



*National Center on  
Criminal Justice and Disability®*



# **Justice-Involved Youth with Intellectual and Developmental Disabilities**

*A Call to Action for the Juvenile Justice Community*



# The Arc®

National Center on  
Criminal Justice & Disability®

## *About NCCJD*

The Arc's National Center on Criminal Justice & Disability™ is the national focal point for the collection and dissemination of resources and serves as a bridge between criminal justice and disability professionals. NCCJD™ pursues and promotes safety, fairness and justice for all people with intellectual and developmental disabilities as suspects, offenders, victims or witnesses.

## *About The Arc*

The Arc is the largest national community-based organization advocating for and serving people with intellectual and developmental disabilities and their families. The Arc encompasses all ages and more than 100 different diagnoses including autism, Down syndrome, Fragile X syndrome, and various other developmental disabilities. With over 650 chapters nationwide, The Arc is on the front lines to ensure that people with intellectual and developmental disabilities and their families have the support and services they need to be fully engaged in their communities. The Arc promotes and protects the human rights of people with intellectual and developmental disabilities and actively supports their full inclusion and participation in the community throughout their lifetimes. Visit [thearc.org](http://thearc.org) for more information.

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*This project was supported by Grant No. 2013-MU-MX-K024 awarded by the Bureau of Justice Assistance, a component of the Office of Justice Programs. Point of views or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.*



# The Arc<sup>®</sup>

National Center on  
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*This paper is the result of a collaborative effort involving people working directly with justice-involved youth with disabilities, experts, practitioners, and advocates in the fields of disability and juvenile justice and draws on the experiences and expertise of the co-authors listed below. NCCJD deeply appreciates the valued contributions of these visionary advocates and experts:*

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Suggested citation: The Arc's National Center on Criminal Justice and Disability (NCCJD), Violence, Abuse and Bullying Affecting People with Intellectual/Developmental Disabilities (Washington, D.C.: The Arc, 2015).

# Justice-Involved Youth with Intellectual and Developmental Disabilities:

*A Call to Action for the Juvenile Justice Community*

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## Introduction

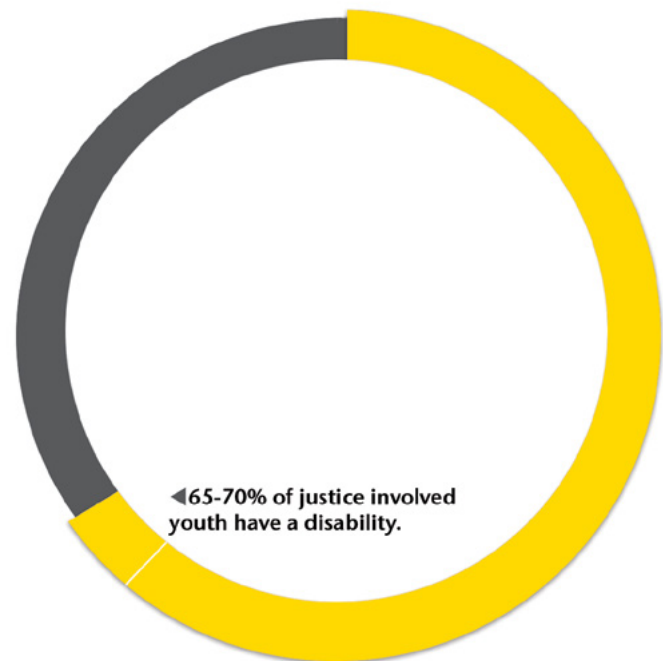
Even with the decline of juvenile crime and incarceration over the past ten years, youth with disabilities, including intellectual and developmental disabilities (I/DD<sup>1</sup>), are being incarcerated at higher rates. One study reports that 65-70 percent of justice-involved youth have a disability—that is three times higher the rate compared to youth without disabilities. As juvenile justice professionals, disability advocates, parents, and others involved in the care of these youth, collaboration across professions is essential to creating strategies and processes to better identify and serve juveniles with disabilities. The first step is gaining insight about the history of juvenile justice initiatives in the U.S., and how youth with disabilities are served (or not being served) by the juvenile justice system.

### ***What We Know—A Brief History and Overview of the Research***

*Leigh Mahoney, Director of National Education and Program Development,  
Robert F. Kennedy Children’s Action Corps*

For just over a century, the United States has maintained a separate legal system for youth (in most states, individuals younger than 18). The system presumes that society has an obligation to support and guide children to adulthood, and that children are both worthy and capable of rehabilitation. Therefore, their crimes and consequences should be considered differently than those of adults.<sup>2</sup> Throughout the 116 years since Cook County, Illinois

### JUSTICE INVOLVED YOUTH



opened the nation’s first Juvenile Court, the juvenile justice system has not delivered consistently on these principles. The “tough on crime” politics of the late 80s and 90s created an environment of harsher penalties and weakened protections for juveniles.<sup>3</sup> As a result, the juvenile justice system as a social and legal institution began doing more harm than good, at least in the macro sense, creating a training ground for a burgeoning system of adult corrections, rather than helping youth move past mistakes to a safe and productive future.<sup>4</sup>

<sup>1</sup>For definitions of I/DD, see The Arc’s fact sheet: <http://www.thearc.org/what-we-do/resources/fact-sheets/introduction-to-intellectual-disability>. Generally, intellectual disability (ID) occurs prior to age 18 and significantly limits intellectual functioning and adaptive behavior. Developmental disabilities (DDs) are attributable to mental and/or physical impairments occurring before age 22 and likely to continue indefinitely. DD’s substantially limit three or more major life activities. Many people with ID will meet the requirements for DD as well.

<sup>2</sup>Federal Juvenile Delinquency Act, definitions <http://definitions.uslegal.com/j/juvenile-justice/>

<sup>3</sup>Law Library - American Law and Legal Information, Juvenile Violent Offenders - The Concept Of The Juvenile Super Predator <http://law.jrank.org/pages/1546/Juvenile-Violent-Offenders-concept-juvenile-super-predator.html>

<sup>4</sup>Center on Juvenile and Criminal Justice, Juvenile Justice History, <http://www.cjcj.org/education1/juvenile-justice-history.html>

Juvenile justice was not alone in this shift—unfortunately, other institutions failed youth as well, most notably, education. We know that students who stay in school are less likely to enter the juvenile or adult justice system, but in recent years, this protective factor has become a risk factor for many. The adoption of “zero tolerance” disciplinary policies that disproportionately push out students most in need of school support has created the “school-to-prison pipeline”.<sup>5</sup> These disciplinary policies frequently employ law enforcement rather than school administration, exposing students to the criminal justice system much more frequently.<sup>6</sup> Though attention is being paid to this dynamic

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*...recent advances in brain science confirm that the adolescent brain is still developing and therefore cannot be treated as that of an adult...*

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through legislative reform in some states, many schools are ill prepared to deal with behavior in a new way, and change is slow in coming.

The news is not all bad. Over the past decade, the juvenile justice world has responded to both external scrutiny and its own soul searching, engaging in broad reform. Largely through the work of private philanthropy such as the MacArthur Foundation’s Models for Change initiative<sup>7</sup>, and with the Office for Juvenile Justice and Delinquency Prevention as a partner<sup>8</sup>, reforms have been developed and disseminated across the juvenile justice system, including juvenile defense, adjudication of status

offenses, and treatment of mental health needs of juveniles, and work to integrate systems for better outcomes for youth involved with both the child welfare and juvenile justice systems. These initiatives work to integrate systems for better outcomes for youth involved with both the child welfare and juvenile justice systems (referred to as dual status youth).<sup>9</sup> Reform has centered around an advanced understanding of this original premise: that recent advances in brain science confirm that the adolescent brain is still developing and therefore cannot be treated as that of an adult; and that any efforts at intervention and rehabilitation must consider these differences to be humane or effective.<sup>10</sup> Though there is still much to be done, the progress thus far is unmistakable, and resulting changes in policy, practice, and research promise additional progress to come.

### *Justice Involved Youth with I/DD*

Given this work to “decriminalize adolescence,” and offer developmentally appropriate intervention, one would assume that youth with I/DD would be considered specifically. This population is rarely mentioned, despite proof that disability is a significant risk factor for juvenile justice involvement. Although, some studies estimate that between 65-70% of youth involved with the juvenile justice system meet the requirements for a disability,<sup>11</sup> these numbers lose their impact and meaning without clarifying the broad category of disability. This sweeping term is used to provide legal protection under the Individuals with Disabilities Education Act (IDEA)<sup>12</sup> and the Americans with Disabilities Act (ADA)<sup>13</sup>. Members of this group could have disabilities ranging anywhere from physical, to specific learning, to social-emotional, to mental health, to I/DD.<sup>14</sup> Youth with disabilities are ill-served by the breadth

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<sup>5</sup>Catherine Y. Kim, Daniel J. Losen, and Damon T. Hewitt, *The School-To-Prison Pipeline; Structuring Legal Reform*, New York University Press, pp.112-114

<sup>6</sup>Ibid. pp. 112-114

<sup>7</sup>Models for Change, <http://www.modelsforchange.net/index.html>

<sup>8</sup>Office of Juvenile Justice and Delinquency Prevention, <http://www.ojjdp.gov/>

<sup>9</sup>Models for Change, <http://www.modelsforchange.net/reform-areas/index.html>

<sup>10</sup>Models for Change, <http://www.modelsforchange.net/about/index.html>

<sup>11</sup>Skowrya & Cocozza, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*, National Center for Mental Health and Juvenile Justice, May, 2015

<sup>12</sup>Individuals with Disabilities Education Act (IDEA), Title I, part A, section 602, Definitions, <http://idea.ed.gov/explore/view/p/%2Crot%2Cstatute%2CI%2CA%2C602%2C>; Americans with Disabilities Act (ADA), Title II, section 12131, Definitions, <http://www.ada.gov/pubs/adastatute08.htm#12102>.

<sup>13</sup>20 U.S.C. §1400.

<sup>14</sup>42 U.S.C. §12101. Daniel P. Mears and Laudan Y. Aron, *Addressing the Needs of Youth with Disabilities in the Juvenile Justice System—The Current State of Knowledge*; Urban Institute, 2003 <http://webarchive.urban.org/publications/410885.html>



of this term because the appropriate interventions and supports will vary as widely as the groups and diagnoses.

Youth with I/DD in the juvenile justice system are at a distinct disadvantage. Lack of adequate screening and assessment means that no hard numbers exist on how many youth with I/DD are in the juvenile justice system.<sup>15</sup> Many youth who end up in the system are from families lacking resources and skills needed to “work” the system. Advocacy, money, and sophisticated system management are often necessary to obtain an accurate and useful diagnosis of I/DD. The actual numbers of justice-involved youth may be higher than estimated. For example, over 60% of people diagnosed with Fetal Alcohol Spectrum Disorders (FASDs) over the age of 12 have been charged with a crime, meaning there is likely a high prevalence of youth with FASDs in the juvenile justice system. Although some advocacy groups have tried to draw attention to this matter (for example, the American Bar Association put forth a resolution in 2012 for systemic and legal responses to the prevalence of FASDs in the child welfare, juvenile justice, and criminal justice systems), there has been little traction and no responses at scale within the juvenile justice system. Even when a disability is recognized, little (if any) supports are provided either within the system or within the community that meet their specific needs. In short, we know the least about those we need specific knowledge to serve, and we don’t even know how many youth with I/DD we are currently serving within the juvenile justice system.

### ***Stories from the System:***

#### ***Children of the Dumping Ground - Justin’s Story***

*Karen Grau, President and Executive Producer,  
Calamari Productions*

How does a boy with an IQ of 40, no parents, no family, no guardian, and no legal counsel end up in maximum-security juvenile prison? It’s not as uncommon as you might think.

Answers are hard to come by when trying to determine a child’s best interest. In the closed-door world of America’s juvenile courts, the public knows little about how laws and policies direct the futures of millions of at-risk kids.

In 1995, after leaving my job as a local television reporter, I assisted in a study of Indiana’s foster care system. I wasn’t working as a reporter at the time,



*Justin, age 14, Pendleton Juvenile Correctional Facility*

but the project allowed me to observe juvenile courts and child welfare cases around the state of Indiana. Despite my years in journalism, I was floored by the first case I witnessed—a hearing on termination of parental rights. I was hooked on the magnitude of these stories. Three children, all under the age of 10, sobbed as their mom readily let the judge terminate her parental rights. She simply was not willing or able to give up the drugs or continue in counseling to get her children back. The hearing adjourned and, without ever saying goodbye to her children, the mom waltzed out of court. Her children stood by in shock. I went into the bathroom and cried.

And I’ll never forget the faces of those kids.

Nearly three years passed before I acted on my professional instincts resulting from that experience. I knew that Indiana law strictly prohibited cameras inside any courtroom—let alone juvenile court. But I couldn’t let go the idea of producing documentary programming on what I had witnessed in these courtrooms. I contacted the counsel to the chief

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<sup>15</sup>National Organization on Fetal Alcohol Syndrome, facts-for-justice-system.pdf, <http://www.nofas.org/wp-content/uploads/2014/05/Facts-for-justice-system.pdf>

justice of the Indiana Supreme Court and sought his advice. He said it would be nearly impossible to get permission for TV access to child welfare hearings, but I was welcome to make my case to the chief justice. And that's exactly what I did.

My letter to the five justices of the Indiana Supreme Court argued that if the Court truly wanted to advocate for abused and neglected children, there was only one way to reach the public: show them the real workings of juvenile court. In a 'be careful what you wish for' moment, my appeal worked. In October, 1998, Chief Justice Randall Shepard and the justices of the Indiana Supreme Court approved my request. Now it was time for the real work to begin.

Since that time some 17 years ago, I have gone on to film hundreds of children and families ensnared in America's child welfare and juvenile justice system. No two cases are ever the same. After nearly two decades of doing this work, I continue to learn as much today as I did when first entering the juvenile courts, detention centers, and juvenile prisons back in the late 90's.

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***“...the prison's Mental Health Unit had become a sort of “dumping ground” for the courts—a place where kids with disabilities were being sentenced when the courts felt there was nowhere else to “put” them.”***

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I readily admit, when it comes to the children involved, every case haunts me. So, in addition to filming, I have become an official mentor to several children I met over the years. I'm often asked how I justify this as a working journalist. I don't apologize for it and have a fairly straightforward answer: Because I give a damn, and I want to give back.

And every once in a while, a case so extraordinary captures my attention that even a seasoned journalist like me is stunned by the magnitude of what I'm witnessing.

Justin is that story.

Justin was 14 when I met him. He was in a maximum-security juvenile prison and completely traumatized

by his surroundings. It was immediately apparent when I saw him that he was unlike the other 400 boys locked up around him.

While I wasn't at the prison this particular day to meet or film with Justin, I was transfixed...and wanted to find out more. The prison superintendent told me Justin had an IQ of 40 and couldn't read or write. He was furious Justin ever made his way from the courts to the prison in the first place. He also told me this: the prison's Mental Health Unit had become a sort of “dumping ground” for the courts – a place where kids with disabilities were being sentenced when the courts felt there was nowhere else to “put” them. I found this unconscionable.

But Justin's case was even more wrenching. As I began to show up day after day to document his story, I also learned he was a prison orphan. By the time I met him, Justin had already served 18 months behind bars. He was ready to be released, but sadly, the Department of Corrections had no one to release him to. Justin had no family, no legal counsel, and no guardian. His child welfare case had been closed years prior, so the state would not take him back into their care. At one point, the prison superintendent was simply told to take Justin to a homeless shelter.

That's when we all decided, enough was enough.

So, how did Justin end up in this desperate situation to begin with? His odyssey in the system began early on.

Justin's father sexually molested him as a child; his mom was a drug addict most of Justin's life and often times, the family was homeless. At age 12, psychologists said Justin functioned at the level of a 5 year old. How he landed in juvenile prison was yet another tragic turn.

During the time Justin's mom was homeless, she and Justin were at a friend's house. Justin was 12 at the time. During dinner, Justin asked for an extra pork chop on his plate. When his mom and her friend refused, Justin went into the living room, pulled down his pants, and exposed himself to the friend's infant child, also engaging in inappropriate touching. At the time, he said he did it because he was mad about not getting an extra pork chop, and thought his actions might make his mom change her mind. Instead, the mother of the infant child called police and had Justin arrested for child molestation. He was



eventually sentenced to prison for a crime he had no idea he committed.

Unfortunately, Justin isn't alone. Over the past six years filming Justin's story, I've learned of the disproportionate number of children with disabilities in the juvenile justice system. Many, like Justin, are abused at home, pushed out of schools due to disciplinary reasons, or are inappropriately placed by the courts in punitive environments where lack of education and services often lead to deep-end commitments in the criminal justice system later in life. Sadly, detention centers and prisons are often the easiest, cheapest options for placement for kids when



*Karen, Justin, and Judge Mary Beth Bonaventura*

courts and child welfare systems can't—or won't—pay for appropriate care and treatment. Some of these children have no one fighting for them. Many have no legal representation whatsoever. Justin is one of these kids.

I have been filming with Justin for six years now, but the truth is, we've become so much more than a storytelling team. He is a boy I love and cherish who changed me in ways I never knew possible. I knew little to nothing about the I/DD community before I met Justin. I am grateful beyond measure that he is the one who opened my eyes and let me into his world. Our six years together has taken us from his time in prison, to his eventual transfer to an in-patient placement facility, to two group homes, where he eventually met a mentor he loves and adores who has now become his legal guardian. Together, we have celebrated his 16th, 17th, 18th, 19th and 20th birthdays.

For so many years, all Justin ever wanted was a family. He still holds out hope that he will see his mother again someday. With each passing year he tells me, "I just don't think it's gonna happen." We are all his family now, and the scared, traumatized boy I met so long ago has grown up to be an amazingly bright, funny, extraordinary young man.

As I think back to the start of my time with Justin, I always envisioned the ending to his story would be his reunification with family. Now, as we prepare to introduce Justin to the world, I realize that scenario was never ultimately in the cards. In the end, Justin found the real definition of family—an ending to his story that was truly meant to be.

To learn more about "Children of the Dumping Ground" featuring Justin's story, see [calamariproductions.com/films-series/](http://calamariproductions.com/films-series/) and to view the trailer visit [www.vimeo.com/44435089](http://www.vimeo.com/44435089).

### ***The Pathways to Justice™ Model: A Framework for Discussion and Solutions***

The National Center on Criminal Justice and Disability® (NCCJD) developed the Pathways to Justice™ Model to address the unique challenges adults, youth and children with I/DD face within the criminal justice system as either defendants or victims. Since its inception in September 2013, NCCJD has created training materials and other resources for criminal justice professionals to help identify and accommodate people with disabilities in the criminal justice system. The Pathways to Justice Model (see page 6) highlights cracks in the system that keep justice-involved youth or at-risk youth, like Justin, from accessing services they desperately need. The purpose of this paper is to highlight cracks in the juvenile justice system impacting youth with I/DD, and assist their advocates, family members and juvenile justice professionals by offering strategies to ensure disability is both recognized and accounted for when a child or teen is involved in, or at-risk of getting involved in, the system.

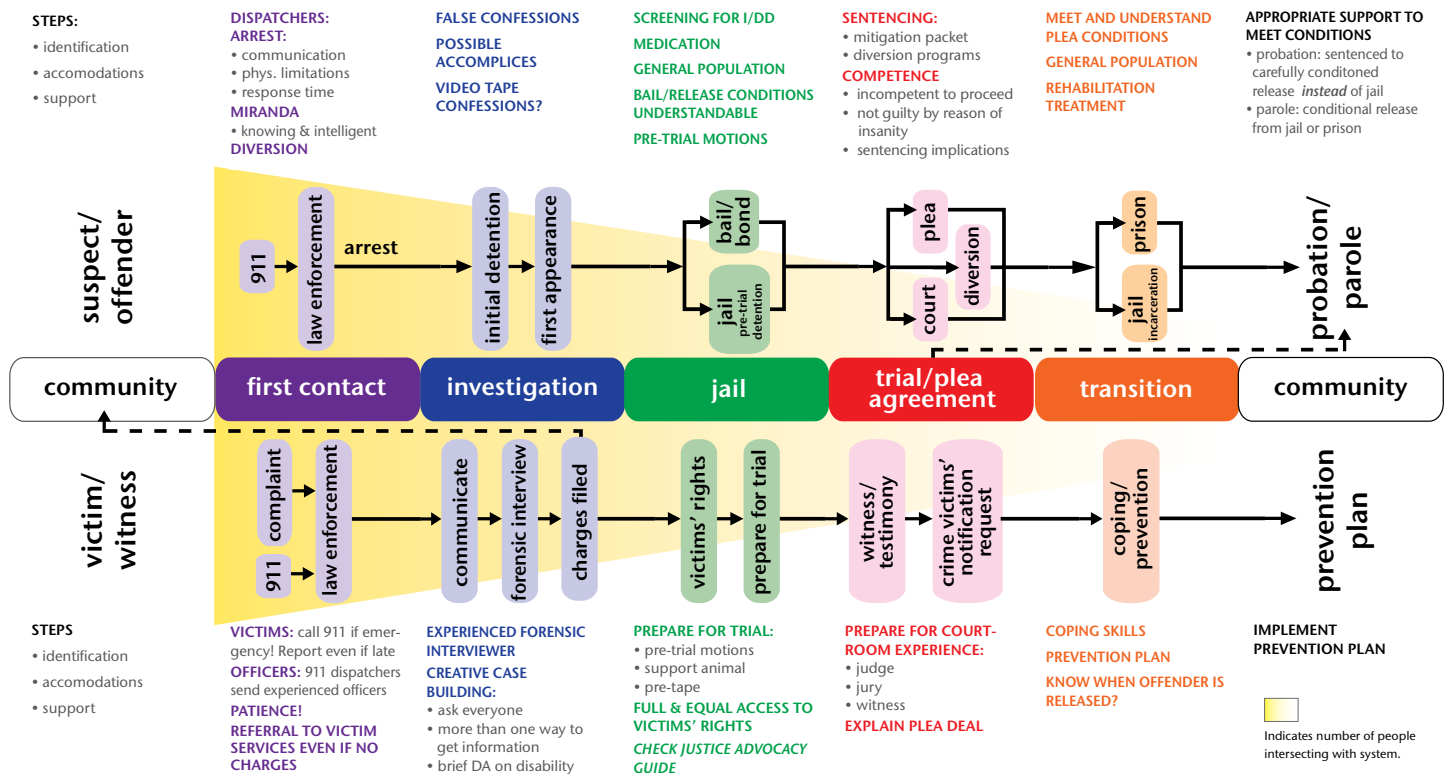
### ***Emerging issues for Justice-Involved Youth with I/DD***

NCCJD receives requests from around the country regarding criminal justice issues, including juveniles with I/DD. The need for assistance far outweighs the

resources currently available to adequately support youth with disabilities. This paper outlines the most pressing issues faced by justice involved youth with I/DD today, and suggests best practices and potential solutions. NCCJD asked experts, researchers, practitioners, and advocates in the field to tackle an emerging issue and provide possible solutions. The paper begins with a parent/advocate viewpoint in mind, providing tips for parents with children already involved in the juvenile justice system, and prevention strategies for reducing juvenile justice involvement in three specific settings: in school, in the community, and online. Next, a snapshot of a recent report on juveniles with disabilities is given by the National Disability Rights Network. The school-

to-prison pipeline is defined and examined, revealing how new policies and practices have actually been counterproductive to the goals of the education system, leading to a disproportionate amount of youth with disabilities in the juvenile justice system. The misuse of restraint and seclusion will be explored, ultimately leading youth with disabilities down a path to incarceration. Experts agree that the best option for non-violent juveniles is community based services, and preventing recidivism is the key to success: The Arc's Capital Area's Juvenile Justice Services embraces these tenants and provides an example for other communities to learn from and possibly replicate.

## Pathways to Justice™ Model



# Preventing Involvement of Children and Youth with I/DD in the Juvenile Justice System: Strategies for Parents and Advocates

Gretchen Godfrey, Assistant Director and Lili Garfinkel, Juvenile Justice Project Coordinator, PACER Center

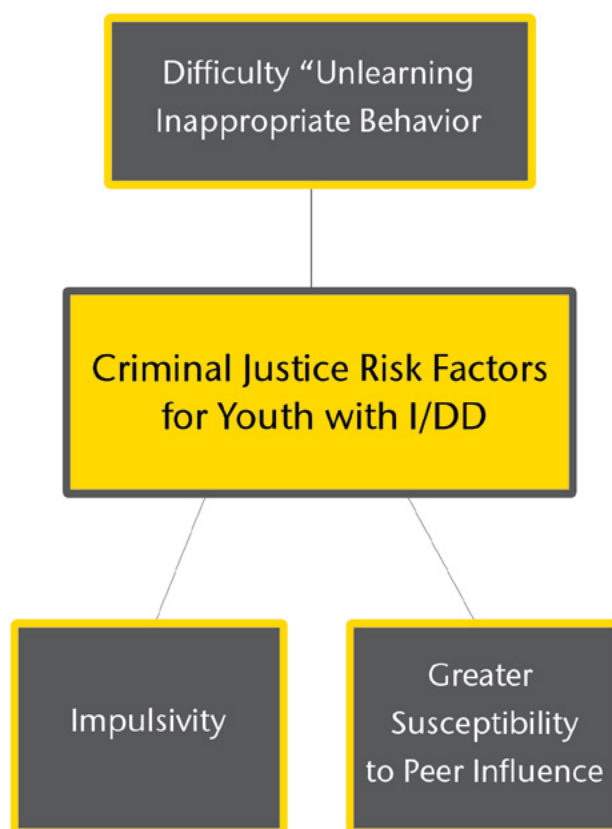
While studies indicate that youth with disabilities are overrepresented in the juvenile justice system<sup>1</sup>, no parent wants to think about their child having an encounter with the police or corrections system. However, because having a disability is a known risk factor, parents of children and youth with I/DD should be aware of prevention strategies to avoid involvement in the juvenile justice system. There are a variety of reasons that individuals with I/DD are vulnerable, including impulsivity, greater susceptibility to peer influence, becoming easily frustrated, and difficulty “unlearning” inappropriate behaviors.

In recent years, tragic violent incidents in schools have resulted in many districts adopting “zero tolerance” policies or other discipline procedures with long-term implications for students with and without disabilities. In this punitive climate, parents must be proactive about helping their child with I/DD avoid negative encounters with the justice system at school, in the community, or online.

## At School

Much has been written about the “school-to-prison pipeline” that pushes at-risk students out of schools and into juvenile justice systems<sup>2</sup>. Parents of students with disabilities can utilize the Individualized Education Program (IEP)<sup>3</sup> planning

process to put in place strategies that will prevent their child from being referred to the corrections system directly from school, even if he or she has



<sup>1</sup>Leone, P., & Weinberg, L. (2012). Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems. Washington, DC: Center for Juvenile Justice Reform, Georgetown University.

<sup>2</sup>American Civil Liberties Union. (n.d.) Locating the School-to-Prison Pipeline. [https://www.aclu.org/sites/default/files/field\\_document/asset\\_upload\\_file966\\_35553.pdf](https://www.aclu.org/sites/default/files/field_document/asset_upload_file966_35553.pdf)

<sup>3</sup>See 20 U.S.C. §1400 et. seq..

challenging behaviors or becomes involved in a disciplinary incident.

The most effective deterrent to involvement in the juvenile justice system is to address behavior issues in a timely manner using research-based positive supports. If a child is repeatedly disciplined or removed from the classroom, parents should ask for a functional behavior assessment (FBA)<sup>4</sup>. This assessment process will help determine the “function” or purpose of the behavior the student is exhibiting and develop interventions to teach

student is being bullied. A child or youth may try to end the harassment themselves using physical aggression that could result in involvement with the juvenile justice system.

Even when positive behavior strategies are in place, it is always a good idea for parents to have an action plan if police or school resource officers become involved in a disciplinary incident. Families should ask that the IEP include a statement requiring parent notification if police or school resource officers have any contact with their child. The IEP can also state that the student cannot be interviewed by police or school resource officer without a parent present. Families can role play scenarios with their child and teach them to ask the officer to call a parent and say that he or she will not answer any questions without a trusted adult present.

<b>IEP</b>	<b>Individualized Education Plan</b>
<ul style="list-style-type: none"><li>Under the IDEA, helps schools understand and identify needs for a child with a disability. IEPs spell out the school’s obligations, the child’s needs, and how success will be measured.</li><li>Include a statement that parents must be notified if police are called and that no interviews with police can take place without a parent present.</li></ul>	
<b>FBA</b>	<b>Functional Behavior Assessment</b>
<ul style="list-style-type: none"><li>Helps determine the “function” or purpose of behavior a student is exhibiting and develop interventions to teach acceptable alternatives. Replacement behaviors can be added to the IEP.</li></ul>	
<b>BIP</b>	<b>Behavior Intervention Plan</b>
<ul style="list-style-type: none"><li>Identifies specific strategies for modifying curriculum, environment, activities, and interactions with other students to prevent challenging behavior from occurring.</li></ul>	

### *In the Community*

acceptable alternatives. After the FBA is completed, goals to help the child learn the replacement behaviors can be added to the IEP. A Behavior Intervention Plan (BIP) should also be created that identifies specific strategies for modifying the curriculum, environment, activities, and interactions with the student to prevent the challenging behavior from occurring.

There are steps parents can take to prevent negative encounters with law enforcement in the community. As in the school setting, parents can teach their child what to do if questioned by police in their neighborhood or another location.<sup>5</sup> Parents should stress to their child to be polite and not to run away from the officer. Children and youth can be taught to share their name, age, and address but not to answer any questions without an adult or advocate who knows them present. Again, role playing possible scenarios and providing youth with a “script” of what to say if stopped by the police can be a helpful strategy for children with I/DD.

Additionally, provisions can be written into the IEP that allow the student to leave the classroom when feeling upset or anxious as another method of preventing problematic behavior. Parents and professionals should also be alert to any signs the

Another helpful strategy for improving interactions with the police is having an identification bracelet that identifies the youth as having a disability. I/DDs, such as autism, are “invisible” so police may not immediately identify youth as having a disability. Because some actions such as avoiding eye contact could be perceived as a sign of guilt, ID bracelets can help police better understand why youth are behaving a certain way. There are some organizations that provide ID cards for individuals with disabilities.

<sup>4</sup>To learn more about Functional Behavior Assessments, see PACER’s handout “What is a Functional Behavioral Assessment and How Is It Used? An Overview for Parents”, <http://www.pacer.org/parent/php/php-c215a.pdf>.

<sup>5</sup>See PACER’s handout “What Youth Need to Know if They Are Questioned by Police” available online: <http://www.pacer.org/parent/php/php-c171.pdf>

This can be a helpful tool, however, in certain crisis situations police may think a youth is reaching for a weapon if reaching into a pocket to grab an ID card.

Parents concerned about risk of police involvement can introduce their child to the local precinct and to resource officers at their school. Parents and youth can meet with officers in their neighborhood, explain their child or youth's disability, and provide strategies for communicating with their child if a problem occurs. Youth with I/DD may become accomplices to criminal activity in order to try to become someone's friend or to please a peer. Parents can help prevent this by teaching their children how to recognize signs of someone who may be taking advantage of them and role playing possible responses.

### **Online**

Youth with I/DD experience heightened risk for encounters with the corrections system because of actions online. Children and young adults may communicate on social media platforms or online chat forums that can be unsafe. For example, they may be targeted by individuals asking for money or personal information. Youth with disabilities may also inadvertently access child pornography sites not understanding what they're viewing or the consequences. Regular monitoring of children's online viewing history, honest discussions about human sexuality, and clearly outlined rules for using the Internet can help prevent any legal issues. Parents can also teach their children how to recognize signs of someone who may be reaching out to them with ill intent rather than to be a friend. These lessons and role play should be repeated frequently.

### ***What if Child is Already in Juvenile Justice System?***

No matter how many prevention strategies are utilized, there will still be occasions when youth with I/DD are detained or arrested for crimes.

Following are tips for parents to remember in those situations:

- Understand that anything youth say to a school resource officer, administrator, or police officer can be used against them in court. Parents should teach their children not to answer questions without a parent or other trusted adult present.
- Parents should provide information about the child's disability to the police, including sharing a copy of the current IEP and most recent evaluation.
- Additionally, parents should explain in practical terms how their child's disability affects their behavior, understanding of the alleged offense, and ability to answer questions.

There are proactive prevention strategies that parents of children and youth with I/DD can implement. Parents should understand how children's vulnerabilities manifest at school, in the community, and online to help prepare them for any encounters with school resource officers or police.

The IEP can serve as a tool for promoting positive behavior and also as a record of what steps must be taken if a student with I/DD has a disciplinary incident involving police. Parents can practice role play scenarios and use other methods to teach their children what to do if they are questioned by a school resource or police officer. Additionally, parents should talk to their children and young adults about Internet safety and signs to watch for that may indicate someone is trying to take advantage of them online.



## Protection and Advocacy Agencies (P&As): Recommendations for Juvenile Justice

*Diane Smith Howard, Senior Staff Attorney for Juvenile Justice and Education Issues,  
National Disability Rights Network*

National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and the Client Assistance Programs (CAP) for individuals with disabilities. Collectively, the Network is the largest provider of legally based advocacy services to people with disabilities in the United States. P&A agencies have the authority to provide legal representation and other advocacy services to all people with disabilities and all P&As maintain a presence in facilities that care for people with disabilities, where they monitor, investigate and attempt to remedy adverse conditions. In this current era, these facilities often include prisons and jails, as they are increasingly “placements” for individuals with disabilities.

In June of this year, NDRN produced a report entitled “Orphanages, Training Schools, Reforms Schools and Now This? Recommendations to Prevent the Disproportionate Placement and Inadequate Treatment of Children with Disabilities in the Juvenile Justice System” (Available at: <http://www.ndrn.org/en/issues/juvenile-justice.html>)

In this report, NDRN describes the extensive work provided by P&As to protect the rights of youth with disabilities in the juvenile justice system, the systemic problems uncovered by their individual casework, and policy recommendation to improve the system.

In general, P&As have learned through this work that although the federal, state and local governments have been searching for a humane way to treat children with “problematic” behavior for centuries in the U.S., we

still have not found our way. Children with disabilities wind up in juvenile justice facilities, adult jails, and prisons, and sometimes in solitary confinement (the “Hole,” or the “Box”) for weeks and months at a time.

Prevalence studies have found that 65-70 percent of youth in the justice system meet the criteria for a disability, a rate that is more than three times higher than that of the general population. Yet, we now know more than ever about the hidden causes that often underlie challenging behaviors. We have a significant body of research at our disposal about best practices and adolescent development, and can implement these practices if there is sufficient will to do so.

For example, solitary confinement more often than not, can worsen the behavior of youth with disabilities and potentially diminish the United States in the eyes of the international community. Community based services are the best approach for the vast majority of juvenile offenders who are non-violent. Secure facilities should be used as a last resort, and even then only for the amount of time necessary to ensure safety to our communities. Youth who receive services at home and in their communities are better off in the end than those who are incarcerated.

The NDRN juvenile justice report is divided into three sections:

1. Diversion of youth with disabilities from the juvenile justice system and/or out of home placement.
2. Conditions for youth within the system.
3. Services to ensure that youth with disabilities who

have been placed within the system are successful upon their release.

Included below is a brief summary of each section. The full report includes examples of P&A case work as well as a comprehensive set of recommendations.

### ***Diversion***

Incarceration for the most part does not benefit youth, is expensive, and does not produce better outcomes overall. It is unjust to punish children who have not broken the law by choice. An example of this inequity is when a child with a disability is referred to the juvenile justice system for truancy, but the child has been prevented from attending school because he or she has not received the services needed to do so.

Once incarcerated, youth may leave juvenile facilities worse, not better off, and often experience short-term and life-long adverse consequences. Confinement often disrupts any educational and vocational opportunities, medication management, and counseling they had been receiving. Even an interruption of a few days or weeks, coupled with the trauma of confinement, can cause disruptions in family and peer relationships and adolescent social and emotional development, and result in relationships with negative peers, dropping out of school, and difficulty finding work due to the stigma of incarceration. Those who return home from detention because the charges were dismissed are stigmatized by their arrest and struggle to cope with the long-term effects of confinement. Many problems that contributed to a youth's maladaptive behavior, arrest and confinement still persist when they return to the community—they still have low literacy, poor academic achievement, and have difficulty managing their anger, emotions, and relationships. In addition, these youth now have another risk factor: contact with the justice system.

### ***Conditions***

During monitoring visits and investigations of facilities where youth are held, P&As encounter and address violations including but not limited to:

- Failure to provide necessary substance use treatment; mental health treatment health care and education.
- Inappropriate use of restraint, seclusion, use of psychotropic medication to control behavior, and segregation/solitary confinement.

- Inhumane conditions in general (inadequate nutrition, space, exercise, bed coverings; heat; light; air, etc.).
- Failure to accommodate youth with disabilities, including both physical (e.g. wheelchair ramps, communication (e.g., sign language interpreters) and programmatic accommodations (e.g. access to therapy groups and educational programming).
- Failure to protect from physical and sexual abuse by peers and staff.

### ***Reentry***

The purpose of rehabilitative juvenile justice programming is to prevent recidivism and allow the youth to rejoin his or her community successfully upon release. Some factors that improve a youth's chances of success upon release include:

- A clear residential plan, where he or she will live, and with whom.
- Meaningful and respected involvement of the youth in all aspects of treatment, transition and discharge planning.
- The youth has maintained contact with family, community, and positive peers.
- A receiving school placement that will accept credits earned while in custody, that has access to the youth's educational records.
- Continuation of any mental health, medical, and substance abuse treatment
- Ready access to other community based services.
- For youth who are also in the child welfare system, access to V-9 and other services to meet the needs of youth transitioning out of the child welfare system.
- For youth with an IEP, IDEA transition planning and timely records transfer.

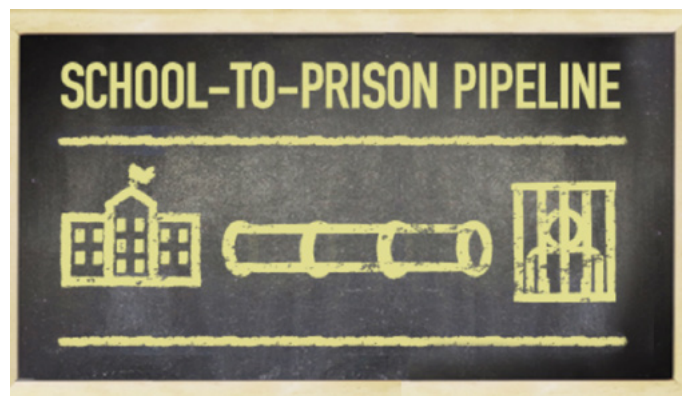
Unfortunately, even for youth who were never formally adjudicated, their home communities and school districts do not always provide an enthusiastic welcome to them upon return. Studies show that nationally, as many as two-thirds of youth eventually drop out of school after being involved in the juvenile justice system, due to these types of barriers. There are clear steps that governments can take to protect youth with disabilities in and around the juvenile justice system, some of which are quite simple to effectuate.

# Exclusionary Discipline in Schools: Students with Disabilities in the School-to-Prison Pipeline

*Shaleen Shanbhag, Fellow, American Civil Liberties Union Foundation of Southern California  
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The term “school-to-prison pipeline” is used to describe the national trend of school policies and practices that force students, especially at-risk students,<sup>1</sup> out of classrooms and into the juvenile or criminal justice system. Research suggests that what began as a series of school discipline policies aimed at promoting public safety has become an established system of practices that actively undermines student achievement and engagement and pushes massive numbers of students out of the classroom, without creating safer schools.<sup>2</sup> Although it is counterproductive to the goals of our education system, removal of students from the classroom has become a common and widespread disciplinary practice.

Under federal law, administration of school discipline should be enforced equally, in a manner that does not discriminate against particular groups of students.<sup>3</sup> In practice, however, students with disabilities, particularly students of color with disabilities, are disproportionately punished for the



same actions as their similarly situated peers, and are disproportionately segregated and subjected to physical restraint and seclusion for disability-based behavior.<sup>4</sup> The following information will provide an overview of factors contributing to the school-to-prison pipeline and their impact on students with disabilities, with emphasis on the effects of restraint and seclusion, and present alternative methods of discipline that are more effective in improving safety and promote a positive school climate.

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<sup>1</sup>“At-risk” students include students of color, students with disabilities, English language learners, LGBTQ youth, and other vulnerable populations.

<sup>2</sup>See, e.g., AM. CIVIL LIBERTIES UNION OF PA., BEYOND ZERO TOLERANCE: DISCIPLINE AND POLICING IN PENNSYLVANIA PUBLIC SCHOOLS 7 (2015), available at [http://www.aclupa.org/files/6914/3144/0044/2-16-2015\\_FINAL\\_64204\\_ACLU\\_ONLINE.pdf](http://www.aclupa.org/files/6914/3144/0044/2-16-2015_FINAL_64204_ACLU_ONLINE.pdf).

<sup>3</sup>See Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 et seq.; Title IV of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000c et seq.; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq.; Title II of the Americans with Disabilities Act, 42

<sup>4</sup>See, e.g., NAT’L COUNCIL ON DISABILITY, BREAKING THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS WITH DISABILITIES 11, 16 (2015), available at [http://fixschooldiscipline.org/wp-content/uploads/2014/05/NCD\\_School-to-PrisonReport\\_508-PDF-1.pdf](http://fixschooldiscipline.org/wp-content/uploads/2014/05/NCD_School-to-PrisonReport_508-PDF-1.pdf). U.S.C. §§ 12131 et seq.

## *Contributors to the Pipeline and Their Effects on Students with Disabilities*

### *Zero Tolerance Policies*

“Zero tolerance” policies impose severe consequences, such as suspension or expulsion, for specified conduct regardless of the particular circumstances. The rationale for eliminating discretion and instituting a “one-size-fits-all” approach to student discipline is that imposing harsh punishment for minor, sometimes trivial misconduct will purportedly deter students from committing more serious misconduct in the future. But research shows that the most common consequence of suspending an at-risk student is, in fact, a high likelihood that the student will be suspended

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*...recent advances in brain science confirm that the adolescent brain is still developing and therefore cannot be treated as that of an adult...*

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again.<sup>5</sup> Of particular concern is that in addition to losing valuable instruction time, students subject to exclusionary discipline methods are more likely to be held back, drop out of school, and enter the juvenile justice system.<sup>6</sup>

Even more disturbing is the disproportionate effect that these practices have on students with disabilities.<sup>7</sup> Data from the Civil Rights Data Collection (CRDC), conducted by the Department of Education’s Office for Civil Rights (OCR), reveals that although

students with disabilities constitute 12 percent of students nationally, they represent 19 percent of students receiving in-school suspensions, 20 percent of students receiving one out-of-school suspension, 25 percent of students receiving multiple out-of-school suspensions, and 19 percent of students receiving an expulsion.<sup>8</sup> Compared to students without disabilities, students with disabilities are more than twice as likely to receive one or more out-of-school suspensions.<sup>9</sup> The disparities are even more shocking for students of color with disabilities. For instance, 25 percent of students of color with disabilities receive at least one suspension and African American students with disabilities constitute 18.7 percent of the special education student population but represent 49.9 percent of special education students in correctional facilities.<sup>10</sup>

### *Over-Policing of Schools*

The dramatic increase of police presence on school campuses, through the proliferation of school resource officers and school district police departments, has amplified reliance on the penal system to address youth behavioral issues traditionally handled by school personnel, families, and the community. Studies show that the placement of police officers in schools is more likely to escalate non-serious or low-level incidents into criminal acts, leading to more school-based arrests and referrals to law enforcement.<sup>11</sup> Indeed, the CRDC reported that students with disabilities make up 25 percent of students referred to law enforcement and 25 percent of students receiving a school-related arrest.<sup>12</sup> Moreover, the establishment of regular law enforcement presence in schools raises concerns about negative long-term effects on youth as a result

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<sup>5</sup>Tary Tobin et al., Patterns in Middle School Discipline Records, 4 J. EMOTIONAL & BEHAV. DISORDERS 82, 82–94 (1996).

<sup>6</sup>DANIEL LOSEN ET AL., SUSPENDED EDUCATION IN CALIFORNIA (2012), available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/suspended-education-in-california/SuspendedEd-final3.pdf>.

<sup>7</sup>See, e.g., TONY FABELO ET AL., COUNCIL OF STATE GOV’TS JUSTICE CTR. AND PUB. POL’Y RESEARCH INST. AT TEX. A&M UNIV, BREAKING SCHOOLS’ RULES 47–53 (2011), available at [http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking\\_Schools\\_Rules\\_Report\\_Final.pdf](http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf).

<sup>8</sup>U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS & U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., DEAR COLLEAGUE LETTER 3 n.6 (2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

<sup>9</sup>U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE 3 (2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.

<sup>10</sup>BREAKING THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS WITH DISABILITIES, *supra* note 4, at 11, 16.

<sup>11</sup>N.Y. CIVIL LIBERTIES UNION, A, B, C, D, STPP: HOW SCHOOL DISCIPLINE FEEDS THE SCHOOL-TO-PRISON PIPELINE 9 (2013), available at [http://www.nyclu.org/files/publications/nyclu\\_STPP\\_1021\\_FINAL.pdf](http://www.nyclu.org/files/publications/nyclu_STPP_1021_FINAL.pdf).

<sup>12</sup>SCHOOL DISCIPLINE, *supra* note 9, at 7.



of increased interactions with police.<sup>13</sup> For example, the ACLU recently filed a federal lawsuit on behalf of two Kentucky elementary students with disabilities, alleging they suffered severe trauma after being handcuffed by a school resource officer.<sup>14</sup>

### ***Restraint and Seclusion***

In theory, restraint and seclusion<sup>15</sup> are techniques employed in order to protect the student, or another, from imminent danger. In practice, however, restraint and seclusion are a key element of the school-to-prison pipeline and have become part of many teachers' and staff's discipline "toolkit," used to punish or force compliance rather than in response to an emergency; students are routinely injured physically with this approach, and almost universally damaged emotionally. This is particularly true in the special education context; students with disabilities, particularly students with autism and intellectual/developmental disabilities, are far more likely to be restrained and secluded at school. Over 70,000 students were physically restrained during the 2011–12 school year. Of these, 75 percent were students with disabilities (52,500). By contrast, students with disabilities comprised only 12 percent of the student population. Students of color with disabilities were also disproportionately mechanically restrained that year, as compared to white students with disabilities.<sup>16</sup>

In many instances, restraint and seclusion is used in response to behavior that is directly related to a student's disability.<sup>17</sup> For example, a 15-year-old boy with autism was killed in Michigan while being

physically restrained at school. He was placed in the restraint because he experienced a seizure and lost control of his extremities and bladder and was found to be uncooperative. Four employees pinned him down for 60–70 minutes, on his stomach with his hands held behind his back and his shoulders and legs held down. He became non-responsive after 45 minutes but the restraint continued and he eventually stopped breathing.<sup>18</sup> The use of these techniques appears to be on the rise. In California, for example, the number of reported behavioral emergencies more than doubled statewide between 2005 and 2012, the vast majority of which involve restraint and seclusion, while special education enrollment has remained relatively constant.<sup>19</sup> Most of these incidents occur in segregated settings, such as nonpublic special education schools which receive students—many with intellectual and developmental disabilities—placed there by school districts that allocate public funds to these schools for educational services.

### ***Barriers to Legal Recourse***

Despite the severity of the problem, legal recourse is particularly difficult for students and parents in the context of restraint and seclusion. The Individuals with Disabilities Education Act (IDEA) requires aggrieved parties to exhaust administrative remedies under the Act before pursuing legal action.<sup>20</sup> This ties up families in administrative procedures that often are not well-suited to address the harms incurred—and are particularly ill-equipped to address the systemic nature of the problem. Plaintiffs often also struggle to establish standing for injunctive

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<sup>13</sup>See, e.g., CATHERINE Y. KIM & I. INDIA GERONIMO, AM. CIVIL LIBERTIES UNION, *POLICING IN SCHOOLS* (2009), available at [http://www.aclu.org/files/pdfs/racialjustice/whitepaper\\_policinginschools.pdf](http://www.aclu.org/files/pdfs/racialjustice/whitepaper_policinginschools.pdf).

<sup>14</sup>Press Release, Am. Civil Liberties Union, *Kentucky Case Spotlights Problem of Untrained Law Enforcement Disciplining Students with Disabilities* (Aug. 3, 2015), <http://www.aclu.org/news/federal-lawsuit-targets-shackling-children-disabilities-classroom>.

<sup>15</sup>The term "restraints" encompasses both "physical restraints," defined as restrictions that immobilize or reduce the ability of a student to move his or her torso, arms, legs, or head freely, and "mechanical restraints," defined as the use of any device or equipment to restrict a student's freedom of movement. U.S. DEP'T OF EDUC., *RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 10* (2012), available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>. "Seclusion" is defined as the involuntary confinement of a student alone in a room or area from which the student is prevented from leaving. See id.

<sup>16</sup>SCHOOL DISCIPLINE, *supra* note 9, at 9–10.

<sup>17</sup>The Kentucky lawsuit mentioned above has alleged that a school resource officer violated students' rights under the Constitution and ADA when he handcuffed them for conduct related to their disabilities. See *supra* note 14.

<sup>18</sup>U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-09-719T, *SECLUSIONS AND RESTRAINTS: SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS 11* (2009).

<sup>19</sup>Jane M. Adams & John C. Osborn, *Little Oversight of Restraint Practices in Special Education*, EDSOURCE (Apr. 19, 2015).

<sup>20</sup>20 U.S.C. § 1415(l).



and declaratory relief—the kinds of remedies that could best address and curb the systemic reliance on restraint and seclusion. One major reason for this challenge is that parents often understandably remove their children from the school district where the harm was suffered to avoid future abuse, thus removing the legal possibility of suffering future harm.<sup>21</sup>

## **Potential Solutions**

### ***Alternatives to Zero Tolerance Policies and Over-Policing in Schools***

Successful alternative approaches to zero tolerance policies include positive behavioral interventions and supports (PBIS), restorative justice practices, and peer mediation.<sup>22</sup> Instead of relying exclusively on exclusionary discipline measures, school administrators should only resort to them where there is a demonstrated and immediate safety threat to the campus community, and where other, less-intrusive measures have been attempted first.<sup>23</sup> Schools can combat the over-policing of students by implementing clear policy guidelines that limit the role of law enforcement on campus. Policies can include, for example, restrictions on law enforcement intervention to emergency situations and mandatory officer training on how to interact with students with disabilities.<sup>24</sup>

### ***Alternatives to Restraint and Seclusion***

There are a number of alternatives that should be advocated for to replace the use of restraint and seclusion. These include de-escalation techniques, verbal calming, and teaching the students self-regulation techniques. Grafton school—which focuses on providing services to people with I/DD—has eliminated the use of restraint and seclusion by adopting alternative methods, including trauma-informed care, positive behavior supports and de-escalation.<sup>25</sup> When restraint and seclusion is being used in lieu of these alternatives, legal advocates can allege claims that the student is being denied a free appropriate education in the least restrictive environment under the IDEA, and that the student is being discriminated against by being deprived educational benefits in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

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<sup>21</sup>See, e.g., D.C. ex rel. T.C. v. Oakdale Joint Unified Sch. Dist., No. 1:11-cv-01112-AWI-DLB, 2012 WL 253224, at \*4 (E.D. Cal. Jan. 26, 2012).

<sup>22</sup>AM. CIVIL LIBERTIES UNION OF N. CAL., DISCIPLINE IN CALIFORNIA SCHOOLS: LEGAL REQUIREMENTS AND POSITIVE SCHOOL ENVIRONMENTS 2 (2010), available at [http://edsources.org/wp-content/uploads/discipline\\_in\\_california.pdf](http://edsources.org/wp-content/uploads/discipline_in_california.pdf).

<sup>23</sup>BEYOND ZERO TOLERANCE, supra note 2, at 12.

<sup>24</sup>DISCIPLINE IN CALIFORNIA SCHOOLS, supra note 22, at 2.

<sup>25</sup>Innovation, GRAFTON, [www.grafton.org/innovation/](http://www.grafton.org/innovation/) (last visited Aug. 7, 2015).

# Restorative Practices: An Opportunity to Dismantle the School-to-Prison Pipeline

*Tanya Eve Franklin, Director of School Culture and Restorative Communities at the Partnership for Los Angeles Schools*

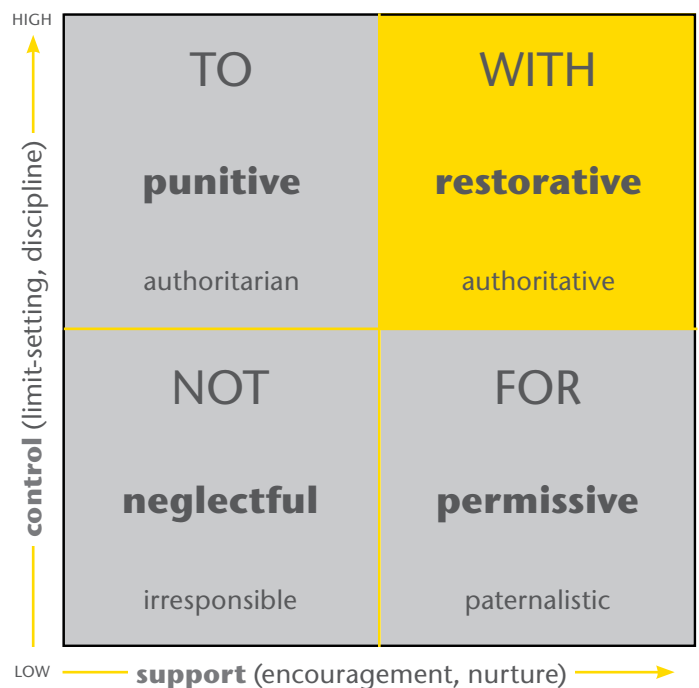
There seems to be a “new” buzzword in education, yet it has ancient roots and the potential to create long-lasting change for students with disabilities. “Restorative justice,” more commonly referred to as “restorative practices” in education, has been developing in schools since the 1970’s in the United States, and adopted as school district policy in Oakland, Chicago, Los Angeles, and other cities in more recent years. Pioneer practitioners of restorative justice like Howard Zehr in Minnesota, Beverly Title in Colorado, Ted Wachtel in Pennsylvania, and Rita Alfred in California, have borrowed indigenous practices like dialogue circles, talking pieces, and ritualistic structures to cultivate a framework for approaching harm in schools from a collaborative, non-punitive lens. Where a traditional school discipline approach asks what rule was broken and what punishment is deserved, a restorative approach asks who has been impacted by the situation and how everyone involved can help repair relationships. By building community, aiming for equity and valuing respect, relationships, and responsibility, restorative practices both address and prevent harm by making decisions “with” others as opposed to “to” or “for” them (see Social Discipline Window). Shifting from a policy-focused system to a people-focused system feels natural in the business of teaching and learning, but in the last few decades discipline in schools has more closely mirrored the depersonalized and punitive criminal and juvenile justice systems. Restorative practices offer an opportunity to

dismantle the school-to-prison pipeline by replacing punitive policies and practices with approaches that are people-centered and equity-focused.

## *Zero Tolerance, Push-Out, and the School-to-Prison Pipeline*

Schools and districts are moving away from their previous policies of zero tolerance for minor

**Social Discipline Window**



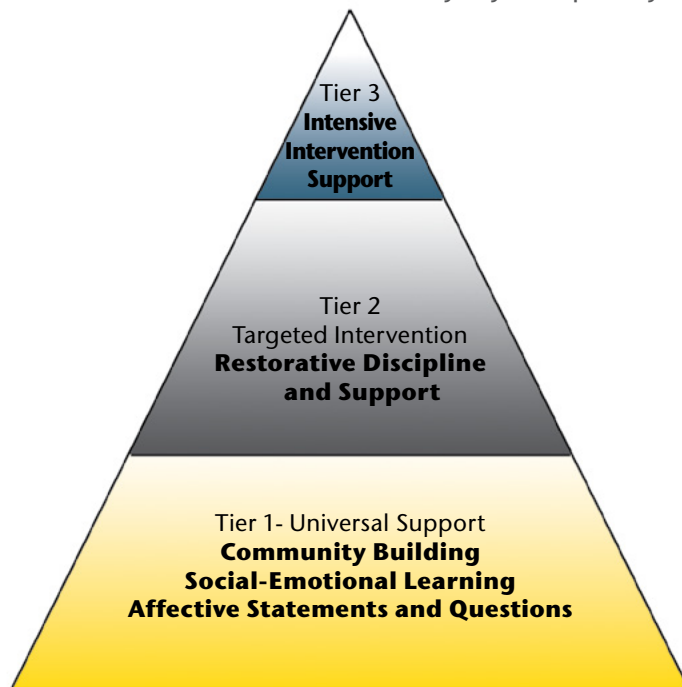
offenses, which often result in higher suspensions and greater loss of learning time, and do not result in safer schools or more positive outcomes for students.<sup>1</sup> When a ninth grader is suspended once, he or she is at least twice as likely to not graduate from high school<sup>2</sup>, and roughly 10% of young adult males without a diploma are incarcerated or in juvenile detention.<sup>3</sup> On average, students with disabilities are suspended at twice the rate of their nondisabled peers, demonstrating an alarming disproportionality for students who are already academically in need of more support.<sup>4</sup> If youth are out of school and unsupervised by a caring adult, they are more likely to make unhealthy, unsafe or unlawful choices, potentially leading to arrest and incarceration. If and when students return to school from suspension, expulsion, or incarceration, they are unlikely to be provided a strategic plan of support for their academic, behavioral and emotional success. More often, through harsh discipline policies, a minimization of supportive resources, and perceptions that students should “know better,” the school conditions are set up such that the highest-need students do not receive the support required to thrive. Students in these situations may explicitly or implicitly be pushed-out of school, propelling a school-to-prison pipeline. John Deasy, former Superintendent of Los Angeles Unified School District, often said, “We don’t have a drop-out problem in this district; we have a push-out problem.”<sup>5</sup>

In recognition of the financial, intellectual, and emotional costs of the school-to-prison pipeline, the U.S. Department of Education, school districts and numerous community-based organizations have advocated for a lessening of harsh disciplinary policies, emphasizing alternatives to suspensions

like restorative justice and conflict resolution. The Office of Civil Rights and Department of Justice have published a federal guidance package that highlights national trends of disproportionate exclusionary discipline practices for students with disabilities and students of color, and calls for a rethinking of school discipline to focus on developing positive school climates that promote positive behaviors, intervention and supports.<sup>6</sup> Schools can create the conditions for students to feel safe, welcome, and even forgiven—a restorative approach aims to do just that.

### *Restorative Justice, Restorative Discipline, Restorative Practices*

Far from another “here today, gone tomorrow” program in education, as the trend has been for decades, the principles and skills of restorative justice are meant to be infused into everyday disciplinary



<sup>1</sup>Editorial Board. “Backing Away from Zero Tolerance.” NY times. 26 Mar 2015. <http://www.nytimes.com/2015/03/26/opinion/backing-away-from-zero-tolerance.html>

<sup>2</sup>Balfanz, Robert, Vaughan Byrnes and Joanna Fox. “Sent Home and Put Off Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade.” Dec 2012. <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/sent-home-and-put-off-track-the-antecedents-disproportionalities-and-consequences-of-being-suspended-in-the-ninth-grade/balfanz-sent-home-ccrr-conf-2013.pdf>

<sup>3</sup>Dillon, Sam. “Study Finds High Rate of Imprisonment Among Dropouts.” NY Times. 8 Oct. 2009. [http://www.nytimes.com/2009/10/09/education/09dropout.html?\\_r=0](http://www.nytimes.com/2009/10/09/education/09dropout.html?_r=0)

<sup>4</sup>Losen, Daniel J. and Jonathan Gillespie. “Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School.” Aug 2012. <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-2012.pdf>

<sup>5</sup>e.g. <http://la.adl.org/2014/03/05/adls-latino-jewish-roundtable-discusses-stopping-the-school-to-prison-pipeline/>

<sup>6</sup>Available at <http://www2.ed.gov/policy/gen/guid/school-discipline/fedefforts.html#guidance>.

and instructional practices. As with a Response to Intervention or Positive Behavior Supports and Intervention model, restorative practices are also a multi-tiered, whole-school approach. In the discipline or intervention tiers, once harm has occurred, restorative practices provide a safe, productive process to discuss the incident, its impact on everyone involved, and collaborative decisions and agreements to heal the harmed relationships and prevent future harm. Tier 2 and 3 incidents only occur approximately 20% of the time or with 20% of the students (and/or adults). The remaining 80% of efforts should be Tier 1: proactive relationship-building, social-emotional learning, effective academic instruction, and healthy responses to minor conflicts. A restorative school with both proactive and reactive restorative practices will aim to positively transform school culture, classroom climate, and student and adult discipline with respect, dignity, empathy, and love. Adults and students in a restorative school will participate in informal restorative practices such as using affective statements and questions, formal restorative practices such as circles for community building, curriculum, and harm/conflict, and also restorative approaches to instruction, decision-making, leadership, and family and community engagement.

### ***Universal and Targeted Support for Students with Intellectual and Developmental Disabilities***

While restorative practices have the potential to positively impact all students and adults, restorative practices have been particularly impactful for students with I/DD. For example, at Roosevelt High School in the Boyle Heights neighborhood of Los Angeles, a school that serves nearly 300 students with identified disabilities, suspensions for students with disabilities has been reduced by nearly 50% after three years of restorative practices.<sup>7</sup> Lori Jandorf teaches students with moderate to severe autism and she uses community building circles multiple times per week with her students. During circles and other instructional activities, she has observed her students using eye contact, identifying feelings, speaking honestly and with multiple sentences, and

using techniques to calm escalating emotions that might otherwise result in physical outburst towards others or self. She believes the circle agreements (e.g. respect the talking piece, speak and listen from your heart) and consistent practice have provided students the tools to develop social-emotional skills that might otherwise not develop during instruction, even though she teaches alternate curriculum. Several of her students were suspended in previous years for behaviors that have since ceased due to the relationship-building and restorative approaches to conflict resolution.

In the Los Angeles neighborhood of Watts, Noel Castorillo at Gompers Middle School now uses affective statements and affective questions with his students with I/DD. Mr. Castorillo participated in 30 hours of professional development with the Partnership for Los Angeles Schools' ("the Partnership")<sup>8</sup> Restorative Communities and has transformed his approach to behavior incidents in class. For example, Mr. Castorillo reported that before the professional development, his approach to discipline was traditionally teacher-driven; when a student broke a rule, he gave the student a consequence without much discussion. After considering how he might be more restorative in his discipline, he began to ask questions like "Who was impacted by your behaviors?" "How can you help repair the relationship?" and "How can I support you moving forward?" These questions gave students an opportunity to collaboratively develop their agreements to address the incident and to ask for support in meeting the expectations. As a result, students learn from their choices and are less likely to repeat misbehaviors. Whereas suspensions often encourage students to make poorer choices that may fuel the school-to-prison pipeline, restorative practices encourage students to address situations differently such that repeated harm is reduced and students remain in school, learning.

### ***Promising Practices: Restorative Communities***

The Partnership is a turnaround network that manages and supports 17 of the highest-need

<sup>7</sup>Suspensions dropped from 7.2% in 2012-13 to 3.8% in 2014-15.

<sup>8</sup>[www.partnershipla.org](http://www.partnershipla.org)

public schools in the Los Angeles neighborhoods of Boyle Heights, South Los Angeles and Watts. They are building an intentional approach to cultivating Restorative Communities by working with all stakeholders who impact the success of students. The Partnership facilitates professional development and coaching with school leaders, teachers and staff, as well as workshops, decision-making opportunities, and events for students, families and partners. The most recent opportunity at the Partnership is the creation and support of a new teacher leader position, the Restorative Communities Leads, to champion the work by coaching peers, leading a school culture team, and modeling best practices.<sup>9</sup> With courage, creativity and collective action in strengthening Restorative Communities, the Partnership aims to dismantle the school-to-prison pipeline in Los Angeles and believes restorative practices provide a much-needed opportunity to dismantle it nationally.

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<sup>9</sup>See <https://sites.google.com/site/partnershipteacherleadership/teacher-leader-roles/restorative-community-lead>



## Restraint and Seclusion in Schools: A Road That Can Lead to Dire Consequences

*Richard Diaz, Civil Rights Fellow, Disability Rights California*

The misuse of restraint and seclusion in schools predominately affects people with disabilities<sup>1</sup> and can lead down a path of severe consequences. Children with disabilities, especially those with intellectual and developmental disabilities, are most vulnerable to the seclusion and restraint practices because of their potential inability to express their feelings or concerns to school staff.<sup>1</sup> The lack of established standards, accountability, and training by states and schools is a major factor of why the practice of restraint and seclusion in schools continues.

### ***What is Restraint and Seclusion?***

The Civil Rights Data Collection (CRDC) project of the United States Department of Education (US DOE) defined restraint and seclusion as<sup>3</sup>:

**Physical Restraint:** A personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back

for the purpose of inducing a student who is acting out to walk to a safe location.

**Mechanical Restraint:** The use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

- Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Restraints for medical immobilization; or
- Orthopedically prescribed devices that permit a student to participate in activities without risk of

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<sup>1</sup>United States Government Accountability Office [GAO], (May, 2009). Seclusions and Restraint: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers. GAO-09-719T.

<sup>2</sup>Child Welfare League of America (2004b). Behavior Support and Intervention

<sup>3</sup>Training, CWLA Best Practice Guidelines. Washington, D.C., CWLA. Available at: <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

harm.

**Seclusion:** The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

### ***Laws and Policies Governing Restraint and Seclusion in Schools***

There are no federal laws governing the use of seclusion and restraints in schools. Individual states have enacted laws that cover restraint and seclusion in schools but they vary widely. In July 2009, Arne Duncan, Secretary of the US DOE, issued a letter to state school officers expressing his concern about the information presented in the Government Accountability Office (GAO) report released that year.<sup>4</sup> He encouraged every state to develop, or review and revise as needed, their state's policies and guidelines regarding the use of restraint and seclusion in schools to ensure the safety of student who are being unnecessarily or inappropriately restrained or secluded.<sup>5</sup> In 2012, US DOE issued a detailed resource guide that articulated 15 principles that states and local school districts should adopt to protect students from the serious and deadly risks associated with restraint and seclusion.<sup>6</sup> Across the

nation only 11 states have implemented ten the main principles suggested by the DOE, still leaving a varying level of protection for people with disabilities who are being restrained in classrooms.<sup>7</sup>

### ***Problems with the Practice of Restraint and Seclusion in Schools***

Restraint and seclusion are dangerous and traumatic events.<sup>8</sup> Children are subjected to restraint or seclusion at higher rates than adults and are at greater risk of injury.<sup>9</sup> Physical and mechanical restraints, even when applied correctly, have been associated with serious physical conditions, including asphyxiation, broken bones, dehydration, oxygen deprivation to the brain and other vital organs, and death.<sup>10</sup> Behavioral restraint and seclusion can also severely traumatize individuals and result in lasting adverse psychological effects.<sup>11</sup> Furthermore, restraint and seclusion can compromise an individual's ability to trust and engage with others.<sup>12</sup>

In June 2007 Protection and Advocacy, Inc. (PAI)<sup>13</sup> published a report documenting their investigation into the practice of restraint and seclusion in California schools.<sup>14</sup> In one case study they found that a 12 year old child with a disability was put into a seclusion room as a "time out" almost every day for three hours.<sup>15</sup> The seclusion room also had a light that was for a period of time broken leaving him sitting in the dark for hours.<sup>16</sup> In another case study a 6 year

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<sup>4</sup>GAO (May, 2009). Seclusions and Restraint: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers, 1-4. available at: <http://www.gao.gov/assets/130/122526.pdf>

<sup>5</sup>Duncan, A., Deputy Secretary of United State Department of Education. Letter to Chief State School Officers, dated July 31, 2009. available at: <http://www2.ed.gov/policy/elsec/guid/secletter/090731.html>

<sup>6</sup><http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

<sup>7</sup>Morrison, L. & Roberts, M. (2015). Restraint and seclusion in California schools: Recommendations for California. Oakland, CA: Disability Rights California (DRC). Available at <http://www.disabilityrightsca.org/pubs/CM6101.pdf>

<sup>8</sup>United States Government Accountability Office [GAO], (May, 2009). Seclusions and Restraint: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers. GAO-09-719T.

<sup>9</sup>Id.

<sup>10</sup>Child Welfare League of America (2004b). Behavior Support and Intervention Training, CWLA Best Practice Guidelines. Washington, D.C., CWLA.

<sup>11</sup>Child Welfare League of America (2004a). Achieving Better Outcomes for Children and Families – Reducing Restraint and Seclusion. Washington, D.C.; CWLA Press.

<sup>12</sup>Child Welfare League of America (2004b). Behavior Support and Intervention Training, CWLA Best Practice Guidelines. Washington, D.C., CWLA.

<sup>13</sup>In October of 2008 PAI changed their name to Disability Rights California.

<sup>14</sup>Morrison, L. & Moore, C. (2007). Restraint and seclusion in California schools: A failing grade. Oakland, CA: Protection & Advocacy, Inc. (PAI). available at: <http://www.disabilityrightsca.org/pubs/702301.pdf>

<sup>15</sup>Id.

<sup>16</sup>Id.

old child with a disability was physically restrained many times outside the classroom in what is called a basket hold.<sup>17</sup> The student told PAI investigators that his teacher restrained him when he did not listen to her and that the restraint events lasted up to 20 minutes.<sup>18</sup> The investigation found that schools frequently used seclusion or physical restraint as the primary means of intervening with the children. As these events occurred repeatedly over time, restraint and seclusion became routine classroom events. School personnel also did not evaluate the students' problem behavior and failed to develop or revise individualized positive behavior plans. These are examples of incidents that not only mentally and physically harm children with disabilities but also encourage their mistrust in the school system.

The lack of trust that develops from restraint and seclusion is something that can have far-reaching consequences. Without staff and student communicating and understanding the underlying reasons causing the behavior problems, there can be no solution to the continual cycle of restraint and seclusion. Further, the lack of trust can lead to increased behavioral problems or an increased defiant attitude to instructions by school staff. This defiance and behavior can in turn lead to increased absences, suspensions and expulsions.<sup>19</sup> The mistrust developed at school can also transfer to adults or authority figures outside of school, leading children with disabilities to potential incarceration in juvenile detention facilities.

This prevalence of minority students and students with disabilities being forced down the path to juvenile hall or prison is often called the "school to prison pipeline". Children with disabilities and emotional disturbance have higher arrest rates than their non-disabled peers.<sup>20</sup> Studies estimate that the prevalence of youth with disabilities in juvenile

corrections is between 30% and 70%.<sup>21</sup> Therefore, restraint and seclusion in schools is not only extremely dangerous for children with disabilities physically and mental health but can also lead down a path of incarceration.

### *Emerging Solutions*

Many states have begun taking active roles reducing the use of restraint and seclusion in schools<sup>22</sup>, but more can always be done. States can enact legislation consistent with recommendations from the US DOE, the US Secretary of Education and numerous other states that sets minimal safeguards for the use of restraint and seclusion with school children. In terms of data collection, many states currently are not required to report incidents of restraint and seclusion or their reporting is unreliable. By creating statewide rules that require accurate reporting of data more incidents can be captured and analyzed so as to target problem areas. Schools must also ensure that the use of restraint and seclusion is limited to only the most imminently dangerous behaviors. Reducing and, eventually, eliminating restraint and seclusion should be a top priority, consistent with initiatives in all other settings where used. Finally, all school personnel should receive comprehensive training on school-wide programs of positive behavioral supports and other strategies, including de-escalation techniques, for preventing dangerous behavior that leads to the use of restraint and seclusion.<sup>23</sup>

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<sup>17</sup>Id.

<sup>18</sup>Id.

<sup>19</sup>Morrison, L. & Roberts, M. (2015). Restraint and seclusion in California schools: Recommendations for California. Oakland, CA: Disability Rights California (DRC). Available at <http://www.disabilityrightsca.org/pubs/702301.pdf>

<sup>20</sup>See Chesapeake Institute, National Agenda for Achieving Better Results for Children and Youth With Serious Emotional Disturbance (1994), available at: <http://cecp.air.org/resources/nlagend.asp>; Wagner et al., Youth with Disabilities: A Changing Population (2003), available at: [http://www.nlts2.org/reports/2003\\_04-1/nlts2\\_report\\_2003\\_04-1\\_execsum.pdf](http://www.nlts2.org/reports/2003_04-1/nlts2_report_2003_04-1_execsum.pdf)

<sup>21</sup>Mary M. Quinn et al., Youth with Disabilities in Juvenile Corrections: A National Survey, 71 *Exceptional Child*. 339, 342 (2005).

<sup>22</sup>Morrison, L. & Roberts, M. (2015). Restraint and seclusion in California schools: Recommendations for California. Oakland, CA: Disability Rights California (DRC). Available at <http://www.disabilityrightsca.org/pubs/702301.pdf>

<sup>23</sup>Based on DOE's 15 principle recommendations, available at: <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

## Special Education in Juvenile Detention and Youth Detention Centers

Katherine Perez Enriquez, JD

*“[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”*—Supreme Court in *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

Youth with I/DD imprisoned by the juvenile justice system have a moral and legal right to education. Yet juvenile detention and youth detention centers, and other out-of-home placements, do not respond adequately to this imperative. For the majority of these youth, “basic education services are not provided” at all.<sup>1</sup> If juvenile halls are to serve a rehabilitative purpose, these inadequacies must be corrected.

Juvenile detention and youth detention centers confine an estimate of 60,000 youth every day.<sup>2</sup> These systems capture many individuals with I/DD who have individualized education programs (IEPs) or need one. IEPs are written documents created by a team of educators, parents, and students that document the student’s disability and chart the student’s progress, goals, and educational plan. It is estimated that as many

as 70% of youth in juvenile halls may qualify for special education programs (and therefore should have IEPs).<sup>3</sup>

Education can empower youth with I/DD and prepare them for the future, yet they face many structural and attitudinal barriers when it comes to receiving the education they need. Research studies demonstrate that, as adults, they are likely to be unemployed or under-employed.<sup>4</sup> If these students with disabilities who become involved in the juvenile justice system are going to have any chance at a better future, education must be a priority in their lives. Depending on the degree to which they are provided an appropriate education while in the system, they may be on a trajectory toward continuing education and life in the community successfully, or they could face a future in poverty, cycling in and out of the criminal justice system.

### ***Legal Rights of Juveniles with Disabilities***

The Individuals with Disabilities Education Act (IDEA) of 1990, (originally the Education for All Handicapped Children Act (P.L. 94-142), passed in 1975), guarantees that every child with a disability between the ages of 3 and 21 years in the juvenile correctional system is entitled to a free and appropriate public education

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<sup>1</sup>Twomey, K. (2008), *The Right to Education in Juvenile Detention under State Constitutions*, *Virginia Law Review*, Vol. 94, No. 3 (765-811).

<sup>2</sup>See “Painting a different picture of education in the juvenile detention center” available at <http://www.ed.gov/blog/2014/12/painting-a-different-picture-of-education-in-the-juvenile-detention-center/>.

<sup>3</sup>Kelly, K. (2000), *The Education Crisis for Children in the California Juvenile Court System*, 27 *Hastings Constitutional Law Quarterly* 757.

<sup>4</sup>“Employment Issues for People with Disabilities,” *Public Policy and Legal Advocacy*, The ARC available at <http://www.thearc.org/what-we-do/public-policy/policy-issues/employment>.

(FAPE) in the least restrictive environment (LRE).<sup>5</sup> Under FAPE, juvenile detention and youth detention centers must provide special education and related services, without charge to its students and their families, and tailor each student's education according to their individual needs.<sup>6</sup> Under LRE, or "mainstreaming" policy, juvenile detention and youth detention centers must provide students with the right educational placement from a continuum of options including "special classes" and "regular classrooms."<sup>7</sup> The law requires that students with disabilities integrate into typical classrooms with nondisabled peers to the maximum extent appropriate.<sup>8</sup>

Schools in juvenile detention and youth detention centers are legally required under the "child find" mandate to identify, locate and evaluate all children with disabilities who may be eligible for special education and related services.<sup>9</sup> There must also be "a practical method... developed and implemented to determine which children with disabilities are currently receiving special education and related services."<sup>10</sup> When a youth with I/DD in the system turns 16, the juvenile hall must update the student's individual education program (IEP) with proper transition goals.<sup>11</sup>

The IDEA and its regulations also provide parent's rights (named "Procedural Safeguards"), which include the right to be informed, to consent, to request an evaluation, and participate in meetings.<sup>12</sup> These safeguards include providing a surrogate if the parent is unknown or the child is a ward of the state.<sup>13</sup> The IDEA requires that "[a]ssessments of children with disabilities who transfer from one public agency to another in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible..."<sup>14</sup>

### ***Challenges to Obtaining Educational Services***

Generally speaking, juvenile detention and youth detention centers face significant challenges when

providing an appropriate educational experience for youth with I/DD given the transient nature of the youth within their system.

First, providing appropriate special education services requires the transfer of large amounts of educational records promptly between bureaucratic systems (e.g. the district and the correctional system). The timely transfer of educational records (such as IEPs) is important for many reasons (for example, many students with I/DD will likely have established individualized behavioral strategies on their IEPs).

Even in the best scenario, juvenile corrections officers and youth need to be able to communicate effectively about educational records. Youth often shoulder the burden to advocate for themselves as they travel from one system to another. However, youth with I/DD may have a difficult time relating if they have an IEP, and if so, what its contents include.

For those youth with I/DD who do not have an IEP, juvenile detention and youth detention centers are charged with "child find" laws to establish an IEP. Time constraints may be a particularly difficult challenge in this scenario given that the IDEA allows up to a two-month period to complete the initial evaluation.<sup>15</sup> It is not unlikely for a student to be transferred to another center within a two-month period thus trapping students in an educational limbo while they circulate through the system.

Pending the juvenile detention or youth detention center receiving a student's IEP in a timely fashion, it may not have the human capacity or resources to enact the student's IEP. Juvenile detention or youth detentions center schools (also called juvenile court schools or juvenile justice schools) may only offer classes for youth without disabilities or provide a contained classroom where all students with I/DD are placed. These one-size-fits-all classrooms do not adhere to the individualization of each student's educational program (and are illegal

<sup>5</sup>20 U.S.C. 1412(a)(1).

<sup>6</sup>20 U.S.C. 1400; 300 C.F.R. §303.15.

<sup>7</sup>20 U.S.C. 1400; 300 C.F.R. §303.15.

<sup>8</sup>20 U.S.C. § 1412(a)(5)(A).

<sup>9</sup>20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111.

<sup>10</sup>20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111.

<sup>11</sup>20 U.S.C. 1414(d)(1)(A)(i)(VIII)(aa) and (bb); 34 CFR 300.320(b)

<sup>12</sup>20 U.S. Code § 1415

<sup>13</sup>20 U.S. Code § 1415(b)(2)

<sup>14</sup>20 U.S.C. 1414(b)(3)(D); 34 CFR 300.304(c)(5)

<sup>15</sup>20 U.S.C. 1414 (A)(1)(c)(i)(I).



under the IDEA). Another challenge is that students present at a juvenile justice school for a fraction of the school year may not complete the coursework sufficient to receive school credit.

### ***Potential Solutions***

When at all possible, juvenile detention and youth detention centers can minimize the movement of students with I/DD from center to center to allow proper time to make assessments, retrieve educational records, and enact the appropriate individualized educational program (IEP). Juvenile justice systems need to have direct access to their district's student information systems for prompt transfer of educational records. Juvenile detention and youth detention centers can also dedicate more financial and human resources to its school programs to meet each student's unique needs.

Barring self-initiated change from within juvenile justice system, individual advocacy, collaborations between public and private institutes and policy initiatives, and impact litigation have proven to be strong tools for creating change.

### ***Individual Advocacy***

Individual advocacy can have the most timely and effective impact. A parent, guardian or other advocate can obtain a student's prior educational records, request a screening at initial arrival the hall, or request an IEP meeting. Advocates may need to take legal action if the student's IEP is not being enacted.

### ***Policy Initiatives***

Collaboration between public and private institutions and policy initiatives also make a difference. For example, a county in California developed an "Education Rights Project" in which the Office of the County Counsel, Probation Department and Department of Family and Children Services (DFCS) joined forces with the Morrissey-Compton Educational Center, Inc., and Legal Advocates for Children and Youth to ensure that dependents and wards of the juvenile court receive a free and appropriate education.<sup>16</sup> This includes providing ongoing training for juvenile

court professionals on educational issues to increase awareness and promote a proactive approach to tackling dependent and educational challenges.<sup>17</sup>

### ***Impact Litigation***

Although impact litigation may be more costly and time consuming than individual advocacy, it can have a sweeping impact that gains remedies for its plaintiffs as well as more permanent solutions for future students in juvenile halls. As an example, the non-profit law firm Disability Rights Legal Center in Los Angeles, California, settled a class action lawsuit that led to improved educational services for youth with disabilities who are in juvenile halls in their case against the County of San Bernardino.<sup>18</sup> This case represented a class of past, present, and future youth with disabilities needing education who experienced discrimination based on their disability. The settlement specified that juvenile hall schools will maintain proper child find and screening procedures; educate staff; require staff to request educational records within two days of the youth's entrance into the hall and develop an assessment plan if the records are not received within 14 days; forward all information if the youth is transferred before this is complete; and maintain a separate budget for juvenile hall schools.<sup>19</sup>

The IDEA (as well as other state and local laws) determines the minimum educational requirements by which juvenile justice schools must abide. These schools can and should go beyond the minimum requirements to support our most vulnerable youth with I/DD in the system. One example of such a school is the Maya Angelou Academy (MAA) at the New Beginnings Youth Development Center in Washington, D.C. The nationally-recognized program offers GED and SAT prep classes, computer skills courses, college tours, and innovative Saturday enrichment programs in areas ranging from law to yoga.<sup>20</sup> Other juvenile detention and youth detention centers should strive to replicate the best practices at New Beginnings.

<sup>16</sup>See "Educational Rights Project" available at <https://www.sccgov.org/sites/cco/Pages/ed-rights.aspx>.

<sup>17</sup>See "Educational Rights Project" available at <https://www.sccgov.org/sites/cco/Pages/ed-rights.aspx>.

<sup>18</sup>See "Disability Litigation Program" available at <http://www.disabilityrightslegalcenter.org/disability-litigation-program>

<sup>19</sup>See "Final Settlement School Settlement" available at <http://www.disabilityrightslegalcenter.org/disability-litigation-program>.

<sup>20</sup>See "Maya Angelou Academy at New Beginnings" available at <http://dysr.dc.gov/service/maya-angelou-academy-new-beginnings>.

## The Arc of the Capital Area's Juvenile Justice Services (JJS): A Successful Program for At-Risk Youth with Disabilities

*Kaili Goslant, Director of Agency Services, The Arc of the Capital Area  
Courtney Mallen, Grant Writer/Development Associate, The Arc of the Capital Area*

Juvenile Justice Services (JJS) at The Arc of the Capital Area (The Arc) located near Austin, Texas prevents involvement or recidivism in the juvenile justice system for students aged 11-17 who are enrolled in special education. Additionally, JJS provides necessary supports for at-risk youth to remain in school, reach graduation, and gain successful employment.

JJS at The Arc is the only program of its kind in Central Texas and one of only a handful of programs in the country that focuses on the needs of at-risk youth with I/DD. We began JJS nearly 10 years ago as we became aware of the unique challenges faced by at-risk adolescents and teens in special education. We have seen steady demand: approximately 70% of students in the juvenile justice system have emotional or developmental disorders (including learning disorders), and while juvenile crime rates are down, more girls are becoming involved in the system. Our case managers work directly with the local educational and criminal justice systems to provide case management, advocacy and support to at-risk students with I/DD. Our experience has shown that these issues are systemic, so we also provide education within the home and help locate community resources for the whole family.

JJS is community-driven by design. The Arc of the Capital Area maintains strong relationships with stakeholders in the special education and juvenile justice systems so we can identify and triage wraparound services quickly and efficiently. As the program grew, The Arc became a recognized expert

in this student population. One of our most important takeaways has been the realization that a successful approach focuses on the positive attributes of the student and family. This requires individualized assessment of every situation. Each student/family is assigned to one case manager so that comprehensive knowledge of the case is centrally maintained.

The majority of referrals come from the student's school, the Travis County Juvenile Probation Department, or Community Partners for Children (CPC), a collaborative group of community and government social service agencies that works together to address individual needs of children and families with complex needs. This large network of providers is effective in identifying students in need across a broad service area. CPC meets every two weeks, where the group hears 30-minute case presentations and assigns case managers and service providers based on the individual circumstances in real time.

Services in our program are provided year-round by one case manager who devotes 75% of their time to our at-risk adolescent clients and one case manager who dedicates 50% to this population. At this staffing level, we can serve about 32 students and their families per year. These services are delivered in the following ways:

Home Visits: Case managers visit client families at their home for onsite assessment of their living conditions, environment, and overall needs. These visits assure

that living conditions are conducive to student learning and do not act as a catalyst for negative behaviors. Our experience has shown that home evaluations are an important informational piece in the assurance that client needs are met effectively.

Resource Development & Referral: The Arc staff assists client families in accessing resources that help provide a safe, stable, and supportive home environment for the entire household. These resources may include financial management, support groups, educational workshops, affordable housing, and other services.

Person-Centered Planning: With the assistance of their case manager, all juvenile clients and their families develop individualized goals and service plans.

Special Education Advocacy: Case managers attend special education planning sessions and Admission, Review or Dismissal (ARD) meetings to advocate for juvenile clients and their families. Case managers also assist parents/caregivers in understanding and navigating the special education system and collaborate with teachers and school officials to track special education documentation and outcomes that ensure appropriate educational settings are in place. This may include the development or modification of Behavior Intervention Plans (BIP).

Advocacy in Juvenile Justice Courts: For students who have already become involved in the criminal system, we help them meet the terms of their probation and avoid any further criminal activities. Case managers provide advocacy by accompanying families to court to ensure that the families understand the proceedings and to educate the court on how the child's disability may have played a part in the behavior relating to the charges. They also work with probation officers, the student, and the family to ensure compliance.

Collaborations: Case managers participate in group meetings with other service providers and clients to establish wraparound services.

Both of our case managers who work with juvenile clients are bilingual (English-Spanish) so that JJS can address common language barriers. In the past year, about 40% of our juvenile clients were primarily Spanish speakers. The Arc's service model assumes that case managers almost always travel to the client's school or home to limit transportation barriers, and all services are free to avoid creating financial barriers.

Our program requires case managers to spend significant time getting to know the students and families they serve. They are able to take time to more thoroughly assess and appropriately address complex situations than an often overburdened educational and/or juvenile justice system. They can involve the entire family in accessing services that will stabilize the home environment so that the student can focus on school. Case managers then work in cooperation with the school to build understanding of complex situations and develop an education plan that addresses unique circumstances for a greater chance of success. By engaging students and families in developing individualized goals, these clients become empowered to make positive choices in the future.

While our juvenile services do not adhere to a specific evidence-based model, our metrics have for years been directly correlated with success rates. For our middle and high school juvenile justice clients, we measure if the students offend or re-offend, if they remain in school and/or at work, and if they are academically successful. During our last juvenile justice service year, we served 32 students. Of those students, 94% (30 students) remained in school or working and 79% (25 students) did not offend or reoffend.

Every school year brings new success stories. For example, a student who recently entered the program was on a destructive path. At 15, she was involved in gang activity, abusing drugs, skipping and failing classes, and had been a victim of and witness to gang violence. When she did attend class, she generally finished her work early but then became vulnerable to negative distractions. The Arc worked with the school to find ways that she could remain safe and work for extra credit instead of disrupting class. We found scholarships for her mom and brother to attend cosmetology school together and build a more stable home. Her outcome is everything we strive for: a student who is getting As and Bs, attending school regularly, is no longer involved with gangs and drug activity, and has developed a sense of pride so that she can advocate for herself.



## A Call to Action

People with disabilities are particularly vulnerable to potential injustices in the criminal justice system, and this is also true regarding youth with disabilities. Rules and laws that work for the majority of the population often blatantly fail people with I/DD, many times leading to injury, trauma and other harmful consequences. In an effort to address this issue collectively as both professionals from the juvenile justice and disability fields, it is important to have a starting point to begin learning more about the topic and how to get involved. With this in mind, NCCJD invites you to:

- Learn more about justice-involved youth with I/DD, and other criminal justice and disability-related issues, by watching free archived webinars and signing up for future [NCCJD webinars](#).
- Use the [Pathways to Justice video](#) and [conversation guide](#) to address juvenile justice and disability issues in your community; find better ways to assist juveniles with I/DD and begin creating possible solutions.
- Use [NCCJD's information and referral service](#) to assist justice-involved youth with I/DD, and refer others needing assistance or training.
- Use [NCCJD's state-by-state map](#) or look up resources by profession (law enforcement, victim service provider or legal professionals) when assisting juveniles with disabilities.
- Stay current on criminal justice and disability issues by following [NCCJD's Facebook page](#).

For more information and to learn how you can become a champion for justice in the lives of people with disabilities, contact NCCJD at [www.thearc.org/NCCJD](http://www.thearc.org/NCCJD).