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Hillary A. Behrman
TeamChild

Anne A. Lee
TeamChild

Jean M. Nist
TeamChild

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ARTICLE

Pressure Points at the Intersection of the Education and Justice Systems: Strategies to Improve Student Success and Reduce Juvenile Court Contacts

Hillary A. Behrman

Anne A. Lee

Jean M. Nist

TeamChild

Abstract

This article explores an under examined facet of the school to prison pipeline by focusing a magnifying glass on the real life stories of youth in Washington State who have become stuck in a cycle of school failure and escalating involvement in the juvenile and criminal justice systems. These concrete case studies allow us to explore the ways that the public education and juvenile justice systems have become entangled and how this entanglement creates significant barriers for youth in their attempts to successfully pursue meaningful educational goals, including high school graduation. The article also explores how this entanglement makes it difficult for youth to extricate themselves from the juvenile and criminal justice systems. The article will examine the impact of indefinite exclusion from school for a wide array of school based behaviors and the lack of a clear path back to school enrollment and will look more closely at school discipline practices and their impact on probation violations in juvenile court. The article will also explore the criminalization of disability-related behaviors in school. Finally, the article will look at re-entry to public schools after time spent in detention and prison. Through analysis of the stories of youth and the systems they interact with, successful strategies for creating better outcomes for individual youth will be identified and changes proposed that would disentangle the public education and the juvenile justice systems, thus making room for better educational and community-based outcomes for all youth.

The connection between exclusionary school discipline practices and students' becoming involved in the juvenile justice system is garnering public attention nationally and in Washington State. This nexus is frequently referred to as the "school to prison pipeline" (Lospennato, 2009, p. 529). Each year in Washington, thousands of youth are suspended and expelled from our public schools. During the 2010-2011 academic year alone, there were 46,394 suspensions and expulsions for behaviors related to drugs, alcohol, harassment, intimidation, bullying, and violent criminal offenses and assaults (Office of the Superintendent of Public Instruction, 2012). The numbers reported by the state are an under-representation of the number of children in Washington who are out of school because of suspensions and expulsions, as school districts were, at the time of reporting, required to report suspension and expulsion data for only certain types of behaviors. Because most data are kept at the district level and the quality varies, there is no real way to know at any given time how many youth are out of school for disciplinary reasons, how long they are out, and when and where they return to school. Many of these young people also come into contact with the juvenile justice system, which puts them at risk for further involvement with juvenile court and the criminal justice system. Youth of color, youth with disabilities, and youth living in poverty are over-represented in the number of students who are excluded from school (Skiba, Michael, Nardo, & Peterson, 2000; Aron & Mears, 2003). Youth of color are also disproportionately represented at every decision-making point in the juvenile justice system from arrest to incarceration (Bell & Ridolfi, 2008).

Much of the attention on the school-to-prison pipeline is focused on the direct link between schools and courts. Zero-tolerance policies, excessive policing on campuses, and the criminalization of adolescent behavior have been natural starting points for reform. Heightened police presence in schools has increased police involvement in non-criminal incidents, resulting in a spike of school referrals to the juvenile court system for largely childish misbehavior (Cobb, 2009). Nationally, high profile incidents where students are suspended or even expelled for seemingly typical adolescent behavior and then charged in juvenile court have made headlines (Advancement Project, 2006). But the connection between the public education system and the justice system is far more complex and is exacerbated by pressure points where the education and justice systems intersect and sometimes work at cross purposes to one another.

This article explores subtle yet damaging ways in which education policy and practice and juvenile justice responses work against the success of young people. Digging deeper into these issues reveals a multitude of ways in which the public education and juvenile justice systems are entangled. At these points of connection, instead of improving education outcomes and prospects, the systems are, often times unintentionally, driving youth deeper into the juvenile justice system and further away from their chances of graduation and post-secondary success. TeamChild case studies illustrate these challenges for youth in Washington and the strategies for overcoming them. In particular, the following pressure points are discussed: indefinite exclusions from school, school discipline and its impact on probation violations in juvenile court,

the criminalization of behaviors related to a student's disability, and re-entry to public schools after time in detention and prison.

TeamChild is a nonprofit law firm whose mission is to uphold the rights of youth involved, or at risk of involvement, in the juvenile justice system and to help them secure the education, health care, housing and other support they need to achieve positive outcomes in their lives. Our clients are marginalized because of life circumstances that include poverty, abuse and neglect, family conflict, race, involvement in the juvenile justice system, and disabilities. Since TeamChild opened its doors in 1995, we have provided legal representation and advice to over 10,000 youth. Over half of these cases involved an issue related to education: school discipline or special education specifically. In 2011 alone, 75% of the youth served by TeamChild were out of school at the time of referral to the program. This article draws from the perspective and the experiences of TeamChild clients and other young people who are working to disentangle themselves from justice-system involvement and striving for better educational opportunities than what are being offered to them. Finally, this article calls for systems-level reform aimed at relieving pressure points for young people who are caught in the web of school discipline and juvenile justice involvement.

TeamChild believes that it is the paramount duty of **our community** to help youth overcome the obstacles of poverty, juvenile justice involvement, disability, neglect and abuse, racism, and discrimination to achieve their true potential. In order to change the school discipline climate in a way that will produce better outcomes for students and schools, it is essential to hear the voices of and meaningfully engage the individuals most affected by current exclusionary school discipline practices in the discussion, the policy proposals, and ultimately the solution (Rivkin, 2008).

Pressure Points in the School to Prison Pipeline

Indefinite Exclusions from School

David, a 15-year-old 10th grader in a large suburban high school in Western Washington, was emergency expelled after he was caught with a small amount of marijuana in his pocket by an undercover police officer. Not long after he was caught, David was arrested at school, charged with a felony drug offense in juvenile court, and incarcerated in his county juvenile detention facility for several days. David lived with his mother and father and was one of four children. His two older sisters had both graduated from his high school and gone on to successfully complete college. David had never been in trouble before at school or in the community and he found himself out of school indefinitely and with no date that he could expect to return to school and continue his education.

Under Washington State law, when students are expelled from school, their exclusion is for an indefinite period of time (Washington Administrative Code [WAC] 392-400-205[5]). Washington law also provides for emergency expulsions, which allow a district to immediately exclude a student for an indefinite amount of time (WAC 392-400-295). Students under either an emergency expulsion or expulsion have no specific date set for return to school. Some of these students may be out of school for months or even years with no ability to access an education. The dramatic impact of an indefinite exclusion from school is worsened by the fact that Washington has no statutory requirement for students who are suspended and expelled to receive an education during periods of suspension or expulsion. Washington law also lacks any mechanism for the district or the state to reach out to expelled youth to schedule or facilitate a return to school. A common scenario seen in TeamChild's cases are youth who have been out of school under an indefinite exclusion and are unable to re-enroll in any other district or even in an online program until the original discipline is resolved. Suspensions and expulsions are risk factors that increase the likelihood that a young person will drop out of high school and have future contact with the justice system (Fabelo, Thompson, Plotkin, Carmichael, Marchbanks, & Booth, 2011). The indefinite nature of expulsions in Washington State would likely increase the risks of these negative outcomes.

Until the 2012-2013 school year, school districts were only required to report the numbers of expulsions for certain types of behaviors to the Washington State Office of the Superintendent of Public Instruction, specifically for bullying, tobacco, alcohol, drugs, fighting, and violence. For this list of behaviors, there were 1,671 reported expulsions during the 2010-2011 academic year (Office of the Superintendent of Public Instruction, 2012). This number is likely only a small percentage of students who experience indefinite exclusions from school, as it does not include all behaviors and is also not inclusive of students who are emergency expelled and who may also be experiencing an indefinite exclusion from school.

David's story provides a representative template for how the problem of indefinite exclusions can permanently interrupt or terminate a student's educational career, as well as serve as a pathway into the juvenile justice system that is difficult to

reverse. David's parents responded appropriately and pursued help and support for him from several community-based social service providers, a public defender, and eventually from a legal services attorney through a referral to TeamChild. A TeamChild attorney was able to assist David in relation to the emergency expulsion from school and to partner with his public defender to obtain a better outcome in relation to the subsequent juvenile charges.

After David took full responsibility for his actions and pled guilty to the drug charge, he was forced to pursue a wide array of his due process rights in an attempt to get back into school. With the help of his TeamChild attorney in the school discipline matter, David and his parents appealed his indefinite exclusion from school to both a hearing officer and subsequently to the school board but lost in both venues. Under Washington regulations, students who are expelled are also permitted to petition for re-admission at any time to the school district and ask to be readmitted to school, and David utilized this process (WAC 392-400-275[5]). The district continued to uphold David's emergency expulsion and refused to readmit him or provide him with any educational services at all.

David remained out of school for more than a year as his appeal worked its way to Superior Court. Upon hearing the facts, including the extensive efforts by David and his family to address the underlying reasons for the expulsion, the Superior Court ordered the District to immediately readmit David to a full-time comprehensive high school program. By this time, David had missed more than a year of high school and was not on track to graduate with his class.

While David's case illustrates some very common ways^[1] that the school-to-prison pipeline impacts low income youth and youth of color, it also shines a light on the ongoing entanglements that trigger continued involvement in the justice system. When the district failed to convert David's emergency expulsion to another form of discipline like an expulsion or suspension, the district avoided the more rigorous application of due process criteria those punishments afford and made it possible for David to be permanently excluded from school with very little hope of return. With no school options for over a year, David was losing ground on credits towards graduation and accumulating more risk factors for dropping out and committing more crimes.

On an individual level, David's experiences illustrate how critical legal advocacy can be for young people who are excluded from school indefinitely. Navigating the complex appeal process can be daunting for students who do not have access to an attorney, and many students and their families may simply be unable to make the case for a student's return to school, ultimately leading to dropping out. At a systems level, David's experience illustrates clearly that if indefinite exclusions are eliminated, and all students are permitted to return to school at a time specified, there is an end date for the increased risk of dropping out and justice system involvement. State laws, regulations, and school policies need to be realigned to tip in favor of educational opportunity – rather than permitting thousands of young people to be disciplined for an indefinite period of time each year.

Probation Violations for School Discipline and other School Problems

Marcus wound up in juvenile court because he was caught stealing chips and candy from a grocery store. He pled guilty to theft and was given conditions of supervision, which required him to attend school regularly. Before the arrest, Marcus had already been falling behind in his classes. His mom worked the swing shift, and he would often stay home in the morning to watch his two younger siblings until his mother woke up. Things at school were tense, and Marcus often found himself in the principal's office for not following directions or being disrespectful to his teachers. He got short suspensions for these behaviors. Because of the problems in school, Marcus's probation counselor asked the court to sanction Marcus. Marcus was in and out of detention for a few days here and there throughout the school year. He was never able to catch up in his classes, and got further and further behind academically.

Involvement in the juvenile justice system in Washington typically comes with a set of expectations for appropriate future behavior. These expectations come in the form of court orders spelling out conditions of release, conditions of supervision or probation, and orders of deferred dispositions (Revised Code of Washington [RCW] 13.40.050, 13.40.127, 13.40.160). A common condition in these orders is regular attendance at school without a "skip, tardy, or unexcused absence" (Washington State Courts, 2000). Falling short of these expectations means a youth is in violation of a court order, which carries serious consequences, including up to thirty days in detention. Getting suspended or expelled is likely to trigger a court hearing and some sanction. In a 2011 examination of community supervision practices in one rural and one urban site in Washington State, school issues made up 50% of the probation violations in both sites and detention was the response used 80% of the time for these probation violations (Bechtold, Cauffman, & Monahan, 2011).

Youth are entitled to education while incarcerated. (*Tommy P. v Board of County Commissioners of Spokane County*, 1982). The district in which the detention center is located is responsible for providing education to the incarcerated youth

(WAC 392-137-115). Although the law protects a child's education while incarcerated, time in detention, particularly short stays associated with probation violations, can be incredibly disruptive to a young person's education. While records are expected to be transferred from the youth's schools to the detention schools, there is no guarantee or requirement that the youth will continue the same studies they had been pursuing prior to detention. Because probation violations carry a short length of stay – 30 days or less – youth often have difficulty getting credit for the time and work completed in detention. Finally, youth released from detention may find themselves disenrolled from their home districts, and have to navigate the process of re-enrollment. This process may result in additional time out of school.

TeamChild's approach to Marcus's case and many others like his involves intensive advocacy that not only identifies the underlying reasons for the school problems but also puts more productive solutions in place. In Marcus's case, TeamChild advocated for tutoring to help Marcus catch up in school. Additional advocacy addressed the lack of support in his home. Raising the awareness of probation and juvenile court to Marcus's challenges helped to mitigate future sanctions and additional detention time that Marcus might have faced for school issues.

Probation violations and sanctions for other violations of court-ordered conditions are designed to correct misbehavior. However, where school problems are the reason for a court sanction, the obstacles created as a result of the sanction compound the challenges that youth face in re-engaging and succeeding in school. In these situations, the public education and juvenile justice systems may be working at cross purposes to each other and producing unintended negative consequences for youth.

The Criminalization of Disability Related Behaviors

Sam is an 11-year-old living in a small rural community in Eastern Washington. Sam had been expelled from seven schools over a two-year period. Sam had erratic behavior, trouble following rules and extremely poor impulse control. Many of Sam's challenges at school stem from a number of disabilities that include developmental delays and neurological problems. Sam threw a chair at school and was suspended. The incident was filed in juvenile court as an assault. While on suspension, Sam showed up at a basketball game and was arrested and charged with trespass.

Youth and children with disabilities are over-represented in the juvenile justice system nationally and in Washington State (Aron & Mears 2003). The criminalization of poor behavior at school has significant impacts for youth with disabilities. The juvenile justice system responds to behavior without much regard to disability unless that disability implicates competency or culpability. Washington's determinate sentencing for juveniles allows little room for tailoring sanctions to address underlying cognitive and health related disabilities (RCW 13.40.0357). For youth like Sam, the juvenile justice system is ill-equipped to respond in a way that can positively impact his future behavior.

On the other hand, the education system has a mandate and a wealth of expertise to provide individualized assessment, planning, instruction and support to youth with disabilities. As a special education student, Sam is entitled to receive a free and appropriate education designed to meet his needs (WAC 392-172A-01005). In Sam's case, individual legal advocacy from TeamChild resulted in Sam's qualifying for special education and related services to address his behavioral, social, and academic needs. The advocacy for Sam at the school level included exploring more supportive and appropriate education placements and requesting a more comprehensive special education evaluation to better identify the ways Sam's disabilities impact his ability to learn and behave appropriately at school. In addition, as required by law, the district conducted a functional behavior assessment and completed a behavior intervention plan, two processes designed to give Sam as the student and his teachers tools to work on his behavior in the classroom (WAC 392-172A-05145).

Individual legal advocacy like that provided in Sam's case can be extremely effective in ensuring that youth with disabilities get the support they need to be successful in school and stay out of the justice system. But many of the challenges illustrated in Sam's situation could be avoided if there were more protections in place at the front end of the juvenile-justice system to divert youth with disabilities into advocacy or other programs that can ensure that the underlying reasons for delinquent behavior are addressed. Additionally, a 2011 study from the Council of State Governments indicated that there are strong links between out-of-school suspensions and drop outs and increased risks of juvenile justice involvement (Fabelo et al., 2011; Losen, 2011). Schools can also increase the educational success of students with disabilities by ensuring access to a free and appropriate public education that meaningfully addresses disability related behaviors rather than utilizing law enforcement and justice system consequences as a strategy for addressing disability-related behaviors.

Re-Entry Problems: The Stigma of Criminal Convictions in Schools

Michael grew up in foster care. Before he turned 12, he lived in 14 different foster homes all over the state of

Washington. In two of these foster homes, Michael experienced physical and sexual abuse by his adult caregivers. When Michael was 13 he was placed in a group home with six other boys and very little supervision. Michael and several of the boys engaged in sexual behavior with each other. Because Michael was two years older than one of the boys involved in the incident, he was charged with multiple counts of child molestation and pled guilty to these charges. Michael was sentenced to several years in a Juvenile Rehabilitation Administration facility. Michael did very well in the institution; he stayed on track at school and actively participated in treatment. Michael's case manager, school teacher and treatment team at the facility all recommended that Michael be in a mainstreamed, community-based school upon his release.

Although he was determined to be at low risk for re-offending, Michael was required to put himself on the statewide sex offender registry. Michael and his new foster parent went to enroll him in school and shared with the school his criminal history and all relevant safety information. They asked for a safety planning meeting pursuant to the Washington Office of the Superintendent of Public Instruction's model policies on sex offenders in the school (Office of the Superintendent of Public Instruction, 2006). However, the school district refused to convene a safety planning meeting and immediately emergency expelled Michael from school based on his status as a convicted sex offender.

Many youth are convicted of crimes in Washington that result in months of incarceration in county-based juvenile detention facilities or even longer-term incarceration in a Juvenile Rehabilitation Administration (JRA) facility under a determinate sentencing structure pursuant to RCW 13.40.0357. In some situations, youth under 18 are also incarcerated in adult county jails and the Adult Department of Corrections pursuant to RCW 13.40.110. Re-entry into the community for these youth is often difficult and riddled with concrete barriers to their successful reintegration into society. Re-entry into the public school system after a period of prolonged incarceration can be particularly difficult. Numerous studies have demonstrated that school engagement after incarceration is also an essential protective element in keeping youth from re-engaging in criminal behavior (JustChildren, 2004).

Although students with prior arrests or incarceration are protected from discrimination pursuant to WAC 392-400-215, many of these students have difficulty enrolling in school when they are released from secure detention and incarceration.

Michael's experience with exclusionary school discipline policies and the difficulties of successfully re-entering the community are not unique to juveniles who have been convicted and incarcerated for more serious offenses. TeamChild was able to successfully negotiate Michael's placement in school. However, he missed the first month of classes and was only able to earn partial credits for the semester. Michael's difficulties in enrolling in school after his successful rehabilitation highlight the reality that exclusionary school discipline policies do not always manifest themselves in a linear manner or as a direct result of behavioral problems at school. Youth involved in the justice system experience stigma and discrimination that impairs their ability to attend and successfully complete school.

The Legal Profession's Role in Dismantling the School-to-Prison Pipeline

Attorneys can play an invaluable role in assisting young people with navigating the complexities of school discipline and juvenile court involvement, in particular at pressure points where the two systems collide. Even more significantly, the unique skill set of civil legal aid attorneys allows for deployment of multiple strategies to address the underlying causes that lead young people to be pushed out of public schools and into juvenile court (Pattison & Lee, 2005).

Community lawyering has been recognized as an effective method for tackling the school to prison pipeline in particular (Dixon, 2005). As demonstrated through the client stories, exclusionary school discipline practices can be successfully challenged through the more traditional legal tools of litigation and negotiation on behalf of individuals. But even more significantly, "beyond the courthouse doors ... lawyers working in partnership with organized communities may eliminate the negative impact of zero tolerance and the schoolhouse to jailhouse track" (Dixon, 2005, p.141). TeamChild's work on systemic reform reflects this idea that when partnering with communities we can accomplish more. We are mindful that to meaningfully participate in enforcing the educational rights of students and create system-wide change to keep students engaged in school, we need to be involved in and engaged with the communities we represent (Reichbach, 2007).

Literature supports TeamChild's belief that the only effective strategy for tackling the school-to-prison pipeline is one that is multifaceted and requires a comprehensive understanding of the local factors affecting schools and students (Rivkin, 2008). TeamChild is committed to working with youth, parents, community partners, policy makers, and school administrators to address the school-to-prison pipeline and to engage youth and their families in the discussion about how to improve educational outcomes for all youth in schools, including youth who struggle with their behavior.

TeamChild also recognizes that a critical component to ending the school-to-prison pipeline involves changing the laws and policies addressing school discipline that shape the daily climate of Washington's public schools. To produce a meaningful change in how students experience school discipline in our state, state laws, regulations, and school district policies will all likely need to change to reflect new methods for addressing student behaviors while keeping students in school and out of juvenile court. TeamChild is seeking partnerships with organizations that are committed to changing the laws and policies that influence disciplinary actions in our public schools on a daily basis.

Conclusion & Call to Action

At the core of TeamChild's work is the belief that *all* children have the potential to succeed and that *all* children should have a voice in their futures. Based on our work in the trenches, we know firsthand that keeping young people engaged in school is critical to future success.

TeamChild is committed to dismantling the overt as well as the more nuanced aspects of the school-to-prison pipeline. Young people need legal advocacy to assert their rights, but they also need community-driven solutions that change school climate and school discipline procedures here in Washington and pave the way for educational opportunity for all students. We are dedicated to partnering with individuals and groups who want to stop the push-out of youth from our public schools and into the juvenile justice system. This article has highlighted several points where the systems have become enmeshed. These points offer meaningful opportunities to reduce juvenile justice involvement and keep youth engaged and on track to graduate. We invite youth, parents, community members, educators, juvenile justice stakeholders and anyone else interested in this goal to join us in taking steps to eliminate indefinite exclusions from school, create more productive ways to address school-related violations of court orders, divert disability-related behavior away from the justice system, and remove re-entry challenges for youth returning to school after a period of incarceration. Positive change can start anywhere. We think it can start here.

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Notes

^[1] David's school district utilized a large undercover police sting operation in the school building that disproportionately targeted and profiled youth of color. The school district also applied an aggressive zero-tolerance school discipline policy that justified using emergency expulsions as a tool for indefinite exclusion for a minor drug related offense.