary school grades in Israel perceive the right to due process in schools' disciplinary procedures. Most of the studies examining pupils' perceptions of school discipline have focused on secondary schools. Some studies examined the perceptions of primary school pupils, but no study as yet has focused on pupils of lower primary school grades, children who are taking the first steps in their compulsory schooling career.

The research was based on qualitative methods. The participants were 40 girls and 30 boys ($N = 70$), aged 7 to 10, recruited from 19 Jewish secular public primary schools in Israel. The participants comprised second, third and fourth graders. Following a pilot focus group, we chose not to incorporate first graders in the study sample, as they had yet to become familiar with their schools' disciplinary practices.

The schools were located in diverse municipalities, which differed in their socio-economic status. The research tools consisted of 12 individual semi-structured interviews and 18 focus groups, with each group comprising between two and five children. We conducted individual interviews as well as focus groups, as each methodology has its own strengths and weaknesses in relation to young research participants. Focus groups are less intimidating, and more likely to facilitate interaction among the group participants, revealing aspects of participants' understandings

inductively (Cohen *et al.*, 2011; Liamputtong, 2011). On the other hand, individual interviews can have an important role, because for sensitive topics children may be more comfortable in one-to-one conversations (Cohen *et al.*, 2011).

During the individual and group interviews, participants were asked to describe the disciplinary procedures in their schools and to share their opinions about these rules. The participants were also asked to analyse three short textual vignettes relating to the challenges characterising a formalistic approach to due process in schools' disciplinary procedures. *Vignette 1* portrayed two boys who had a fight and received the same punishment, in accordance with school rules regulating violent behaviour. One of them was clearly more blameworthy, as he insulted the other child; he was also the first of the two to use physical violence. The teacher on duty during the recess witnessed the incident, and the principal determined the punishment without hearing the pupils directly.

Vignette 2 portrayed two children who disrupted the classroom several times: one launched paper airplanes and the other shouted that she did not understand the teacher's explanations. After several warnings, the teacher sent the child who threw paper airplanes to the principal and informed the child that she would have a detention during recess, in accordance with school rules regulating class disruption. However, the teacher did not punish the girl who shouted. *Vignette 3* portrayed an angry child who kicked a ball and broke a window after other children refused to let him participate in their ball game. The boy was suspended from playing ball at school for 1 week, in accordance with school rules regulating irresponsible behaviour during ball games.

The interviews were conducted between 2015 and 2016 in the children's homes, in their schools or in after-school facilities. Individual interviews lasted around 20 minutes and group interviews lasted between 40 minutes and an hour, depending on the number of participants. We recruited parents and children through personal contacts or through the schools. The procedures and research tools were approved by the Institutional Review Board of the University of Haifa Faculty of Education (approval no. 230/15) and by the Israeli Ministry of Education (approval no. 8906).

All interviews were recorded and transcribed. We used Dedoose software to analyse the data. For the initial procedure, we coded all the issues that we identified in the interview transcriptions. Then, we organised the various issues in categories that differentiated between *justifications* and *criticisms* of a formalistic approach to due process (i.e. meting out uniform punishments in similar cases, in accordance with a closed system of rules).

In this article, we identified participants by pseudonyms indicating their gender, along with the school's assigned serial number (1–19). Individual interviews are identified by the letter I and a serial number (1–12). Focus groups are identified by the letter F and a serial number (1–18).

Additionally, a children's research advisory group (CRAG) was established, comprising three children (two girls, one boy). One girl and one boy were 8 years old when the research began, and one girl was 7 years old. The children lived in the same town and knew each other, but they studied in two different schools. We started the research process with more children but only three participated in all five meetings, which were scattered along 2 years.

The methodology of our work with the CRAG followed a rights-based approach (see Lundy & McEvoy, 2011; Lundy *et al.*, 2011). All meetings were conducted in familiar places out of school, and we guaranteed informal, participatory and voluntary engagement (Lundy *et al.*, 2011, pp. 719, 733). Each meeting with the CRAG was devoted to a different stage of the research. The first meeting included both capacity-building and decisions on the research questions and the research population. We discussed the process of conducting research and the role of the CRAG. We also discussed the fairness of the disciplinary procedures in the children's schools and through this discussion explained the contours of the right to due process. It should be noted that the terms 'fair' and 'due' are both translated to the Hebrew word *hoggen*, which is widely used by children. During the second meeting, we designed the research tools: the interview guide and the vignettes. The third meeting focused on shaping the coding tree. In the fourth and fifth meetings, we discussed the data analysis and the conclusions. The fourth meeting also included preparation for disseminating the research at a university conference. The two female members of the CRAG attended the conference and presented part of their work. The boy could not attend the conference, but he took part in preparing the materials. Each meeting included a long introduction in which we reminded the children what had transpired in previous meetings and highlighted their contribution.

The most significant contribution of the CRAG to the study was in the process of shaping the research questions and tools. During the final meetings, the children tended to constantly shift from the general discussion on the interviewees' perceptions to their personal experiences. While this behaviour helped confirm the relevance of the findings, we learned that we should invest more thought in how to design more effective methods to build the capacity of young children to engage in the analysis of the findings.

Findings

Rules regulating children's behaviour in school

The findings indicated that all the participants were familiar with the rules regulating discipline in their schools and could recite these rules easily. The participants mentioned various kinds of rules. Some of these concerned violence or vandalism. The participants were very specific about these rules, and many of them referred to 'hitting', 'scratching', 'biting', 'pushing' and 'cursing'. Other rules referred to classroom discipline, including quiet learning and homework preparation. The participants also noted rules relating to behaviour during recess, including prohibitions on running in the halls or climbing fences. Additionally, the participants described rules concerning pupil appearance, which required a school uniform and gathered hair, and prohibited nail polish, flip-flops and long earrings. In a very few cases, the participants reported rules mandating positive behaviour towards others, such as being 'nice' and 'respectful'.

The rules that the participants described typically implemented a 'carrot-and-stick' policy to punish children who break the rules and reward children who abide by them. Many schools use tangible accessories to signify the children's behaviour. Examples included:

- Michael (School 3, I3): *We have three kinds of cards – we have green which is good, yellow which is not so good, and red which is not good. . . . If you have three green cards, you're a green child.*
- Joseph (School 3, I4): *If you have five red cards, you're suspended from school.*
- Leah (School 5, F12): *We have beads. You receive 10 beads when the week starts, and then if you do something bad, they take away a bead from you. . . . If it's homework, they take two beads from you. . . . If one has fewer than five beads, they give a letter [to the parents]. And there are bonuses, too. If you behave really well, they give you a bead in another colour. . . . and you can go help the teacher.*

Support for a formalistic due process

Many participants justified a formalistic approach to due process in school. Some of the participants' justifications were based on formal equality in the application of the rules. For example:

- Rachel (School 9, F6): *So what if it's hard for him? He should be punished sometimes and not only me.*
- Anna (School 14, F14): *It's not fair that she is treated better than we are and gets most of the consideration [when she breaks school's rules].*

Some children perceived loose enforcement of the school's disciplinary rules as detrimental to children who behave well, and disruptive of their learning:

- Aaron (School 16, I9): *The parents pay [school fees] to suspend children who disturb [other children].*
- Sharon (School 13, F13): *There is a child in our school who keeps playing soccer when he should be in class. . . . and then he comes in during the lesson and disturbs everybody.*

Support for a formalistic due process was repeated in the children's responses to the vignettes we presented. Responding to Vignette 1, many participants insisted that both boys who hit each other should be punished equally, even if one of them was clearly more blameworthy, as he insulted the other child and was the first to use physical violence. In Vignette 2, participants who supported a formalistic due process said that both girls should receive the same punishment because children who do not understand in class should raise their hand and not shout, and because it is not fair for teachers to take learning difficulties into consideration when enforcing the school's disciplinary code. Only a few participants supported formalistic due process in Vignette 3, which described an angry child who kicked a ball and broke a window after other children refused to let him participate in their ball game. Only five participants maintained that he should be punished, saying that the other children should be suspended from playing in the schoolyard as well, though no school rule obligates children in the schoolyard to include other children in their activity. One girl out of the entire sample thought that the children's decision not to let a classmate participate in their game may be justified and that he should be punished for kicking the ball and breaking the window.

Objections to a formalistic due process

Many excerpts of the participants' interviews reflected objections to a formalistic approach to due process in the school. This subsection analyses the participants' concerns.

School discipline should consider special circumstances and enable compassion. Many of the participants supported disciplinary policies that would take into account the specific circumstances of each pupil and of each case. They also emphasised that disciplinary policies should allow for compassion and understanding of social, academic or other difficulties. Examples of such arguments in the children's appraisal of their own schools' disciplinary policies included:

- Dana (School 6, F2): *There's one thing that we can and should understand in regard to Adam. I'm not sure that you'll understand but you can. He doesn't have many friends, maybe one friend. It can be that it's difficult for him. . . He doesn't have any support aside from his parents. . . On one hand he's right, and on the other hand they're right, and on the third hand no one is right.*
- Abigail (School 4, F2): *Since he has no friends, he needs the teachers' attention. . . He should be punished but not like everyone else.*
- Libby (School 11, F8): *When Rebecca behaves badly, it's fair enough [that she be treated differently], because she told me that her mother beats her, so. . . [teachers] should support her and treat her differently.*

The participants also raised similar objections when they discussed the vignettes. Many participants reacted to the vignettes by criticising uniform disciplinary responses, suggesting that the nuances of fairness depend on the circumstances. Regarding Vignette 1, most of the participants expressed empathy with the insulted child. '*Half of his self-confidence was reduced*', said one of the girls (Maya, School 5, F12). Many children believed that although both children had hit each other, emotional injury should be taken into account and therefore lessen the severity of the punishment. Regarding Vignette 2, several participants differentiated between disruptions reflecting disrespect to adults and disruptions stemming from motivation to understand the lesson. Regarding Vignette 3, many participants denounced the children who did not let a classmate participate in a ball game and called attention to the child's feelings of 'sadness', 'anger' and 'frustration'. '*If you're not popular, your life is ruined!*', noted Naomi (School 14, I7).

Disregard of pupils' voice. Some participants noted that their voice was not heard during disciplinary procedures and lamented that they were punished without an opportunity to offer their perspective. Examples included:

- Sarah (School 13, F11): *It's not fair that Daniel hits me and then tells [the principal] that I started it, and then I'm the one suspended for 3 days. . . He always lies. . . My side wasn't heard.*
- Jacob (School 8, F15): *I was punished. . . because someone. . . blamed me. . . and the teacher immediately blamed me.*

The importance of hearing the pupils was also discussed in regard to Vignette 1, which described a situation that represents the need to understand the pupils' motives before making punitive decisions. Most participants said that the principal should have heard the pupils' version of the incident:

- Emma (School 1, F2): *The principals should have asked how the fight started.*
 Tamar (School 4, F2): *If [the principal] didn't have a talk [with the children] it's unprofessional.*
 Ben (School 2, I2): *[The principal] should have checked [to reveal] the real story.*
 Judith (School 9, F6): *[The principal] should have had a talk with the children and find out what happened, even if the teacher who was on duty told her [what she saw].*
 Danielle (School 10, F7): *It's not good, because they immediately received the punishment without saying their opinions, and what they think they should do to improve [their behaviour]. . . [the principal] should have taken them [for a talk] and each one of them would say his opinion and what he has done, and then their opinions should be compared and [the principal] should decide in the middle [of both children's opinions].*

In School 14 (F14), two girls assumed that cameras were installed in the schoolyard and argued whether the principal should have heard the pupils or not, even though she has access to the footage:

- Lily: *I think that [the principal] should have discussed it with the children because she doesn't know the case.*
 Anna: *But she saw it.*
 Lily: *But she wasn't there.*
 Anna: *But there are cameras.*
 Lily: *But she wasn't there. . . First of all, she should have discussed it with the children, and then she would have known what really happened, and she could show them what she saw in the cameras, and then they would have explained the truth.*

The need for the pupils' voice to be heard was also apparent in the participants' suggestions on how to improve school discipline procedures. Among their suggestions were to have more discussions with children regarding the motives behind their behaviour, and to have a role for older pupils in managing school discipline in the lower grades.

Participants expressed their related concern that when educators do not hear the perspectives of all the pupils involved, there is a difficulty in discerning the truth. For instance:

- Nathan (School 1, F1): *[Teachers rely only] on what they saw.*
 Julia (School 10, F7): *Ari ran wild in the class, and he was suspended. . . Children bullied him. . . [The teacher] didn't understand, because no one told her.*
 Ruth (School 11, F8): *[Adults] should believe us more. In our class, many children hit other children and the teacher believes one child.*

These comments indicate that due process requires a thorough investigation of the 'truth', which includes hearing the perspectives of all the pupils involved, in order to reveal fabrications and injustice. Similarly, some of the participants said that they could not respond to the vignettes without knowing more details. '*We don't know how the story began*', said one of the girls with regard to Vignette 1 (Dana, School 6, F2). Another girl said that she did not have enough details regarding the girl who shouted in the middle of the lesson in Vignette 2: '*Maybe she has ADHD. . . you don't know what she has*' (Hanna, School 8, F4).

Apprehension over a uniform punitive system. Another objection to a formalistic approach to due process concerned the children's distress over a uniform punitive system, which sanctions both major and minor rule infractions. For example, one girl said that the punitive policy in her school makes her feel constantly '*worried and frightened, because it's scary. . . If [the teacher] reproaches you because you didn't bring equipment, then you're sad*' (Judith, School 9, F6). Another girl said in this regard: '*Now, I'm thinking about my principal, and I'm afraid. Whenever I think about her, it's scary*' (Lily, School 14, F14).

Some of the participants said that punishments are frightening, especially for children who are used to respecting school rules:

- Karin (School 5, F12): *I'm afraid [to be punished]. It's scary. I've hardly ever been punished.*
- Rose (School 5, F12): *I've never been punished. . . I was so frightened that today, at the end of recess, I started sweeping the classroom instead of those who were on duty [and didn't do their work].*
- Anna (School 14, F14): *I've never been punished and. . . It seems scary. . . It feels like a little pain in the heart. It's like you hate yourself in this moment.*
- Shira (School 18, F17): *I'm afraid to be punished. Sometimes the teacher tells someone to be quiet, and I'm seating next to him, and I'm scared.*

The participants also mentioned that they are fearful of their parents' reaction:

- Sarah (School 13, F11): *I was never punished because I haven't done anything bad, and when someone is punished. . . then [the teachers] call the mother, and I'm afraid that they'll call my mom. . . she can say: 'one month without friends or TV or mobile phone' and the phone is my life, so I don't know. I'm afraid.*
- Sharon (School 13, F11): *I'm afraid [to be punished] because my parents would be angry. For example, I was extremely afraid this week [to be punished] because my parents went to London, and I was afraid that if [the teachers] would call my parents. . . and tell them that I did something bad, then they would be angry at me instead of being happy to see me when they return.*
- David (School 18, F16): *I'm afraid to be suspended because then my parents would shout at me and take my mobile phone for a week. . . my mother doesn't ever compromise.*

Low efficacy of punishments. The participants also referred to the low efficacy of punishments that do not manage to improve the behaviour of children who repeatedly

commit disciplinary infractions. The participants criticised the ineffectiveness of punishments when we asked them about the most severe punishment in their schools. Almost all of them referred to suspension, and many said that after being suspended, children return to school and continue to break the rules.

Some examples:

Jasmine (School 10, F7): *If they did something severe, they are sent home, and then they can do whatever they want and not think about what they did... and sometimes they return and do exactly the same thing.*

Danielle (School 10, F7): *They think that it's a holiday... and it's fun because they don't have to learn.*

Hanna (School 8, F4): *When they get back [from suspension] they have more strength to hit [other children]... It doesn't help.*

Ron (School 5, F12): *I've received lots of punishments. It's fun. When you're suspended, you can go home, play, and watch TV.*

Discussion

This study explored how children of lower primary school grades in Israel perceive the right to due process in schools' disciplinary procedures. The findings indicated that all participants were familiar with the rules regulating discipline in their schools. Most of the rules that the participants mentioned concerned prohibitions on violence, vandalism, class disruptions, irresponsible behaviour during school breaks and requirements regarding pupils' appearance. In a very few cases, participants mentioned a school requirement to engage in positive behaviour with others. The rules that the participants described revealed a punitive 'carrot-and-stick' policy to punish children who break the rules and reward children who abide by them. None of the examined schools implemented an alternative disciplinary policy.

Children's perceptions of due process in schools' disciplinary procedures varied widely. The analysis of the findings differentiated between justifications and criticisms of a due process based on a formalistic approach (i.e. meting out uniform punishments in similar cases, in accordance with a closed system of rules). This section summarises the main findings and discusses their implications.

Many participants defended a formalistic due process and argued that there should be fixed punishments for categories of offence (i.e. violence, class disruption, vandalism) defined in the school's code of conduct. Some of the participants' justifications were based on formal equality in the application of the rules, while others lamented the harm incurred by children who behave well and have their learning disrupted. We assumed that children in the lower primary school grades, still far from their adolescent rebellion, would tend to normalise their school's disciplinary rules. Normalisation is expected when practices become part of the school's 'habitus' (Bourdieu, 1990, pp. 55, 64). Bourdieu argued in this regard that past experiences shape perceptions, thoughts and actions, and thus ensure their active presence. Nonetheless, support for a formalistic approach to due process does not necessarily stem from normalisation. Many studies exploring children's perceptions of school discipline

have revealed that children are concerned about inconsistent and discriminatory application of school rules (Raby & Domitrek, 2007; Thornberg, 2008; Bracy, 2011; McCluskey *et al.*, 2013). Hence, children's support of a formalistic approach to due process may derive from their distrust of educators applying the rules in a fair manner.

Many other participants objected to a formalistic approach to due process in school disciplinary procedures, providing various reasons for their concerns. Some participants supported disciplinary policies that would make allowances for the specific circumstances of each child and of each case, and enable compassion and understanding of social, academic or other pupil difficulties. In other words, these participants did not define differential treatment as discrimination (see UNCRC, Article 2) when finding such treatment as morally justified. Their perceptions reflect a substantial equality (cf. Stevens, 2009). Its preference over formalistic equality decentralises school discipline and provides teachers with expanded authority to determine interventions subject to the context (Goodman, 2006) and in the best interests of the children involved (UNCRC, Article 3). Our findings indicated that many of the participants were trusting of their teachers' discretion.

Other concerns noted by our participants were related to the disregard of pupils' voice during disciplinary procedures. Some participants lamented that they are disciplined without the opportunity to provide their own perspective, and most participants criticised the school principal of Vignette 1, who did not provide children with an opportunity to be heard and explain their motives. The need for the pupils' voice to be heard was also prominent in the participants' suggestions on how to improve school disciplinary procedures. A related concern reflected the difficulty of discerning the truth in the course of disciplinary procedures. The participants noted that a thorough investigation of the truth should include hearing the perspectives of all pupils involved.

A similar connection between a fair investigation of disciplinary events and children's voice has been reported in other studies exploring children's perceptions of school discipline (Osler, 2000; Bracy, 2011; McCluskey *et al.*, 2013). Children's rights to participation in decisions that affect them, and to be heard in administrative proceedings, are anchored in Article 12 of the UNCRC and are interconnected with many other rights (see Lundy, 2007; Perry-Hazan, 2015; Gal, 2017; Tisdall, 2017). As noted, the right to be heard is a core component of procedural due process (UN Committee on the Rights of the Child, 2009, para. 65, 67, 113).

Another type of concern that the participants expressed is their apprehension over a uniform punitive system. Some of them noted that punishments are frightening, especially for children committed to respecting school rules. The fear of a uniform punitive system is congruent with the previous objections. Our findings showed that children may be apprehensive when the punitive disciplinary system ignores specific and personal circumstances, does not take into account children's best interests and relies on unverifiable contentions. These consequences are embedded in a technical approach to school discipline that circumvents making moral judgements and attaches sanctions to all school rules. Several studies have indicated that children do make moral distinctions between school rules. Some viewed rules of etiquette as unimportant (Thornberg, 2008), and some questioned rules that they perceived as

implementing the interests of the school administration rather than those of the children (Raby & Domitrek, 2007). The implications of such a system, that sanctions both major and minor infractions, are that any pupil can find himself or herself in the position of an offender (see McCluskey, 2008).

The participants in our study also indicated that punishments do not deter children who are repeat rule breakers and do not improve their behaviour. In particular, participants pointed out that suspended children return to school and continue to break the rules. Similar contentions regarding the low efficacy of punishments have been raised by various scholars (Lewis, 2001; Lewis *et al.*, 2005; Way, 2011; Kupchik & Catlaw, 2015; Payne, 2015), as well as by studies exploring children's perceptions of school discipline (McCluskey, 2008; Geldenhuys & Doubell, 2011; Honkasilta *et al.*, 2016).

Concluding remarks

Our findings demonstrated the complexities of due process in schools, as seen through the eyes of young participants enrolled in lower primary school grades. The prominent challenge of due process in schools seems to relate to applying a semi-legal structure, inspired by the criminal justice system, in a pedagogic setting. The intersection of legal and educational narratives produces inherent incongruities. Even young children were found to be able to recognise these incongruities, given the pervasive role of disciplinary processes in their daily school routine. Many of the young participants in our study had not normalised the legalistic–formalistic approach to due process and raised complex reservations concerning it. Their criticisms indicated that they experience the problematics of being subjected to a formalistic due process in school and are amenable to alternatives in appropriate cases. The complex opinions of the participants indicate the necessity of including young children in school discipline studies, which typically focus on adolescents.

The right to due process in schools is embedded in the assumption that the perceived fairness of school rules improves pupils' behaviour (Arum, 2003; Way, 2011; Free, 2014) and enhances the perceived legitimacy of both the school and other governmental institutions (Zimmerman & Tyler, 2010; Way, 2011). It remains, however, a knotty challenge to enhance pupils' perceptions of fairness when schools' disciplinary policies are punitive. Punitive disciplinary policies require teachers to provide a timely response to violations of the school code. There is often insufficient time to carry out the delicate balance between formalistic and substantial equality in each case, or to conduct lengthy conversations with an eye to hearing pupils' perspectives and clarifying the evidence and the circumstances. The result is a distorted due process, which not only affects pupils' perceptions of fairness, but also imparts faulty lessons about the right to due process (cf. Perry-Hazan & Birnhack, 2018), thus compelling teachers to encounter frequent clashes between procedures and personal morals (cf. Levinson, 2015; Finefter-Rosenbluh, 2016).

The self-evident question seems to be: What should be the adequate contours of the right to due process in punitive disciplinary procedures for elementary schools? This question deserves further theoretical and normative research, based not only on legal and policy documents but also on psychological and developmental studies. Unfortunately, based on what is already known on punitive school policies, including

the findings of our study, the right to due process can solve only some of the problems associated with such policies. Paradoxically, criminal justice systems worldwide are constantly developing alternatives to formalistic approaches to criminal punishments (e.g. Stolle *et al.*, 2000; Wexler, 2008; Gal & Dancig-Rosenberg, 2017). The expanding paradigm of therapeutic jurisprudence explores how insights from psychiatry, psychology, criminology and social work are useful to the law and how they can simultaneously be consistent with the due process framework (Wexler, 2008). However, most schools are still trapped within a formalistic punitive approach and struggle to reconcile due process with educational considerations. It is time for systemic efforts to develop policies that fulfil the child's right to school discipline being administered in a manner respectful of human dignity (UNCRC, Article 28[2]) by applying disciplinary policies that use educational rather than semi-legal tools (UN Committee on the Rights of the Child, 2001, para. 8). Alternative approaches to conflict resolution in school, based on restorative practices that engage children in decision-making, may offer such a path (e.g. Morrison, 2003; Sellman, 2011; Sellman *et al.*, 2013).

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