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Dismantling the School-to-Prison Pipeline: Whether Senate Bill 100 Will Address Problems Specific to Students With Learning Disabilities

Adrien Fernandez

Children with learning disabilities make up 36% of the juvenile justice system, but only 8.6% of the nation's students.¹ It is clear that the juvenile justice system disproportionately affects and punishes youth who have a learning disability.² The Illinois government took notice of this so called school-to-prison pipeline when it passed Senate Bill 100.³ Senate Bill 100, which will go into effect in September 2016, is being lauded as a bill that will eliminate the school-to-jail pipeline.⁴ But the question remains whether the bill will address concerns that are particular to students with learning disabilities—or whether the school-to-jail pipeline will still prominently exist for this faction of students.

SENATE BILL 100

The main provision of Senate Bill 100 eliminates the usage of zero tolerance discipline policies in publicly funded Illinois schools.⁵ Zero tolerance policies punish students for any type of misconduct without regard for the student's intent in the action or any extenuating circumstances.⁶ These zero-tolerance policies increase the likelihood that a student will be referred for

¹ Marilyn Elias, *The School-to-Prison Pipeline*, TEACHING TOLERANCE, Spring 2013, <http://www.tolerance.org/magazine/number-43-spring-2013/school-to-prison>; *Students with Disabilities & the Juvenile Justice System: What Parents Need to Know*, PACER CENTER, 2013, <http://www.pacer.org/jj/pdf/jj-8.pdf>.

² PACER CENTER, *supra* note 1.

³ Christina Wilkie, *Illinois Governor Signs Sweeping School Discipline Reform*, THE HUFFINGTON POST, Aug. 25, 2015, http://www.huffingtonpost.com/entry/illinois-school-discipline-reform_us_55dcc9c0e4b0a40aa3ac8907.

⁴ *Bill to End the School-to Prison Pipeline Passes IL General Assembly! Awaits Governor's Signature!*, COMMUNITIES UNITED, <http://communitiesunited.org/voyce-and-apnc-students-win-major-legislative-victory-address-exclusionary-discipline-schools>. (last visited Mar. 20, 2016); Wilkie, *supra* note 3.

⁵ Elyn Fortino, *Illinois Legislature Poised to Reform School Discipline Policies*, PROGRESS ILLINOIS, Apr. 27, 2015, <http://progressillinois.com/posts/content/2015/04/27/illinois-senate-passes-school-discipline-reform-legislation>; S. 100, 114th Cong. § 10-22.6 (2016).

⁶ *Discipline*, ILLINOIS STATE BOARD OF EDUCATION, http://www.isbe.net/homeless/pdf/discipline_discrim.pdf. (last visited Mar. 20, 2016).

punishment and thus pushed out of the classroom.⁷ When students are not attending classes, their introduction to the juvenile justice system becomes much greater.⁸ Significantly, if a student is suspended Senate Bill 100 requires schools to allow the student to make up their work. In some circumstances the student will even be offered support services.⁹

Senate Bill 100 also recognizes that students can be introduced into the juvenile justice system when school staff does not have the proper training for dealing with students who misbehave.¹⁰ In order to address this issue, the new bill provides that school districts need to make a reasonable effort to provide ongoing professional development for their staff “on the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, and developmentally appropriate disciplinary methods that promote positive and healthy school climates.”¹¹

This development is especially important for students who have learning disabilities because the school administration and other staff members often lack the knowledge of how to handle these students.¹² Therefore, youth with learning disabilities who experience pushout often end up being punished by the juvenile system in addition to their school.¹³

Although Senate Bill 100 has mostly been received as a positive step forward there are still concerns with the implementation and what changes this Bill might bring about.¹⁴ Parents are concerned that Senate Bill 100 will make it harder to expel students who get into physical altercations.¹⁵ Politically, there is a pushback on Senate Bill 100 because local school districts feel that the Bill is another way in which local control is lost to statewide mandates.¹⁶

⁷ Elias, *supra* note 1.

⁸ *Id.*

⁹ S. 100, *supra* note 5.

¹⁰ *Id.*

¹¹ *Id.*

¹² In-person interview with Rachel Shapiro, Equip For Equality (Mar. 11, 2016).

¹³ *Id.*

¹⁴ Dane Placko, *Parents Worried About Law that Makes it Harder for Schools to Expel Students*, FOX 32, Feb. 9, 2016, [for-sped-leads-jail/19800](http://fox32.com/story/for-sped-leads-jail/19800).

¹⁵ *Id.*

¹⁶ Paul Westermeyer, *As 250 Students Stay Home, No Problems Occur*, PONTIAC DAILY LEADER, Mar. 12, 2016, <http://www.pontiacdailyleader.com/article/20160312/NEWS/160319810?Start=1>.

SPECIFIC ISSUES FOR STUDENTS WITH LEARNING DISABILITIES

With learning disabled students making up over one-third of the youth involved in the juvenile justice system, clearly there are issues that are specific to these students that contribute to their involvement in the school-to-jail pipeline.¹⁷ A student's learning disability can often manifest itself in actions that would be deemed misbehavior worthy of punishment.¹⁸ Because teachers often lack the appropriate training on how to manage children who are disruptive due to their learning disability, staff members are prone to turn to the school resource officer (a formally trained police officer).¹⁹

Moreover, those personnel who do have the formal training to help these children are not hired at the same rate as resource officers.²⁰ In Chicago for every 4.21 resource officers hired, only 2.18 counselors are hired.²¹ Schools and lawmakers have come to recognize that punishing students for how their disability manifests itself is counter-productive and does not actually resolve the underlying problems.²²

At the federal level, the Individuals with Disabilities Education Act ("IDEA") went into effect in 2004 to address discipline problems that specifically affect students with learning disabilities.²³ However, IDEA had the effect of making it more difficult to reach the conclusion that the demonstrated behavior from the student was a result of a disability.²⁴ No longer was it presumed that there was a connection between the demonstrated behavior and the learning disability.²⁵ Instead, the student had the burden of proof to show that their actions were a result of their disability.²⁶ This change in the law was

¹⁷ PACER CENTER, *supra* note 1.

¹⁸ Jackie Madar and Sarah Butrymowicz, *For Many with Disabilities, Special Education leads to Jail*, DISABILITY SCOOP, Oct. 29, 2014, <https://www.disabilityscoop.com/2014/10/29/for-sped-leads-jail/19800/>.

¹⁹ *Id.*

²⁰ Kenya Ranking, *STUDY: Nation's Largest Public Schools Have More Police Than Counselors*, COLORLINES, Mar. 29, 2016, <https://www.colorlines.com/articles/study-nations-largest-public-schools-have-more-police-counselors>.

²¹ *Id.*

²² *Id.*

²³ GreatSchools Staff, *IDEA 2004 Close UP: Disciplining Students with Disabilities*, GREAT-SCHOOLS, May 20, 2015, <http://www.greatschools.org/gk/articles/idea-2004-close-up-disciplining-students-with-disabilities>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ GreatSchools Staff, *supra* note 18.

detrimental to students with learning disabilities because if there was no finding of a causal connection between the conduct and the disability, the student could then be punished in the same way as a non-disabled student.²⁷

IDEA AND THE SCHOOL-TO-PRISON PIPELINE

Although IDEA positively changed the way in which students with a learning disability were treated in school – such as providing regulations and guidelines for Individualized Educational Program (IEP) and behavioral assessments – there were still ways in which a disabled student could easily enter the school-to-jail pipeline.²⁸ This concern is not just in theory, but is a harsh reality: ten years after IDEA had been enacted, students with learning disabilities were still three times more likely to enter the juvenile system as compared to students without learning disabilities.²⁹

Rachel Shapiro, an attorney with Equip For Equality, noted that when functional behavior assessments occur for students with learning disabilities, then a structured IEP can be formed.³⁰ An IEP is a legally binding document on the school that assesses a child's unique and individual learning issues, creates educational goals, and a mechanism to obtain these goals.³¹ The IEP in turn can solve significant behavior problems that would otherwise result in the student potentially being punished.³² For example, a functional behavioral assessment could reveal that a student always acts out in English class because they are uncomfortable reading out loud.³³ The school could then implement a simple system such as having the student put a post-it note on his or her desk when the student is comfortable with reading out loud.³⁴ This system would stop the student's misbehavior from not feeling comfortable reading and thus eliminate the possibility of punishment.³⁵

²⁷ GreatSchools Staff, *IDEA 2004 Close UP: Disciplining Students with Disabilities*, GREAT-SCHOOLS, May 20, 2015, <http://www.greatschools.org/gk/articles/idea-2004-close-up-disciplining-students-with-disabilities>.

²⁸ *Id.*

²⁹ Madar, *supra* note 15.

³⁰ Shapiro, *supra* note 12.

³¹ Kristin Stanberry, *Understanding Individualized Education Programs*, UNDERSTOOD, <https://www.understood.org/en/school-learning/special-services/ieps/understanding-individualized-education-programs> (last visited May 16, 2016).

³² Shapiro, *supra* note 12.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

CONCLUSION

Zero-tolerance policies might not be the only problem in addressing school behavior. Instead it may be that schools do not know how to handle students whose disabilities manifest themselves into what is deemed as misbehavior. The administration is then quick to turn to the resource officers, thus fast-tracking these students into the school-to-jail pipeline.

To this end, Senate Bill 100's provision requiring the training of staff members on alternative discipline methods can significantly lower school pushout for students with learning disabilities. Educating teachers and administrators on why certain students misbehave will allow the school to recognize why behaviors are occurring. This allows staff member to be more understanding and less likely to turn to the resource officer for help—interrupting, and thereby helping dismantle, the school-to-prison pipeline.³⁶

³⁶ *School Discipline of Young Children Questioned*, BETTER GOVERNMENT ASSOCIATION, July 19, 2015, <http://www.bettergov.org/news/school-discipline-of-young-children-questioned>.