

2019 Legislative Education Study Committee: School Discipline and Special Education Students

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The School-to-Prison Pipeline: A National Problem and Orienting Materials

Nance, Jason P., Redfield, Sarah E., American Bar Association, School-to-Prison Pipeline: Preliminary Report (2016).

Legislative Policy Recommendations p. 25

- Remove Zero-Tolerance Policies from schools
- Legislation eliminating criminalizing student behavior that does not endanger others
- Support demonstrated alternatives to arrest such as Restorative Justice practices and programs
- Provide model policy and support for school policy and agreements which clarify differences and responsibilities for school discipline and law enforcement discipline
- Better, more appropriate School Resource Officer (SRO) training
- Implicit bias and de-biasing training for school personnel and security, SROs
- Require and enforce data reporting relating to student discipline and juvenile detention as well as discipline disproportionality

Final Report of the Federal Commission on School Safety (2018) (pp. 37-39)

Prevention as Key to Improving School Safety

- Less than half of children and adolescents with a mental health condition receive the treatment they need. Of those receiving necessary treatment, 24% were in school-based settings.
- Schools are a natural place to provide mental health services because of the amount of time students spend there.
- Evidence supports the premise that mental health services assist in supporting academics.
- Evidence also suggests that approximately 75% of students with physical health conditions, such as asthma, diabetes, etc. experience adverse mental health conditions. However, when mental health outcomes are addressed, physical health outcomes also improve.

- “Prevention services that address mental health conditions and divert youth from the juvenile justice system are an essential part of an effective continuum of services.”
- Approaches to educate, skill-build, socially develop, and foster relationships lead to lessening or prevention of future risk.
- Early identification and intervention make a difference in longer-term outcomes, especially for children at risk for involvement in the juvenile justice system.
- Students with disabilities are more likely to be involved in disciplinary actions at school and are more often suspended or expelled. These actions may result in social disconnectedness as well as involvement with law enforcement.
- Mental health disorders among juvenile justice-involved youth ranges from 50-75%. Recidivism rates for juvenile offenders out of residential treatment and/or juvenile corrections settings range from 40-85%
- Ensuring at-risk youth receive timely and appropriate prevention and early intervention services is highly recommended as best practice.

Nance, Jason P., *Students, Police, and the School-to-Prison Pipeline*, Washington University Law Review, Vol. 93, Issue 4 (2016).

School Policing

- It is recommended that if lawmakers and schools choose to rely on police officers to protect students, that police officers and school officials receive training regarding how to appropriately discipline students. It is also recommended that Memorandums of Understanding be implemented to avoid involving students with law enforcement for lower-level offenses. P. 928
- Several empirical studies demonstrate that growing up in poverty is significantly correlated with severe cognitive impairments and poor academic achievement. P. 944
- Strict security measures in and of themselves can harm the educational climate by alienating students and generating mistrust, which may lead to more disorder and violence. P. 949
- SROs, in practice, have the legal authority to intervene in almost all student disciplinary matters...and they have the legal authority to arrest a student who has “disturbed the peace” or has disrupted school activities. P. 950

- At least some SROs believe that an increased number of arrests in schools is a positive result of their work in schools. P. 951
- Even if a student is not arrested, but is still referred to law enforcement, detrimental effects ensue. These students often return to school stigmatized and labeled by peers and staff alike. They are often the object of stricter scrutiny because of the past referral, and they have a higher likelihood of dropping out, lower academic achievement, and an increased likelihood of interaction with juvenile justice. P. 955
- Ample studies demonstrate that a suspended student is less likely to advance to the next grade level or enroll in college and is more likely to drop out, commit a crime, get arrested, and become incarcerated as an adult. P. 956

National Council on Disability: Breaking the School-to-Prison Pipeline for Students with Disabilities (2015)

Disproportionate and Disparate Discipline

- Up to 85% of youth in juvenile detention facilities have disabilities that make them eligible for special education services, yet only 37% of these youth actually receive special education services

U.S. Gov't Accountability Office, GAO-18-258, K12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities (2018).

Disproportionate and Disparate Discipline

- Students with disabilities represent 11.7% of all students nationally, yet represent nearly 1/4th of out of school suspensions. Students with Disabilities are over represented in out of school suspensions by 13.2%.
- Highlighting the racial disparities, the report also noted that despite black students representing 15.5% of the student population nationally, they represent nearly 40% of students placed in out of school suspension.

New Mexico Issues Contributing to the School-to-Prison Pipeline

- Espanola SRO Taser Incident: Illustrates part of the problem with SRO involvement on school campuses
- Yazzie-Martinez Lawsuit: Illustrates the longstanding history of New Mexico's struggle to protect our state's most vulnerable and overlooked students

- Personal Experiences and Stories
 - Student LTS for e-cigarette charger
 - Middle School student Felony assault charge for throwing a pencil
 - High school student transfer from another state, LTS before even holding an IEP meeting
 - Others...
- Observations from advocates and attorneys from various agencies:
 - **Power Imbalance** between school and parents often leaves parents out of discussion, despite their intimate and invaluable knowledge and experience with their child and their disability
 - **Lacking Good Faith Efforts** to understand disability before utilizing regular school discipline processes. IDEA more of a requirement to impose school's will than adapt services and supports that would benefit student before disciplinary matters arise
 - **Utilizing Alternatives to Police/Criminal Charges and Referrals**
 - Restorative Justice programs
 - Juvenile Detention Alternatives Initiative (JDAI) and New Mexico's State-to-Scale Efforts through CYFD
 - Sandoval County Initiative: Family In Need of Services (FINS) Referral
 - Other alternatives...

Our state's most vulnerable students are depending on New Mexico to better protect their futures. Education is a pathway out of poverty for many students. The right to an education requires vigilance and problem solving from those of us in positions to create a better education system in our state.

Concerns:

MDR Issues: Sufficiency of meeting and training of personnel. Often, parents complain that information provided by them is not considered. Many times, the MDR form has been completed before parent even arrives for the meeting. Conditions which the school has knowledge about, but has not acknowledged special education eligibility for, are often not considered by the MDR team. Administrative involvement has become more commonplace, even if those administrators are not part of the student's IEP team.

Delayed Evaluations: Parents often request an initial evaluation verbally or in writing. If requested verbally, they are often shrugged off and are told that the Student Assistance Team has not made a referral to special education for initial evaluation yet, or they are told the student is not ready for an initial evaluation. If the parent makes the request in writing, they are often ignored or are responded to verbally with some reason why the student is not ready to be evaluated. We have

seen cases with students who were recommended for retention before an initial evaluation by the school, despite a parent request for an initial evaluation. Students often end up waiting anywhere from several months up to two years after a request for initial evaluation has been made. The federal timeline between parental consent and when the evaluation report must be completed is 60 days. Additionally, schools routinely do not provide a Prior Written Notice denying an initial evaluation that has been requested by a parent, as required by federal law. *These are opportunities for early intervention before the student's behaviors have become a problem or before their deficiencies in academics lead to problematic behaviors at school.*

Threat Assessments and Suspensions: Albuquerque Public Schools records this data. Many districts do not. For this reason, these examples are offered to illustrate trends. Threat Assessments in APS, New Mexico's largest public school district: 2017/18 school year totaled 719 Threat Assessments K-12. Elementary: 315, Middle: 253, and High School: 119. Suspension Numbers in APS 2017/18 school year totaled 7,461. Out of school suspensions were 5,412

Where we see K-5 numbers relatively similar to each other over the 2015-2017 school years, a sharp increase for every grade after that occurred during the 2017/2018 school year. The worst of which was 6th, 7th, and 8th grade suspensions where approximately 50% of all K-12 suspensions were assigned. Total suspensions for 2017/18 numbered 7,461, and 6th, 7th, and 8th grade suspensions totaled 3864.

This is to say that students in middle school, a pivotal point in students' development and maturation, are at the most risk for suspensions and thus academic disenfranchisement/disconnection.

FBA/FERPA Issues:

School security and SROs are prohibited by FERPA to access a student's IEP and incorporated BIP. When schools defer to security or SROs, they often violate the student's BIP. Additionally, for non-violent behaviors, there is an over-utilization of SROs. This is done either intentionally to circumvent IDEA special education protections, or it is unintentional, in which case staff compliance and understanding of the student's IEP/BIP might be lacking. *In either situation, the legal protections offered to students in special education are not being observed by those responsible for their education and safety*

FERPA is often used to deny due process rights to students in disciplinary proceedings such as video evidence, which cripples the student's due process protections against school exclusion

School districts are utilizing different tactics to cause obstacles in obtaining student records which is essential for adequate legal representation and for the student to abide by the short timelines in special education discipline procedures

Final Thoughts and Social Costs:

Children's Code/Delinquency Act: NMSA 1979 §32A-2-1 et. seq.

- Emphasis to rehabilitate youth, not expose them to the criminal justice system
- Student misbehavior ought to carry consequences which relieve the student from the same penalties imposed on adults, but that still impresses consequences for behavior
 - This is tricky when dealing with students with certain disabilities

ABA Preliminary Report on School-to-Prison Pipeline

- Earnings Differentials: Students who drop out of high school earn approximately \$400,000 less than high school graduates over the course of their lives. The social cost is increased because of reduced state and federal taxes. P. 48
- Average National Cost per year incarcerating juveniles: \$148,767. P. 49
- Regular Presence of SROs on school campuses: (1) significantly increases odds that schools referred students to law enforcement for several lower-level offenses, and (2) more likely to arrest for lower level offenses than schools without a regular SRO presence, but the regular presence of an SRO does NOT increase arrest rates for more serious crimes. P. 53
- The Result: SROs have become the new agents of discipline in schools which regularly rely on their presence. P. 54

Hawker v. Sandy City Corp., 774 F.3d 1246 (10th Circuit. 2014):

“[T]housands of [students]...thrust into the criminal justice system deserve better.... It [is] too easy for educators to shed their significant and important role in [the disciplinary] process and delegate it to the police and courts....A more enlightened approach to... school discipline by educators, police, and courts will enhance productive lives and help break the school-to-prison chain.”