



School Pathways to the Juvenile Justice System

The Context for a Practice Guide
for Courts and Schools



NATIONAL COUNCIL OF
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SCHOOL PATHWAYS TO THE JUSTICE SYSTEM

THE CONTEXT FOR A PRACTICE GUIDE FOR COURTS AND SCHOOLS

INTRODUCTION

Juvenile courts across the nation are facing substantial challenges associated with the unintended consequences of policies such as “zero tolerance.” Specifically, juvenile courts are struggling to handle the numbers of youth referred by schools for truancy or behavioral problems that have traditionally been handled within the education system. Apart from juvenile courts becoming bogged down with the sheer numbers of cases referred from schools, communities are seeing these youth increasingly drawn deeper into the juvenile justice system. This phenomenon is often referred to as the “school-to-juvenile justice pipeline.”

Education is a robust protective factor, and for many, it is lifesaving. Paradoxical responses to truancy and other school engagement issues – such as suspending or expelling students for non-attendance – erode school attachment; a critical resiliency factor for our most vulnerable youth. In light of the proposed phase-out of the Valid Court Order exception in the pending re-authorization of the Juvenile Justice and Delinquency Prevention Act and our understanding of the harm associated with mixing low risk youth with high risk juvenile offenders, school pathways to the juvenile justice system are of particular concern to the National Council of Juvenile and Family Court Judges (NCJFCJ) and other leaders interested in improving outcomes for system-involved children, youth, and families.

The time has arrived for a coordinated, thoughtful, and strategic response to school pathways to the juvenile justice system and for finding effective ways to meet the multiple needs of students while diverting them from the juvenile justice system. Judicially led collaborations that include intensive training, technical assistance, and opportunities for public education and engagement are crucial to this endeavor. In collaboration with NCJFCJ, judicial leaders and allied professionals active in reducing unnecessary school referrals and justice system penetration developed a practice guide to support these training, technical assistance, and engagement activities. This technical assistance bulletin serves to provide context around the need for and the development of the practice guide.¹

¹ The practice guide is scheduled for release in September 2014, and will be available online at www.ncjfcj.org.

CONTEXT OF THE PROBLEM: ZERO TOLERANCE

The philosophy toward and the methods employed to enforce discipline within school systems has changed substantially over the last 50 years (Insley, 2001; Hanson, 2005). In the 1960s, most schools moved away from using corporal punishment as a form of discipline and instead relied on out-of-school suspensions and expulsions to remove disruptive students from classrooms. When the humanity and legality of these disciplinary practices were questioned in the 1970s, schools adopted the policy of employing in-school suspensions; this practice removed disruptive students from classrooms, but kept them inside the protective school environment to continue work on their academic assignments.

This rehabilitative approach toward discipline was favored in schools until the late 1980s and early 1990s when many schools adopted policies that mandated the use of specific disciplinary consequences – often severe and punitive – in an effort to increase school safety (Education Development Center, 2012; Insley, 2001; Skiba, 2000). Subsequently, school systems began requiring mandatory punishments (e.g., suspension or expulsion) for certain classes of behaviors (e.g., possession of alcohol or other drugs) regardless of the severity or context of the infraction (e.g., cocaine versus aspirin). This approach toward school discipline was termed zero tolerance in reference to strict state and federal enforcement policies adopted during the war on drugs (Teske & Huff, 2011).

According to Skiba and colleagues (2006, p. 2), zero tolerance can be defined as any “philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of the behavior, mitigating circumstances, or situational context.” The zero tolerance approach to school discipline was given the federal seal of approval when the Clinton Administration signed the Gun-Free Schools Act of 1994 into law (Insley, 2001). This Act conditions federal funding for schools on each state’s adoption of legislation requiring a minimum one year expulsion for any student who brings a weapon to school and referral of the student to a criminal or juvenile court (Fabelo, Thompson, Plotkin, Carmichael, Marchbanks, & Booth, 2011). Originally, this law pertained only to firearms. However, subsequent amendments have broadened the language of the bill to include any instrument that may be used as a weapon (Skiba, 2000). For instance, in 1998, a five year old was suspended from school for wearing a five-inch plastic axe as part of his firefighter’s Halloween costume, and in 1999, a sophomore was suspended for 10 days after loaning a friend her nail clipper with attached nail file (Skiba).

Within a year of the bill being signed into law, every state in the U.S. complied with this federal statute by enacting zero tolerance policies (Insley, 2001). Since then, the percentage of schools within the U.S. with zero tolerance policies has since never fallen below 75% (Insley). Further, many school systems quickly broadened the intent of the law to justify zero tolerance policies toward other offenses, such as drugs, alcohol, tobacco, and school disruptions (e.g., fighting, inappropriate dress, bullying, swearing, threats; Skiba, 2000). For instance, from 1996 to 1997, most schools in the U.S. had zero tolerance policies for offenses such as firearms (94% of schools), weapons (91%), drugs (88%), alcohol (87%), and violence and tobacco (79%; Kaufman et al., 2001).

EFFECTS OF ZERO TOLERANCE POLICIES

Although prevalent across states and school districts, zero tolerance policies are heavily criticized for being too harsh and applied inequitably. Further, a greater body of research is beginning to document the strain that these policies place on the juvenile justice system in terms of increased caseloads and financial cost. The negative, unintended consequences that these policies have on students – such as school disengagement, failure, and dropout – are also of great concern.

IMPACT OF ZERO TOLERANCE POLICIES ON THE JUVENILE JUSTICE SYSTEM

Since the implementation of zero tolerance policies, the rates of suspensions, expulsions, and school referrals to the juvenile justice system have skyrocketed. For instance, in Denver Public Schools, out-of-school suspensions rose by 36% between the 2000-2001 school year and the 2003-2004 school year; interestingly, 86% of the 13,423 suspensions in the 2003-2004 school year were for subjective, non-violent behavior (e.g., threats) and “other violations of code of conduct,” such as being a member of an unauthorized group, destruction of non-school property, obscenities, disruptive appearance, use of slurs, bullying, and minor fights (Advancement Project, 2005). Expulsions from school also rose by 26% over the same time period, and more than half of expulsions were for non-violent offenses. Finally, referrals to law enforcement rose 71% from 818 in the 2000-2001 school year to 1,401 in the 2003-2004 school year. This trend is not unique to Denver and is not attributable to increases in student populations or rises in dangerous crime (Advancement Project). In fact, the school incidents most commonly reported to law enforcement in the 2003-2004 school year were “other violations of code of conduct” (42%); more serious offenses such as carrying dangerous weapons and drug violations accounted for only 7% and 17%, respectively, of referrals to law enforcement (Advancement Project). In another example, a recent study by the Council of State Governments’ Justice Center, involving almost a million public secondary school students in Texas, found that nearly 60% of students were suspended or expelled at least once between grades 7 and 12. Only 3% of these suspensions and expulsions were mandatory responses to students’ possession of drugs or weapons on campus; 97% were at school administrators’ discretion (Fabelo et al., 2011).

Juvenile courts around the country report being overwhelmed by students referred to the juvenile justice system for school-based incidents that might have been previously dealt with by school administrators (Hanson, 2005; Richart, Brooks, & Soler, 2003). Further, students, lawyers, and court administrators agree that most referrals that come before juvenile courts do not merit the attention of the court (Advancement Project, 2005). For instance, in Denver, 68% of the cases involving minor offenses on or around school property in 2004 were dismissed upon completion of a diversion program by the Denver County Court - Juvenile Division (Advancement Project). Thus, it is argued that zero tolerance policies are unnecessarily bogging down the juvenile justice system with cases involving students who made understandable mistakes or engaged in ordinary adolescent behavior (Advancement Project; Fabelo et al., 2011).

IMPACT OF ZERO TOLERANCE POLICIES ON STUDENTS

In addition to directly overburdening the juvenile justice system through increased referrals, zero tolerance policies also have an indirect impact on the juvenile justice system via their negative impact on students. Although designed to reduce future disruptions, suspensions and expulsions from school actually have the unintended consequence of leading to behaviors that increase the likelihood that students will become involved in the juvenile justice system (Fabelo et al., 2011). Research has documented that school commitment and engagement act as protective factors for children (U.S. Department of Health and Human Services, 2001). Often, children who are removed from school do not get adequate supervision and thus are more likely to engage in risky behaviors (e.g., gang involvement, physical fights, weapon possession, drug use) that directly increase their chances of coming into contact with the juvenile justice system (Insley, 2001). Further, students who see themselves labeled as delinquent are likely to feel alienated and fall behind in their school work; these factors can cause some students to drop out of school, which consequently further increases their chances of contact with the juvenile justice system (Insley, 2001). Those who do return to school after being suspended or expelled engage in higher rates of misbehavior, which in turn, leads to further suspensions, expulsions, or direct referrals to the juvenile justice system (Fabelo et al.; Skiba et al., 2006).

Not surprisingly, most scholars argue that the criminalization of minor infractions has negative impacts on children (e.g., psychological harm, reduced educational opportunities, increased dropout rates) which can lead to increased involvement with the juvenile justice system (Hanson, 2005). Unfortunately, these pathways to system-involvement are more common for certain groups of individuals (Skiba et al., 2006). For example, students with disabilities, especially emotional disturbances, are more likely to be punished under zero tolerance policies (Fabelo et al., 2011). They are more than twice as likely to experience one or more out-of-school suspensions (Education Development Center, 2012). Additionally, suspension and expulsion rates are higher for African American and Latino students (Richart, Brooks, & Soler, February, 2003; Verdugo, 2002; Education Development Center, 2012). The United States Department of Education's Office for Civil Rights reports that African American students are more than three and a half times more likely to be suspended or expelled than their white peers (Education Development Center, 2012). Interestingly, the disproportionate discipline of students of color cannot be attributed to economic disadvantage or higher rates of misbehavior (Skiba et al., 2006). Instead, evidence suggests that the subjective nature of zero tolerance policies leads to differential treatment of minority students; white students are more likely to be punished for guns, weapon, and drug violations whereas African American students are more likely to be reprimanded for appearing to be threatening or being disrespectful (Verdugo, 2002).

COURTS AND SCHOOLS PARTNERING TO REFORM ZERO TOLERANCE

Given the negative effects on youth associated with school disengagement, disparate treatment, and justice system penetration, many juvenile justice and education professionals are calling for an end to zero tolerance practices. Recognizing that “zero tolerance makes zero sense” in some cases of public safety, judicial leaders across the nation are actively collaborating with schools, law enforcement, juvenile probation, and other system stakeholders to develop more reasoned and developmentally appropriate responses to school-based behavioral issues.

Much of this effort is based on the groundbreaking work of Judge Steve Teske (2011) and colleagues who developed a collaborative, judicially led approach to address the problems associated with zero tolerance policies. This approach involves bringing the pertinent stakeholders together to discuss the problem, identify a solution, and create a protocol that to achieve the identified goal. Clayton County, Georgia is an example of the dramatic improvements associated with Judge Teske’s approach. Following adaptation of the multi-integrated systems approach, Clayton County experienced a 64% overall decrease in referrals to the court, a 43% decrease in referrals for youth of color, and a 73% decrease of serious weapons on campus. Further, after implementing the protocol, graduation rates increased by 20% (Teske, 2011). The NCJFCJ practice guide for courts and schools further outlines this judicially led collaborative approach and serves to support jurisdictions interested in reducing or eliminating the school-to-juvenile justice pathway by engaging schools and communities to address school-based behavior appropriately, fairly, and outside of the justice system.

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