



The Civil Rights **Crisis** in Our Schools

By Nicole Joseph

The term “school to prison pipeline” refers to the link between school failure, zero-tolerance discipline policies, exclusionary discipline, school-based arrest and the likelihood that youth who have these experiences in school will become involved in the juvenile, and later, adult criminal justice systems. *See, School to Prison Pipeline*, NAACP Legal Defense Fund, <http://www.naacpldf.org/case/school-prison-pipeline> (last visited Sep. 4, 2016). Children of color and children with disabilities are over-represented at all stops on the school to prison pipeline, beginning with exclusionary discipline and academic failure in early childhood.



The fact that Black children and children with disabilities are suspended and expelled more often than other children for the same offenses reflects the same inequalities that exist in the adult world. We live in a society where the rate at which Black men are subject to imprisonment is unparalleled, and where people with disabilities are at disproportionate risk of lethal encounters with law enforcement. *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet> (last visited Sep. 4, 2016); David Perry & Carter-Long Lawrence, *How Misunderstanding Disability Leads to Police Violence*, *The Atlantic*, May 6, 2014. The deaths of Freddie Gray and Ethan Saylor indicate that Maryland is no exception. See, Kevin Rector, *Charges against three remaining officers dropped*, *Baltimore Sun*, July 27, 2016; Theresa Vargas, *Md. man with Down syndrome who died in police custody loved law enforcement*, *Wash. Post*, Feb. 19, 2013.

Although the overall number of suspensions and expulsions are down across Maryland, the disproportionate impact of school exclusion and push-out of children with disabilities and children of color continues, according to Maryland State Department of Education (MSDE) data:

2009-2010

- 139,014 total suspensions and expulsions
- Students with disabilities represented 12 percent of the population, but 22 percent of suspensions were of students with disabilities.
- Black students represented 38 percent of the population, but 59 percent of suspensions were of Black students.

2014-2015

- 70,404 total suspensions and expulsions

- Students with disabilities represented 12 percent of the population, but 27 percent of suspensions and expulsions were of students with disabilities.
- Black students made up 35 percent of the population but 62 percent of the suspensions and expulsions were of Black students.

Maryland State Department of Education, *Suspension, Expulsion, and Health Related Exclusions in Maryland Public Schools 2014-2015*, available at http://marylandpublicschools.org/MSDE/divisions/planningresultstest/doc/20142015Student/2014-2015_Suspensions.pdf.

In other words, suspensions are down overall, but suspensions of Black students and students with disabilities have gone down more slowly, so the disproportionality has increased. Nationally, the data is even more troubling, with Black students 3.8 times as likely to be suspended as white students, and children with disabilities more than two times as likely to be suspended as students without disabilities according to the Department of Education's Office for Civil Rights. *A First Look: 2013-2014 Civil Rights Data Collection*, U.S. Dep't of Educ. Office of Civil Rights (2016), <http://ocrdata.ed.gov/DataInfo1314>.

Maryland's Response

In response to these patterns and growing concerns about the effectiveness of removing children from school for childish behavior, in 2012 the Maryland State Board of Education issued a report on school discipline in Maryland. *School Discipline and Academic Success: Related Parts of Maryland's Education reform*, Md. State Board of Educ. (July 2012), available at <http://marylandpublicschools.org/NR/rdonlyres/42ED8EDA-AF34-4058-B275-03189163882D/32853/>

School Discipline and Academic Success Report Final July 2.pdf. The report found that disproportionality by race and disability was a significant problem, that zero tolerance policies were generally ineffective, and that such policies should be replaced with a rehabilitative model of school discipline. *Id.* In 2014, the Board passed regulations to address problems within the suspension process itself, and required the Maryland State Department of Education (MSDE) to develop a method for identifying districts that disproportionately suspend students of color and students with disabilities. Local districts that were identified as problematic were required to present a plan to reduce the disproportionality in one year and eliminate it in three years. These regulations also required collection of data on school based arrests beginning in the 2015-2016 school year. *Md. Code Regs. § 13A.08.01-04*.

Unfortunately part of these regulations has not been implemented at all—the requirement that districts track, reduce and eliminate disproportionate suspensions of students with disabilities and students of color. MSDE is now considering methods of measuring disproportionality, but after two years, has not yet begun measuring it.

Don't Some Students Need to be Removed?

Violent or dangerous behavior in school is never acceptable, and there are times when a student must be removed from a learning environment to ensure the student's safety and the safety of other students. However, according to MSDE data, most suspensions are not for violent actions. Rather, the majority of suspensions statewide fall into the categories of disrespect, insubordination, and disruption. These categories are subjective and often overused as a form of classroom management. They also like-

ly represent the type of behaviors that could be more effectively addressed with restorative approaches to correcting behavior. “Restorative” discipline is a method of effecting behavior and school “climate” that focuses on relationships and having individuals repair wrongs they have committed.

If our goal is to change inappropriate behavior, suspension has been disproven as a method to make schools safer. Matthew P. Steinberg, Elaine Allensworth, & David W. Johnson, *What conditions support safety in urban schools? The influence of school organizational practices on student and teacher reports of safety in Chicago*, Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion (2015). What suspension has been proven to do however, is increase the likelihood of substance abuse, school failure, dropout, and involvement in the juvenile justice system. Tracy J. Evans-Whipp, et al., *Longitudinal Effects of School Drug Policies on Student Marijuana Use in Washington State and Victoria, Australia*. 105 Am. J. of Public Health 994 (2015); Michael Krezmien Peter Leone, & Georgianna Achilles, *Race, and Disability: Analysis of Statewide Practices and Reporting*, 14 J. of Emotional & Behavioral Disorders 217 (2006); Peter Leone, et al., *School failure, race and disability: Promoting positive outcomes, decreasing vulnerability for involvement with the juvenile delinquency system*, The National Center on Education, Disability & Juvenile Justice (2003). See, Christopher Ingraham, *Zero-tolerance school drug policies only make drug use worse, a study finds*, Wash. Post, Mar. 23, 2015; Daniel Losen & Tia Martinez, *Out of School and Off Track: The Overuse of Suspensions in American Middle and High School*, The Civil Rights Project, April 8, 2013; American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?*, 63 Am. Psychologist 852 (2008).

Students with Disabilities

We know that students with disabilities are suspended and expelled more frequently than other children, and that suspension is not an effective way to change behavior or to make schools safer. So why are students with disabilities suspended so much?

When schools fail to identify students with disabilities, when disability is misunderstood or underestimated, or when students with disabilities are not provided with effective, appropriate academic instruction, challenging behavior can result. While most families try to address these issues directly with their child’s school (as they should), results vary, and in some cases, legal intervention may be required to enforce the civil rights of children with disabilities.

Schools have specific legal obligations regarding students with disabilities under the Individuals with Disabilities in Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These obligations include: identifying students who have disabilities, 20 U.S.C. § 1412(a) (3); providing a free and appropriate public education to all children, even those who are suspended, 20 U.S.C. § 1400, et seq., 34 C.F.R. § 300, 34 C.F.R. §300.101(a); and questioning whether problematic behavior is a “manifestation” of the child’s disability before suspending them, 34 C.F.R. § 300.530 (e); and providing positive behavior supports.

Too often, school systems fail to meet these obligations and respond to the resulting behavior issues in a manner that discriminates against that student due to their disability. It is generally understood that a student with autism may laugh or hum at inappropriate times, and that those behaviors are specific to the disability. Rather than disciplining a student for such behaviors, schools must provide accommodations and behavior supports

to ensure that student can access the curriculum and learning environment. Yet, in one case handled by Disability Rights Maryland, an elementary school student with autism had a tantrum and then refused to come out from under a table, where he was crying. School administrators called police, who dragged the child out, handcuffed him, and placed him in a police car, resulting in significant trauma to the child. Legal advocacy ensured that this child was not suspended or arrested.

For some students, the effects of Attention Deficit Hyperactivity Disorder (ADHD), or trauma are misunderstood and underestimated, resulting in students receiving inappropriate discipline. According to leading researchers on ADHD, including Russell A. Barkley, many people with ADHD experience a significant lack of inhibition, impulse control, and the ability to delay gratification. Russell A. Barkley, *Fact Sheet: Attention Deficit Hyperactivity Disorder (ADHD) Topics*, <http://www.russellbarkley.org/factsheets/adhd-facts.pdf> (last visited Sep. 4, 2016). Some people with ADHD also have low working memory, delayed development of the ability to control one’s own behavior, difficulty regulating emotions, and greater than normal variability in performance of academic or work tasks. *Id.* Without access to legal representation, many low-income families of children with disabilities are unsuccessful in getting help for their children in situations where disability is misunderstood, or underestimated.

Case Scenario

In my work representing students with disabilities, I have found that many suspensions of students with disabilities could have been avoided if the special education process were implemented effectively. Take the case of “Jack,” a 13-year-old whose parents suspected he had academic needs that the school was



not addressing. His parents expressed concern to the school but were told that it was just Jack's behavior and lack of effort that interfered with his academic success. Thus no evaluations were ordered until the family retained legal counsel. Jack was already in eighth grade when the school system finally evaluated him and discovered his learning disability. By that point, Jack had been regularly suspended for disrespectful behavior and failing to follow directions.

In cases like Jack's, lack of academic progress contributes to challenging behaviors. Jack could not read well enough to do the work that was expected of him, and was not receiving any intervention to address that problem. Ideally, children with learning disabilities should be identified in early elementary school and provided with research-based interventions to ensure their educational progress, but that is not what happened for Jack. Instead, he sat in class feeling frustrated and embarrassed, and he behaved inappropriately. We see similar situations play out in classrooms across Maryland.

Jack is also Black, thus falls doubly into categories of children who are pushed out of school. In addition to disproportionate suspension by race and disability status, Black students with disabilities are suspended twice

as often as white students *with disabilities*, and are suspended for more days. Allan Porowski, Rosemarie O'Conner, & Aikaterini Passa, *Disproportionality in Schools Discipline: An Assessment of Trends in Maryland, 2009-2012*, U.S. Dep't of Educ.(2014). The U.S. Department of Education Office for Civil Rights (OCR) also reports that one out of every five Black boys with disabilities was suspended, while only one out of ten white boys was suspended. *A First Look: 2013-2014 Civil Rights Data Collection* U.S. Dep't of Educ. Office for Civil Rights, (2016), available at <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

Many students like Jack do not receive appropriate interventions, repeat a high school grade two or three times, are suspended often, and drop out of school or get involved in the juvenile justice system. In other words, these children are set right down at the entrance to the pipeline to prison. Experts estimate the rate of disability in juvenile justice facilities to be somewhere between 30 and 70 percent, and have a number of theories to further explain this disproportionality. Mary Quinn, *et al.*, *Youth with Disabilities in Juvenile Corrections: A National Survey*, 71 Council for Exceptional Children 339 (2005). OCR reports that in 2011-2012, students with disabilities in Maryland

were subject to a school-related arrest at a rate that is over 2.5 times that of the non-disabled population. *Civil Rights Data Collection – Data Snapshot: School Discipline*, U.S. Department of Education Office for Civil Rights, <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>. These statistics highlight the clear path from school to prison for some students.

Alternatives to Suspension for All Students

For students with disabilities, there are already systems in place that are underutilized for addressing problem behavior, including correctly identifying students with disabilities through the existing special education process and planning for appropriate accommodations and services for those students. Functional behavior assessments (FBA) and behavior intervention plans (BIP), which are in use to varying degrees throughout the state for both students with disabilities and students without them, aim to identify the main problematic behaviors and the "function" of those behaviors, and direct adults how to respond in a consistent, specific way to teach and reward appropriate "replacement" behaviors. Other programs aim to teach children the skills they are lacking in order to resolve conflicts.

There are research-based methods of improving school climate and reducing the need to suspend so many children. These alternatives have costs associated with them, but those costs are less than the economic and social costs of school drop-out and incarceration. It is up to the community to demand that education budgets include funding for these programs. Effective restorative justice programs are already functioning successfully in some Maryland schools and should be expanded. Two examples

of many are Community Conferencing and Holistic Life Foundation. *About Us*, Community Conference Center, <http://www.communityconferencing.org/index.php/about/> (last visited Sep. 4, 2016); *About*, Holistic Life Foundation Incorporated, <http://hlfinc.org/> (last visited Sep. 4, 2016). Community Conferencing reports that 98 percent of Community Conferences resulted in a written agreement between the parties, with 95 percent compliance to those agreements. *Impact*, Community Conference Center, <http://www.communityconferencing.org/index.php/impact/> (last visited Sep. 4, 2016). Holistic Life Foundation reports an overall reduction in the stress levels of students, many of whom have experienced high levels of trauma. Importantly, these programs teach students critical life skills that will ensure their success, rather than their failure, beyond school.

Finally, teachers report that their training should include more information about behavior and classroom management. American Federation of Teachers, *Reclaiming the Promise: A new path forward on school discipline practices*, [aft.org, http://www.aft.org/position/school-discipline#sthash.DJf7GIID.dpuf](http://www.aft.org/position/school-discipline#sthash.DJf7GIID.dpuf) (last visited Sep. 5, 2016).

Given the alternatives and the damaging impact of suspension, other school systems including New York and Minneapolis have determined that children in pre-kindergarten to 2nd grade – or children between the ages of 4 and 6 – should not be suspended. *See*, Yasmeen Khan, *New York Seeks to Ban Suspensions for Youngest Students*, WNYC (Jul. 21, 2016), <http://www.wnyc.org/story/new-york-city-makes-school-discipline-changes/>; Alejandra Matos, *Minneapolis schools ban suspensions of youngest students*, StarTribune (Sep. 5, 2014), <http://www.startribune.com/minneapolis-schools-ban-suspensions-of-youngest-students/274043091/>. Maryland should follow suit.

While Disability Rights Maryland and other organizations represent some children whose civil rights have been violated in the school discipline process, a vast gap exists between the number of students who are removed from school inappropriately and the number of students we can serve. We rely on pro bono attorneys to help bridge the gap. Disability Rights Maryland’s pro bono program provides training and technical assistance to attorneys willing to assist a student and their family. Please consider volunteering your time to represent these students. Contact Disability Rights Maryland at (410) 727-6352.

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