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Introduction: Challenging the School-to-Prison Pipeline

Deborah N. Archer
New York Law School

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DEBORAH N. ARCHER

Introduction: Challenging the School-to-Prison Pipeline

ABOUT THE AUTHOR: Professor of Law and Director, Racial Justice Project, New York Law School.
B.A., Smith College, 1993. J.D., Yale Law School, 1996.

INTRODUCTION: CHALLENGING THE SCHOOL-TO-PRISON PIPELINE

Despite clear evidence that violence and crime in our schools is decreasing,¹ the often misguided approaches of our criminal justice system, with its focus on punishment rather than rehabilitation, are bleeding into our schools.² This has led many school districts to “crack down” on our children, focusing on punishment and criminalization rather than education. Today, children are far more likely to be arrested at school than they were a generation ago.³ The number of students suspended from school each year has nearly doubled from 1.7 million in 1974 to 3.1 million in 2000.⁴ And, in 2006, one in every fourteen students was suspended at least once during the year.⁵

This disturbing phenomenon is called the school-to-prison pipeline. The school-to-prison pipeline is the collection of education and public safety policies and practices that push our nation’s schoolchildren out of the classroom and into the streets, the juvenile justice system, or the criminal justice system.

There are both direct and indirect avenues through the pipeline. Directly, schools put students into the pipeline through excessive police involvement in imposing discipline and zero-tolerance policies that often end in arrest or referral to the juvenile justice system.⁶ And, police officers and metal detectors often transform our schools from nurturing learning environments into virtual detention centers.⁷ Across the country, an alarming number of students, and a disproportionate number of students of color, are being removed from mainstream educational environments for non-violent violations of school policy, which many would consider to be typical childhood behavior.⁸ Schoolchildren who are removed from mainstream education environments, even for short periods of time, are far more likely to become involved with the

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1. See, e.g., SECURING OUR CHILDREN’S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE 2 (Gary S. Katzmann ed., 2002) (citing a decrease in youth violence since 1993); see also ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 11 (2005) [hereinafter EDUCATION ON LOCKDOWN] (noting a national 47% decline in the youth arrest rate for violent crimes between 1994 and 2002).
 2. NAACP, LEGAL DEFENSE AND EDUCATIONAL FUND, INC., DISMANTLING THE SCHOOL-TO-PRISON-PIPELINE 1 (2006), available at http://www.naacpldf.org/content/pdf/pipeline/Dismantling_the_School_to_Prison_Pipeline.pdf.
 3. THE AMERICAN CIVIL LIBERTIES UNION, HARD LESSONS: SCHOOL RESOURCE OFFICER PROGRAMS AND SCHOOL-BASED ARRESTS IN THREE CONNECTICUT TOWNS 5 (November 2008).
 4. Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, in 99 NEW DIRECTIONS FOR YOUTH DEVELOPMENT 10 (Johanna Wald & Daniel J. Losen, eds., 2003).
 5. M. PLANTY ET AL., U.S. DEPT. OF EDUCATION, NAT’L CTR. FOR ED. STATISTICS, THE CONDITION OF EDUCATION 2009: INDICATOR 28 STUDENT SUSPENSIONS AND EXPULSIONS 70 (2009).
 6. See EDUCATION ON LOCKDOWN, *supra* note 1.
 7. See CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY & THE ADVANCEMENT PROJECT, *OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE* 15–16 (June 2000) [hereinafter OPPORTUNITIES SUSPENDED]; see also NEW YORK CIVIL LIBERTIES UNION & AMERICAN CIVIL LIBERTIES UNION, CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS 6 (2007).
 8. See OPPORTUNITIES SUSPENDED, *supra* note 7, at 4.

criminal justice system, use drugs, or drop out of school.⁹ Few would question the importance of keeping our schools safe, but it is the overuse and misuse of these policies that raise concern; arresting students should never be seen as an acceptable method of discipline. Indeed, policies such as policing in schools and zero tolerance have been shown to be ineffective as corrective measures and instead serve to demoralize our children.¹⁰

Indirectly, schools put children on a path that far too often ends with incarceration through suspensions, expulsions, high-stakes testing, push-outs, and the removal of students from mainstream educational environments and into disciplinary alternative schools.¹¹ Our under-resourced public education system is often linked to behavioral problems and violence in schools.¹² Therefore, it is not surprising that the impact of school-to-prison pipeline policies are most severely felt by students in high-minority and high-poverty schools, where overcrowding, unqualified teachers, and fewer resources collide with these misguided policies.¹³

The school-to-prison pipeline is also one of the most urgent civil rights challenges we face. Minority students are disproportionately impacted by the pipeline and are among those most severely disciplined in school.¹⁴ Studies have shown that African American students are disproportionately suspended, expelled, or arrested for conduct similar to that of their white classmates.¹⁵ And although African American students represented only 17% of public school enrollment nationwide, they accounted for 34% of school suspensions in 2000.¹⁶

In April 2009, the Racial Justice Project of the New York Law School Justice Action Center and the American Civil Liberties Union's Racial Justice Program co-sponsored a symposium on challenging the school-to-prison pipeline. The symposium sought to explore the many harms of the increasing criminalization of our students and to identify strategies to reverse this disturbing trend. Moreover, the

9. NEW YORK CIVIL LIBERTIES UNION, SAFETY WITH DIGNITY: ALTERNATIVES TO THE OVER-POLICING OF SCHOOLS 9 (July 2009), available at <http://www.nyclu.org/files/Safety-with-Dignity-072909.pdf> [hereinafter SAFETY WITH DIGNITY]; see also NAACP, LEGAL DEFENSE AND EDUCATIONAL FUND, INC., *supra* note 2.

10. AMERICAN PSYCHOLOGICAL ASSOCIATION ZERO TOLERANCE TASK FORCE, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS (2006); SAFETY WITH DIGNITY, *supra* note 9.

11. See WALD & LOSEN, *supra* note 4, at 9; see also EDUCATION ON LOCKDOWN, *supra* note 1, at 12.

12. DRUM MAJOR INSTITUTE, A LOOK AT THE IMPACT OF SCHOOLS (2005) (finding a link between school violence and levels of funding and over-crowding in schools); Daniel J. Losen, *The Color of Inadequate School Resources: Challenging Racial Inequities That Contribute to Low Graduation Rates and High Risk for Incarceration*, 38 CLEARINGHOUSE REV. 616, 629 (2005).

13. See WALD & LOSEN, *supra* note 4, at 9.

14. See EDUCATION ON LOCKDOWN, *supra* note 1, at 18.

15. OPPORTUNITIES SUSPENDED, *supra* note 7, at 8; see also WALD & LOSEN, *supra* note 4, at 10; RUSSEL J. SKIBA, ZERO TOLERANCE, ZERO EVIDENCE: AN ANALYSIS OF SCHOOL DISCIPLINARY PRACTICE 11 (2000), available at <http://www.indiana.edu/~safeschl/ztze.pdf>.

16. EDUCATION ON LOCKDOWN, *supra* note 1, at 18.

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symposium brought together advocates, organizers, litigators, researchers, and students to brainstorm ideas for melding litigation, grassroots organizing, legislative advocacy, and research.

The papers collected in this issue take a critical look at the many ways in which our public school system feeds the school-to-prison pipeline. Even more importantly, they explore the legal claims and theories that can help us redirect the pipeline and reorient our priorities in favor of providing educational opportunities and environments that provide our schoolchildren with meaningful opportunities to learn and live up to their individual potential.

Joe Tulman and Doug Weck's article, *Shutting Off the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, advances the thesis that special education advocacy for children with unmet or undiagnosed special education needs can help disrupt the school-to-prison pipeline by re-establishing children in their schools and insulating special education students from involvement in the juvenile courts.¹⁷ The article explores the role that status-offense charges for truancy, ungovernability, or running away play in leading special education children into the juvenile justice system and proposes a meaningful role for special education advocates that can assist both the child and family in crisis.¹⁸

In *Decriminalizing Students with Disabilities*, Dean Hill Rivkin uses the case of *Morgan v. Chris L.*¹⁹ as a lens for understanding the current trend of over-criminalization of school-based misconduct.²⁰ His article offers a detailed look at how the Individuals with Disabilities Education Act²¹ can guard against the exclusion and criminalization of children with emotional and mental disabilities.²² Professor Rivkin argues that *Chris L.* stands for the proposition that non-punitive, disability-centered methods of intervention are more suitable methods to enforce school discipline than juvenile courts or the use of police in schools.²³

Catherine Kim also closely examines ways to remediate the pipeline through a case study in her article, *Procedures for Public Law Remediation in School-to-Prison Pipeline Litigation: Lessons Learned from Antoine v. Winner School District.*²⁴ Kim considers the lessons advocates can glean from *Antoine v. Winner School District*²⁵ and

17. See Joe Tulman & Doug Weck, *Shutting Off the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, 54 N.Y.L. SCH. L. REV. 875 (2009/10).

18. *Id.*

19. *Morgan v. Chris L.*, 927 F. Supp. 267 (E.D. Tenn. 1994), *aff'd*, 106 F.3d 401 (6th Cir. 1997).

20. See Dean Hill Rivkin, *Decriminalizing Students with Disabilities*, 54 N.Y.L. SCH. L. REV. 909 (2009/10).

21. 20 U.S.C. §§ 1400–1491 (2006).

22. Rivkin, *supra* note 20.

23. *Id.*

24. Catherine Y. Kim, *Procedures for Public Law Remediation in School-to-Prison Pipeline Litigation: Lessons Learned from Antoine v. Winner School District*, 54 N.Y.L. SCH. L. REV. 955 (2009/10).

25. *Antoine v. Winner Sch. Dist.*, No. 06-3007 2006 U.S. Dist. LEXIS 76910 (D.S.D. Oct. 27, 2006) (involving a challenge to the alleged racially discriminatory imposition of discipline policies and

provides guidance on how to structure effective remedies in cases challenging the school-to-prison pipeline, particularly when challenging issues that have a significant racial impact.²⁶

Johanna Wald and Lisa Thureau's article, *Controlling Partners: When Law Enforcement Meets Discipline in the Public Schools*, examines ways in which educators and school resource officers can effectively work together in schools despite their vastly different goals and missions.²⁷ Wald and Thureau attempt to provide guidance on how to resolve some of the "ambiguities, inconsistencies, and inequities"²⁸ that hamper interactions between schools, parents, communities, and police officers, which should all work to preserve safety in our schools while still supporting educational opportunity.²⁹

Dennis Parker, Director of the Racial Justice Program of the American Civil Liberties Union, writes in his article, *Discipline in Schools After Safford Unified School District #1 v. Redding*, about how the United States Supreme Court's decision in *Safford Unified School District #1 v. Redding*³⁰ will impact children in the school-to-prison pipeline.³¹ Parker applauds the Court's recognition that school districts must balance the interests of school administrators in maintaining safety and discipline within our schools with the privacy interests of individual students.³² He also advocates for the use of alternatives to such intrusive searches as strip searches, which have been found to be detrimental to the psychological well being of children and counterproductive to the goal of ensuring safety in our schools, and which often hasten a child's journey down the pipeline from school to the criminal justice system.³³

In their article, *Failing the Grade: How Corporal Punishment in U.S. Public Schools Violates Human Rights and Disproportionately Impacts Students with Disabilities and Students of Color*, Alice Farmer and Kate Stinson challenge the use of corporal punishment in American public schools as a violation of international human rights law.³⁴ According to Farmer and Stinson, corporal punishment is not only an ineffective means of punishment that causes both psychological and physical harm to

maintenance of a racially hostile educational environment by the Winner School District leading to a disproportionate adjudication of minority children as juvenile delinquents).

26. Kim, *supra* note 24.

27. Johanna Wald & Lisa Thureau, *Controlling Partners: When Law Enforcement Meets Discipline in the Public Schools*, 54 N.Y.L. SCH. L. REV. 977 (2009/10).

28. *Id.* at 980.

29. *Id.*

30. 129 S. Ct. 2633 (2009).

31. Dennis D. Parker, *Discipline in Schools After Safford Unified School District #1 v. Redding*, 54 N.Y.L. SCH. L. REV. 1023 (2009/10).

32. *Id.*

33. *Id.*

34. See Alice Farmer and Kate Stinson, *Failing the Grade: How Corporal Punishment in the U.S. Public Schools Demonstrates the Need for U.S. Ratification of the Children's Rights Convention and the Convention on the Rights of Persons with Disabilities*, 54 N.Y.L. SCH. L. REV. 1035 (2009/10).

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children,³⁵ but it also violates international law because it is incompatible with human dignity,³⁶ rises to the level of cruel and degrading treatment,³⁷ violates a child's right to be free from physical violence,³⁸ is incompatible with a meaningful right to education,³⁹ and violates fundamental principles of non-discrimination because of its disproportionate use against African American children.⁴⁰

In *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, Russel J. Skiba, Suzanne E. Eckes, and Kevin D. Brown address the critical issue of over-representation of African American children in incidents of school discipline.⁴¹ The article advocates for the use of non-legal, extra-judicial approaches to challenging racial disparities in school discipline in light of recent United States Supreme Court precedent and the tradition of discretion given to school administrators.⁴²

While most of the articles in this issue focus on factors leading our children out of school and into the juvenile or criminal justice systems, any attempt at disrupting the school-to-prison pipeline must include a discussion of what happens when students leave the juvenile justice or criminal justice systems and try to reengage with the public schools. In *The School to Prison Pipeline . . . And Back: Obstacles and Remedies for the Re-Enrollment of Adjudicated Youth*,⁴³ Jessica Feierman, Marsha Levick, and Ami Mody explore the legal, social, and administrative obstacles that make it difficult for youth returning from the juvenile justice system to re-enter and graduate from school.⁴⁴ The authors argue that among the many "re-entry" barriers facing people returning home from incarceration, those facing our youth are most disturbing because they impact the fundamental right to a public education embraced by many state constitutions.⁴⁵

Although these papers span a variety of topics, at their core they all seek to develop new ways to disrupt the pipeline and re-orient our nation's priorities toward nurturing the academic and social development of our youth. This issue represents a significant step towards doing so.

35. *Id.* at 1038.

36. *Id.* at 1040.

37. *Id.* at 1064.

38. *Id.* at 1068.

39. *Id.*

40. *Id.*

41. Russell J. Skiba, Suzanne E. Eckes & Kevin D. Brown, *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y.L. SCH. L. REV. 1071 (2009/10).

42. *Id.*

43. Jessica Feierman, Marsha Levick & Ami Mody, *The School to Prison Pipeline . . . And Back: Obstacles and Remedies for the Re-Enrollment of Adjudicated Youth*, 54 N.Y.L. SCH. L. REV. 1115 (2009/10).

44. *Id.*

45. *Id.*