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The Paradox of Education in America: Integrating Systems for Children with Disabilities

By Judge Steven C. Teske and Judge Brian Huff

We're a nation in paradox when it comes to taking care of our children. It's an indictment of communities across the country when, on one hand, we promulgate laws to promote the education of children with disabilities, and, on the other, we fail to safeguard them from incarceration on relatively minor school offenses that are likely a manifestation of their disabilities. Currently, a disproportionate number of children with

education-related disabilities, eligible for special education services under the Federal Individuals with Disabilities Education Act (IDEA), are in the juvenile justice system. Worse is the disproportionate number of children with disabilities currently incarcerated in juvenile facilities. For example, studies reveal that approximately 70 percent of incarcerated children have disabilities.¹ It's time to evaluate our policies with an eye toward removing these contradictions so that

children with disabilities are not disrupted from their educational services and placed in a juvenile justice system that only leads to additional, avoidable risk factors for these children.

The juvenile courts in Jefferson County, Alabama (Birmingham), and Clayton County, Georgia (a suburb of Atlanta), used a multi-integrated systems approach to significantly reduce the number of school

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Representing the Status Offender: The Need for a Multi-Systemic Approach

By Marlene Sallo and Sarah Darbee Smith

Status offenses are unique to juveniles, meaning that only juveniles can be charged with or adjudicated for conduct that, under the law of the jurisdiction in which the offense was committed, wouldn't be a crime if committed by an adult.¹ Status offenses include truancy, incorrigibility, running away from home, using vulgar language, and drinking. These behaviors tend to be the result of a poor family environment or school or community problems, and they present attorneys with a multitude

of challenges. Research indicates that risk factors for potential truancy include push-out policies, unsafe school environments, academic problems, a lack of parental involvement in education, substance abuse, and chronic health problems.²

Petitions for status offenses have historically subjected youth to juvenile court jurisdiction and detention as a form of protective supervision. Detained status offenders were frequently adjudicated and committed to an institutional

setting. Studies have shown consistently poor outcomes for institutionalized youth due to lack of services within institutional facilities. In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDP), which mandated the deinstitutionalization of status offenders as one of its core protections. The emphasis on deinstitutionalization of status offenders in the JJDP was premised on the understanding that youth who misbehave but haven't committed

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The Paradox of Education in America

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referrals to the juvenile court, including referrals for children with disabilities. A review of the literature generally recommends that juvenile courts address this problem through better intake and screening of referrals to 1) continue or defer pending the outcome of the special education due process and disciplinary proceedings, 2) divert minor offenses into informal supervision programs, or 3) dismiss the case in the interest of the child and community. These are excellent recommendations, but they don't go far enough to address the systemic issues giving rise to the inherent contradictions that hurt children by merely making a referral to the juvenile justice system, or worse, by placing handcuffs on them. This article discusses the role of juvenile judges, attorneys, and other stakeholders in making system changes that eliminate ineffective policies and practices that defeat the objectives of special education laws.

The School-to-Prison Pipeline and Special Education

Understanding the problem with referring children with disabilities to the juvenile court requires a reexamination of the purpose of a juvenile justice system and its systemic characteristics. The juvenile court was created to treat the criminal conduct of children differently from that of adults. The behavioral sciences, most recently adolescent brain research using magnetic resonance imaging, support the notion that children are biologically wired to exhibit risk-taking behaviors, impulsive responses, and poor judgment. This research shows that the frontal lobe of the brain, which filters emotion into logical response, is not fully developed until about age 21.² Adolescents, therefore, are more capable than adults of learning from their mistakes, because they are still in a cognitive structuring phase. In other words, it's neurologically normative for adolescents to make poor decisions, which may include breaking the law.

Despite this research, a phenomenon

has developed since the early nineties that has significantly increased the number of children and adolescents suspended, expelled, and arrested for minor school offenses involving disruption of school. This phenomenon is the result of school systems adopting a "zero-tolerance" approach to school discipline—an approach taken to fight the war against drugs. The problem was further compounded with the placement of police on school campuses. For example, in Clayton County alone, the number of referrals from the school system increased approximately 1,248 percent immediately after police were placed on campuses. Approximately 90 percent of these referrals were misdemeanors involving school fights, disorderly conduct (mouthing off), obstruction (not following the verbal command of a police officer), and disrupting school (throwing a wad of paper, shouting out in class).

During these same years, suspensions out of school increased, while, simultaneously, the graduation rates decreased to 58 percent by 2003. The data in Birmingham and Clayton County supported the research that suspensions and arrests increase the dropout rates.

Generally, suspensions and arrests are contrary to the ultimate goal of public school systems: graduation. The problem with zero tolerance is that it removes children from school, when school is the second-most-important protective factor against delinquency and other negative behaviors.³ More problematic are studies that show disciplining harshly with suspension, expulsion, and criminal sanctions, in most cases, increases the risk of delinquent conduct and dropping out of school.⁴ Despite the importance of education in protecting our children from negative behaviors, our educational systems, with the passive acceptance of juvenile courts, have created another paradox that compromises the health, education, and safety of our children. What a novel idea that keeping kids in school will increase their chances of graduation and

their success in adulthood.

It's not surprising that children with disabilities are more likely to be suspended, expelled, and arrested. For example, it's estimated that juvenile justice facilities are three to five times more likely to have youth with emotional disabilities than public schools have.⁵ If children without disabilities are expected, as the research shows, to be impulsive and make poor decisions that result in breaking the law, there is no question that children with disabilities are even more susceptible to rule infractions that lead to court referral. The two most common educational disabilities among children referred to the juvenile court are specific learning disability (LD) and emotional behavioral disorder (EBD).⁶ These disabilities can include symptoms that can place the child at a disadvantage within a school setting, which explains the need for special services. Children with learning disabilities often develop feelings of embarrassment about their disability and become frustrated and angry and act out against others. A number of children with EBD have experienced trauma in their childhood that makes it difficult for them to build or maintain relationships with peers and teachers, or it could cause them to suffer depression and phobias associated with personal or school problems. Such symptoms make children, who are already vulnerable to impulsive and irrational thoughts, easy targets for punishment when they act out.

Even assuming that courts have established appropriate intake and screening of referrals to ensure that cases are deferred pending disciplinary hearings, diverted, or dismissed in the best interest of the community, the emotional vulnerability of many of these children with disabilities demands measures that prohibit unnecessary referrals to juvenile court in the first place. It's not enough for these children that courts work to improve their intake and screening techniques, although it is extremely important. Additionally, repairs to a system that allows unnecessary referrals



are desperately needed so that no child with special needs will encounter the trauma of arrest and court referral. This requires the relevant stakeholders in the juvenile justice system to develop alternatives to suspension, expulsion, and court referral. For this to happen, there must be an individual with the influence to help stakeholders agree to make a systems change.

The Role of the Judge as an Agent for Change

A system is commonly defined as “a set of interacting components, acting interdependently and sharing a common boundary separating the set of components from its environment.”⁷ All systems have inputs in the form of demands and supports and a desired outcome. This definition, however, is not readily applicable to a “juvenile justice system” because it doesn’t have a “common boundary” as stated in the definition. To achieve the desired outcome of reduced recidivism, it’s imperative that effective treatment modalities be identified to address the causes of delinquent conduct. These causes, referred to as criminogenic needs, include lack of family support, poor performance in school, lack of prosocial activities, substance abuse, antisocial cognition (attitudes, values, and beliefs), and antisocial associates. These needs are served by different agencies in the community, including social services, mental health professionals, the school system, and juvenile court. Thus, the “juvenile justice system” is comprised of multiple systems that must work together to achieve a desired outcome. Paradoxically, these multiple systems possess their own policies, procedures, budgets, and regulations that oftentimes impede communication between them.

The prohibitive factor in establishing a method to reduce the referral of children with disabilities to the court is the lack of resources to treat such children outside the school. Consequently, schools tend to rely on punishers such as suspension, expulsion, and arrests to address disruptive behavior. Although schools may have a special-needs child appropriately placed, disruptions often occur, resulting from underlying issues at

home or outside school, and may require services not accessible to the school system. It’s essential that schools be linked to other community resources that can assess and provide interventions for the child and fam-

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ily to reduce the risk of disruptive behavior.

Judicial leadership is the key to bringing all the relevant stakeholders together to develop a system in which schools may refer children with disabilities for further assessment and intervention as an alternative to suspension, expulsion, and arrest. Within this larger system we call juvenile justice, the court is the common denominator—the intersection of juvenile justice—and the juvenile judge is the traffic cop. Juvenile judges are incomparable agents for change within the juvenile justice system. All stakeholders in the system intersect with the court. This factor, coupled with the respect accorded judges, places judges in a unique position to bring together system stakeholders.

The Multi-Integrated Systems Approach: Creating Alternatives for Children with Disabilities

In Clayton County and Birmingham, the judges brought stakeholders—including educators, mental health professionals, law enforcement, prosecutors, treatment providers, social services, and the justice system—to the table to find ways to shift children,

especially those with disabilities, away from the court and into programs that better serve them. The judges asked the stakeholders to create a protocol that prevents the arrest and referral of children for minor school offenses. The stakeholders were also asked to develop alternatives to suspension, as well as for arrests. A neutral moderator was assigned to facilitate the discussions and move them toward a written protocol. After many months of meetings and discussions on a plethora of issues involving school and community safety, the purpose of IDEA, the role of campus police, the dynamics between school police and school administrators, the assessment of offenses worthy of referral to court, and many more, the multidisciplinary committee agreed to a written protocol.

The protocol called for a three-tier graduated response process that focused on certain misdemeanor offenses that made up the majority of the referrals. The first infraction required a written warning to the student and copies to the school and parent. The second infraction required a referral to a school conflict workshop or mediation. Since implementation, the police have modified the protocol allowing for greater discretion on the second infraction to issue a second warning. The police have been creative in developing their own alternatives at the second level such as school-based community service. Oftentimes, the officer will spend time counseling the child and speaking with the child’s parents. This interaction was seldom allowed before the protocol because the sheer quantity of referrals didn’t allow time to develop a rapport with students, and because arrests on campus caused police to spend time off campus transporting students and filing complaints. The lack of rapport was also grounded in the distrust students had for police due to the disproportionately harsh treatment they had been receiving for committing petty infractions.

Another protocol was developed that created a single point of contact for children with chronic disciplinary problems. As pointed out above, the “disconnect” between stakeholder agencies in the juvenile



justice system had to be connected. Understanding that school systems aren't designed to be "one-stop, one-shop" agencies that include mental health, social services, and other relevant needs, the larger system, working together to make the connection, must make their resources available. In fact, this is the way it was intended, with the communities creating agencies designed to address mental health and social service needs. In other words, it just doesn't make sense to expect a school system to treat all of a child's mental health and social needs when we have already created other entities to treat those needs. It's a waste of resources and a waste of taxpayers' money because it duplicates resources. A complex, disconnected system is inefficient, and worse, mystifying to youth and families that have to navigate this "non-system."

The single point of contact for a student with chronic disciplinary problems is a panel that meets regularly and consists of the deputy director of social services, a mental health counselor, a psychologist from the mental health department, the child's school social worker and counselor, and other approved treatment providers from the community. Staff of the juvenile court moderates the panel. The parent, and sometimes the child, is required to be present during the assessment. The panel develops an action plan that connects community resources and treatment modalities to the specific needs of the child and the family. The school social worker manages the action plan with assistance from court personnel.

Consequently, the two protocols together have reduced referrals to the court by 67.4 percent in Clayton County and 50 percent in Birmingham. In Clayton County, the protocol produced a residual effect on felony referrals, reducing them by 30.8 percent. (Birmingham only recently implemented the protocol and doesn't have longitudinal data.) Subsequent to implementing the protocol in 2004, the police requested and were granted permission to use the warning and other alternatives in certain "low level" felony cases such as terroristic threats (a child threatening harm

to another out of anger). This request by police shows a cognitive shift in handling school offenses on a case-by-case basis. This reduction in referrals also reduced the number of children detained in a secure facility by 86 percent. The protocol favorably impacted racial and ethnic disparity concerns by reducing the number of children of color referred to the court by 43 percent.

Attorneys advocating for children with disabilities should also engage judges outside the courtroom and in the chambers to encourage them to use their legitimate authority as judges to engage the community and bring stakeholders together.

Another incidental effect of the protocol is the reduction of serious weapons brought on campus. Under federal law, the police have no discretion involving serious weapons, yet the presence of such weapons fell 73 percent. School police attribute this to their increased presence on school campus and handling each offense on a case-by-case basis, leading to more amicable relationships between the police and children. This increase in rapport has led to more information shared with police about potential incidents involving weapons and gang-related issues. The supervisor of the school resource officers in Clayton County, Sgt. Marc Richards, stated, "Schools are a microcosm of the community. If you want to know what

is going on in the community, talk to the kids." But the kids must want to talk to you! Therefore, school safety can be enhanced if school policing focuses on intelligence gathering through student engagement by using positive approaches.

The multidisciplinary panel established as a single point of entry developed an array of treatment programs that include multisystemic therapy, functional family therapy, cognitive behavioral programming, wraparound services, and more. These alternatives resulted in a decrease in suspensions of 8 percent.

More importantly, the graduation rates increased during this time period by 20 percent, while felony rates fell 51 percent. This supports the theory that keeping children in school using alternative measures will increase graduation rates. It probably goes without saying that the more children graduate, the less juvenile crime appears in the community.

Finally, the protocols working together have reduced the number of children with disabilities referred to the court by 44 percent. A number of these children, however, have been assessed and are receiving treatment in the home and community to address the reasons for their referral.

Conclusion

Much has been said and written about how children with disabilities should be treated once they're referred to the juvenile court. The threshold question is whether these children should be referred to the court at all. Many children with disabilities are disruptive for reasons related to their disability, but this does not make the child delinquent. The beauty of the juvenile court is that the commission of a delinquent act doesn't necessarily make the child delinquent. Children are prone to make poor decisions and do things that break the law. This is their nature. The juvenile court should be reserved for children who scare us, not those who make us mad.

Judicial leadership is the key to getting the schools and police together to discuss alternatives to arrest. Judges should judge when on the bench, but engage the



community when off the bench. Attorneys advocating for children with disabilities should also engage judges outside the courtroom and in the chambers to encourage them to use their legitimate authority as judges to engage the community and bring stakeholders together. Zealous representation of child clients in the courtroom is essential, but such advocacy can be effective outside the courtroom as well.

The juvenile justice system is not a single entity, but a collection of different systems with the desired outcome of reducing recidivism. These different systems must be connected through an intermediary, preferably a multidisciplinary team, to assist schools with alternatives to suspension and arrest. It's not enough to wait for children with disabilities to come to the system when, in many circumstances, they shouldn't have been referred in the

first place. Effective advocacy eradicates this paradoxical system for our children, especially those with disabilities. Effective advocacy doesn't begin in the courtroom. It begins with leadership in the community advocating for systems change.

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