

# Education in Black America: Is It the New Jim Crow?

Ellen Marrus\*

## I. INTRODUCTION

“Our children are our future.” How many times have you heard that saying? We often say it to encourage young people to think about their future responsibilities. Adults think about it as we remember how important children are to the well-being of our nation. This phrase has even been used in song: “[T]he children are our future. Teach them well and let them lead the way.”<sup>1</sup> Every generation depends on its youth to build the future, to make sure society takes care of the elderly, and to provide a better overall environment and civilization for current and future generations. It is imperative that we endow all young people with the essential tools to accomplish these goals. A quality educational system that meets the needs of all children will provide them with the knowledge and skills necessary to be successful. However, we have long debated government’s role in education and the appropriate way to educate children.<sup>2</sup> As of

---

\* George Butler Research Professor of Law and Director of the Center for Children, Law & Policy, University of Houston Law Center. I thank University of Houston Law Center Dean Leonard Baynes and the National Bar Association for inviting me to present at the twenty-fifth anniversary Wiley A. Branton Issues Symposium held at St. John’s Law School on October 10, 2014. I also thank the University of Houston Law Foundation for its financial support.

1. WHITNEY HOUSTON, *GREATEST LOVE OF ALL* (Arista Records 1985).

2. United States Supreme Court cases from as early as the 1920s focused on education-related issues, including a parent’s right to educate his or her child as he or she sees fit, a state’s right to require compulsory education, and a child’s right to education. *See, e.g.*, *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925) (“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.”); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (“[I]t is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the States . . . enforce this obligation by compulsory laws.”). However, the Court did not address the education of African American youth until 1954. *See Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954) (“We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities

late, there has been much discussion about the education system's inability to provide children with the means to succeed in our modern, global society. Furthermore, many express concerns about the way we evaluate teachers and schools, and how we measure what students are learning. To date, much of this discussion has focused on children who live at home with their parents and attend schools in their community. The discourse often overlooks the children who face disciplinary action and removal from their "home" school. These students might receive instruction at home or move to an alternative school. Others might become involved in the juvenile justice system through delinquency or dependency proceedings,<sup>3</sup> often removing them from their homes.

Children placed in foster care or group homes might frequently move from placement to placement, causing their school to also change. The youth involved in the delinquency system might also receive their education in a juvenile detention center or, even worse, in an adult prison. The number of children who face these types of educational situations increases constantly, but society often ignores their needs. Children of color, particularly African American children, are disproportionately represented in all of these arrangements. Once removed from his or her home school and caught in the net of alternative education or the justice system, a child's chances for a quality education decrease dramatically. Thus, for many children, the opportunities to receive the skills needed to become productive citizens are destroyed at an early age.

Part II of this essay first discusses the disproportionate number of African American children involved in child welfare programs, school disciplinary proceedings, and the juvenile justice system.<sup>4</sup> The connection between African American youth and the legal system contributes to the criminalization of

---

and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.").

3. Delinquency proceedings involve children accused of an act which would be considered a crime if committed by an adult. A dependency action is filed to protect a child from harm caused by the child's caretaker, usually a parent.

4. In my initial drafts, I planned to discuss only children in the delinquency system. While I prepared my presentation for this symposium, I found it impossible not to discuss foster care and schools. A child's educational disadvantages do not start when he or she enters the delinquency system—the educational disruptions occur at a much earlier age. As a society, we often talk about the school-to-prison pipeline, but we tend to ignore what happens to young children who enter the foster care system.

black children. Furthermore, various educational interruptions in each system increase the likelihood of black children finding themselves in the adult criminal justice system. African American children are more likely to be placed in foster care, are more likely to face disciplinary action in public schools, and are more likely to be confined in either juvenile or adult detention facilities than their white peers. This creates major obstacles for children of color to become productive citizens in our society and limits the chance this generation of African American youth can reach their full potential.

Part III of this essay describes how each of these systems interrupts the education of black youth in our public school system. Part III also analyzes the long-term effects of educational interruption on African American children. These problems include an inability of children to reenroll in their home school, a lack of coordination and collaboration between agencies, a shortage of coordinated efforts to address the needs of youth, a scarcity of appropriate school services, a high level of mobility among youth in the system, an absence of advocates for appropriate education for children, and a lack of access to educational records. Furthermore, a host of other problems related to post-placement transition arise for incarcerated youth, including a failure to earn high school credits, a lack of skills training, an inability to enroll in college programs, a difficulty with obtaining financial aid, and more.

Part IV of this essay concentrates on developing solutions to the problems faced by minority youth in the foster care, school discipline, and delinquency systems. Educational reformers have implemented successful programs that both provide a quality education and help youth remain in school, regardless of grade level. Programs also exist to help students obtain a post-secondary degree and to stay out of the criminal justice system. Lastly, Part IV discusses the reform needed to provide all youth with a quality education and equal educational opportunities.

## II. THE DISPROPORTIONATE NUMBER OF YOUTH OF COLOR INVOLVED WITH THE LEGAL SYSTEM

The terms “disproportionate minority representation” or “disproportionate minority contact” usually refer to the overrepresentation of people of color in the criminal justice

system. However, minority youth are also overrepresented in the child foster care system and in disciplinary proceedings in our nation's public schools. Before we can understand the educational disruptions experienced by African American youth entangled in the legal system, we must first discuss the disproportionate number of black children represented in the child welfare and school discipline systems. Although the educational disruptions that often occur in foster care, schools, and the juvenile justice system are damaging to any child, the disproportionate number of minorities, particularly African Americans, in each system creates a disparate impact on youth of color.

### A. Child Welfare System

In the child welfare system, children are removed from parental care following some type of physical, emotional, or sexual abuse, or after a parent fails to protect the child from harm caused by someone else.<sup>5</sup> African American children are more likely to be removed from their parents' care, are disproportionately placed in foster care and group homes, and are kept in these placements for longer periods of time than their white peers.<sup>6</sup> In 2004, black children comprised 34% of the children in foster care, even though the child population in the United States was only 15% African American.<sup>7</sup> As children continue through the child welfare system, the disproportionate number of African American children in foster care grows.<sup>8</sup> Furthermore, black children placed in foster care will remain there almost nine months longer than white children.<sup>9</sup>

Scholars continue to debate why such a high number of African American children are initially removed from their

---

5. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-816, AFRICAN AMERICAN CHILDREN IN FOSTER CARE: ADDITIONAL HHS ASSISTANCE NEEDED TO HELP STATES REDUCE THE PROPORTION IN CARE 1 (2007), available at [www.gao.gov/assets/270/263615.pdf](http://www.gao.gov/assets/270/263615.pdf).

6. *Id.*

7. *Id.* at 8.

8. See *id.* at 7-8. After the initial removal of a child from his or her home, there are several times during which the child may be returned to his or her parents' care, be placed with a relative, or be adopted. See *id.* at 9. African American children, however, stay in temporary placements at greater numbers than white youth throughout the process. See *id.* at 7-9.

9. *Id.* at 26.

homes, put in out-of-home placements, and stay there for longer periods of time. A 2007 study by the United States Government Accountability Office cited higher rates of poverty in African American homes, greater difficulties for families to access needed support services, and racial biases among decision makers in the child welfare system<sup>10</sup> as the primary reasons for the high rate of black children in foster homes.<sup>11</sup> The report also noted three primary reasons why black youth stay longer in foster care—"lack of appropriate adoptive homes for children, greater use of kinship care among African Americans, and parents' lack of access to supportive services needed for reunification with their children."<sup>12</sup> Although racial bias, intentional or unintentional, is not always cited as the primary reason for the removal of African American children, it certainly plays a role. This bias also explains why a disproportionate number of African American youth enter and remain in foster care.

A 2003 California study examined the relationship between racial bias and the disproportionate number of African American children in foster care.<sup>13</sup> When researchers controlled for poverty levels and the type of maltreatment, they found black children were more likely to be removed from their homes than white youth.<sup>14</sup> However, another study conducted with data from the child welfare system in Baltimore, Maryland found race was not a factor.<sup>15</sup> When controlling for factors such as race and the mother's age at the child's birth, researchers found no difference between the number of black and white children

---

10. Child welfare caseworkers, supervisors, police, and judges all make decisions regarding a child's removal from home and whether a child will be reunited with his or her family. Although no specific studies have examined implicit bias in child welfare courts, there is research that assesses implicit bias in society and the courts. In one such study, the implicit association test was administered to 133 judges from three different jurisdictions. Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1205-06 (2009). The test found a strong white preference in white judges, while black judges exhibited no overall preference. *Id.* at 1209-10.

11. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 5, at 16.

12. *Id.*

13. See generally Barbara Needell et al., *Black Children and Foster Care Placement in California*, 25 CHILD. & YOUTH SERVICES REV. 393 (2003).

14. See *id.* at 398-401.

15. See Susan Zuravin & Diane DePanfilis, *Predictors of Child Protective Service Intake Decisions: Case Closure, Referral to Continuing Services, or Foster Care Placement*, in THE FOSTER CARE CRISIS: TRANSLATING RESEARCH INTO POLICY AND PRACTICE 63, 80 (Patrick A. Curtis et al. eds., 1999).

removed from their homes in Baltimore.<sup>16</sup> This is not to say bias played no role in the process. Research suggests that African American families have more interaction with mandatory reporters and are more likely to be reported for maltreatment than white families.<sup>17</sup> Although research has produced conflicting results, a 2006 report issued by the Casey-CSSP Alliance for Racial Equity in the Child Welfare System indicated that stakeholders considered race when making decisions about placing children in foster care and determining the length of out-of-home placements.<sup>18</sup>

This debate has persisted for many years, and many legal commentators take opposing views. Professor Dorothy Roberts has long argued that the disproportionate number of African Americans in the child welfare system is caused by the biases of child protective services workers, misguided government policies, and institutionalized racism.<sup>19</sup> On the other hand, Professor Elizabeth Bartholet has opined that the higher rate of removal for black children is attributable to higher rates of maltreatment of African American youth, and she has argued for more support for dysfunctional families and their at-risk children.<sup>20</sup> I agree with Professor Bartholet's position in that we must provide more services for at-risk families; but in light of the studies previously discussed, I disagree with her assertion that black youth are more frequently abused or neglected. For example, a common reason for both the removal of a child from home and his or her lengthy stay in foster care is homelessness. Even six years into the twenty-first century, one study found black families had less access to affordable housing.<sup>21</sup> Furthermore, the same report found that medical personnel were more likely to report African American families for substance

---

16. *See id.* at 74.

17. ROBERT B. HILL, CASEY-CSSP ALLIANCE FOR RACIAL EQUITY IN THE CHILD WELFARE SYS., SYNTHESIS OF RESEARCH ON DISPROPORTIONALITY IN CHILD WELFARE: AN UPDATE 17-18 (2006), available at <http://www.cssp.org/reform/child-welfare/other-resources/synthesis-of-research-on-disproportionality-robert-hill.pdf>.

18. *Id.* at 21-24.

19. *See* DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE, at viii (2002) (“*Shattered Bonds* is a plea to call the child welfare system what it is: a state-run program that disrupts, restructures, and polices Black families.”).

20. Elizabeth Bartholet, *The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions*, 51 ARIZ. L. REV. 871, 896-900 (2009).

21. *See* HILL, *supra* note 17, at 28.

abuse issues in the home.<sup>22</sup> Additional services will not solve the problem if African American families are viewed and treated differently.

Children entering the foster care system are more likely to have problems in school that will lead to school discipline issues.<sup>23</sup> They are also more likely to end up in the delinquency system after experiencing exclusionary school discipline.<sup>24</sup> In fact, data from 2004 showed 33% of foster youth in the juvenile justice system were there for placement-related behavioral issues.<sup>25</sup> This occurs for a variety of reasons. For example, an adolescent may experience several placements over a short period of time.<sup>26</sup> After living in so many different homes, the child is more likely to have abandonment issues or anger management problems.<sup>27</sup> The child also may not receive appropriate and ongoing mental health services during this transient period.<sup>28</sup>

Consider a common example. Sam lives in a group home. One day, a staff member told Sam to go to his room, but Sam was in the middle of doing something important and did not want to leave. The worker pushed Sam toward his room, and Sam threw a chair in frustration, breaking a window. The staff person was not trained on how to handle Sam's behavioral issues, had little education, and was paid minimum wage. This staff worker called the police, who took Sam to the youth detention facility and filed a delinquency petition.<sup>29</sup>

---

22. *Id.* at 18.

23. AM. BAR. ASS'N ET AL., FOSTER CARE & EDUCATION: ISSUE BRIEF 1 (2014), available at [http://www.fostercareandeducation.org/portals/0/dmx/2014%5C06%5Cfile\\_20140623\\_160924\\_bGK\\_0.pdf](http://www.fostercareandeducation.org/portals/0/dmx/2014%5C06%5Cfile_20140623_160924_bGK_0.pdf).

24. *See id.* at 2.

25. Miriam Aroni Krinsky, *Disrupting the Pathway from Foster Care to the Justice System—A Former Prosecutor's Perspectives on Reform*, 48 FAM. CT. REV. 322, 325 (2010). In addition, children who have been abused or neglected are 50% more likely to enter the juvenile justice system than non-abused children. *See id.*

26. *See id.* (“[O]ne study . . . found that over 90% of foster youth who move five or more times will end up in juvenile justice . . .”).

27. *See id.* at 324-25 (“Foster youth commonly lack a stable or positive adult role model, tend to feel socially isolated, and are deprived of the opportunity to participate in extracurricular activities that are a fundamental part of development.”).

28. *Id.* at 325.

29. The University of Houston Law Center operates a clinic that represents children in the permanency stage of abuse and neglect cases. This incident has occurred with a number of children that we represent. Most children, at least in Texas, are not represented at this point in their proceedings. Without an advocate that understands the process, it is unlikely that there will be any positive outcome for these children.

The outcomes for abused and neglected children are rarely good. Within three years of turning eighteen and aging out of the foster care system, “51% will be unemployed, [o]ne-third will be on public assistance, 25% [will] become homeless and many more will return to the biological parent we sought to protect them from by keeping them in foster care, and 25% will be incarcerated.”<sup>30</sup> Entering the foster care system has become the first step in the criminalization of black youth. It is not only a school-to-prison pipeline that exists, but rather a cradle-to-prison pipeline.<sup>31</sup>

### B. School Discipline

When zero-tolerance policies were instituted in school districts around the country, the school-to-prison pipeline became a reality. Due to the disproportionate number of African American youth affected by these policies, they have a disparate impact on children of color. Take one statistic for example—research from 2011–12 found African American students were three times more likely to be suspended or expelled than their white counterparts.<sup>32</sup>

Suspensions and expulsions lead to serious consequences, such as missed learning days, the loss of educational opportunities, and referrals to the juvenile justice system. A 2014 report issued by the Office for Civil Rights included, for the first time, information about the suspension of preschool children.<sup>33</sup> The report found African American children were disproportionately suspended at all levels of education in 2011–12, including preschool—“black children represent[ed] 18% of preschool enrollment, but 42% of the preschool children

---

30. Krinsky, *supra* note 25, at 324.

31. See *Cradle to Prison Pipeline Campaign*, CHILD. DEF. FUND, <http://www.childrensdefense.org/campaigns/cradle-to-prison-pipeline/> (last visited Jan. 19, 2015).

32. U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION: DATA SNAPSHOT: SCHOOL DISCIPLINE 1 (2014), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>. Although the report found boys in general were more likely to be suspended than girls, 12% of African American girls were suspended at least once in 2011–12, the highest rate among girls of any race. *Id.* at 3. During this time, the only groups with higher suspension rates than African American girls were American Indian/Native Alaskan males (13%) and black males (20%). *Id.*

33. *Id.* at 1.



suspended once, and 48% of the preschool children suspended more than once.”<sup>34</sup>

The number of suspensions for students in kindergarten through twelfth grade doubled from the early 1970s to 2006, and the gap between racial groups also grew.<sup>35</sup> In the 1970s, white students were suspended at the rate of approximately 3%, while African American students were suspended twice as often.<sup>36</sup> By 2006, the rate for African American students had risen to 15%, while the rate of white student suspension only increased to 4.8%.<sup>37</sup> Although the adoption and proliferation of zero-tolerance policies can explain the overall rise in suspensions, it does not account for the widening gap between the suspension rates of black students and students of other races.<sup>38</sup>

Most of the data collected does not discern between middle school and high school students; however, the reports that do indicate a higher number of suspensions among middle school students.<sup>39</sup> Suspensions during middle school lead to greater disparities in the achievement gap and higher rates of interaction with the juvenile delinquency system.<sup>40</sup> Middle school is a

---

34. *Id.* at 7. This is probably one of the most damning statistics. A successful early childhood education is crucial to academic success. Suspending children at such an early age sets them up for failure, as they are stigmatized as having behavioral issues and miss crucial educational days that cannot be made up later on. When I first started teaching in the early 1970s, I taught at an inner-city school that was 50% African American, 49.5% Puerto Rican, and 0.5% white. This was prior to zero-tolerance policies, and over 50% of my third-grade class of thirty-eight students had been suspended from school in kindergarten. A senior teacher greeted me with the following words on the first day of school: “I feel so sorry for you. You have the kids I had last year. Half of them had been suspended in kindergarten and they are just terrible kids.” Not one of my students were suspended during that year, and enrollment in my class rose to approximately sixty. I developed individualized learning plans for all of them, spent many hours with students outside of class, and most importantly, I did not label them as “terrible kids.” Unfortunately, most teachers are too quick to stereotype children based on prior incidents.

35. DANIEL J. LOSEN & RUSSELL SKIBA, *SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS* 2-3 (2010), available at [http://www.splcenter.org/sites/default/files/downloads/publication/Suspended\\_Education.pdf](http://www.splcenter.org/sites/default/files/downloads/publication/Suspended_Education.pdf).

36. *Id.*

37. *Id.* at 3.

38. In 2006, black males were suspended from middle school at the highest rate of any other racial or gender group, and black females followed close behind. *See id.* at 5.

39. *Id.* at 4.

40. *See* LOSEN & SKIBA, *supra* note 35, at 3. Research conducted by Robert Balfanz of John Hopkins University studied over 400 children who had been incarcerated in ninth grade. *Id.* He found “the typical ninth grader who went to prison had previously attended school only 58% of the time, failed at least one quarter of their classes, and read at a sixth

crucial time in adolescent development, and a student's failure in school can have long-term repercussions. When one focuses on middle school suspensions, the disparities are troubling. In 2006, black males in middle school were suspended at a rate of 28.3% and black females at a rate of 18%.<sup>41</sup> Overall suspension rates in that year stood at 14.7% for males and 7.5% for females.<sup>42</sup> White male students experienced suspension at a below-average rate, 10%, and so did white females, who were suspended at a rate of 4%.<sup>43</sup>

Another concern regarding the high number of suspensions involves the types of behavior for which suspensions are issued. One report found only 5% of suspensions at Indiana schools during the 2002–03 school year were for serious issues such as possession of drugs or weapons.<sup>44</sup> In this report, researchers discovered suspensions were most commonly given for minor offenses such as physical fights among students, offensive language, “cutting class, tardiness, and truancy.”<sup>45</sup> The benefit of suspending a child from school for cutting class is unclear. If a child misses school, educators should seek to make up for missed learning time. Suspension, in or out, decreases the time spent in a classroom. Exclusionary discipline also sends a message to students that attending school is not important. Logically, suspension may also widen the achievement gap.

Scholars frequently debate the disproportionate suspension rates experienced by black youth.<sup>46</sup> One side of the debate claims black students are suspended more frequently because they misbehave more at school.<sup>47</sup> However, several research

---

grade level at the end of the eighth grade.” *Id.* Additionally, two-thirds of the students had been suspended at least once in middle school, and 80% of the children were black. *Id.*

41. *Id.* at 5.

42. *Id.*

43. *Id.*

44. *Id.* at 9.

45. LOSEN & SKIBA, *supra* note 35, at 9.

46. Many also question why males are generally suspended at much higher rates than females in all racial groups. *See id.* at 5 (“Th[e] 10-point difference in suspension rates by gender for Black students was the largest of any racial group, but all racial/ethnic groups showed large internal differences by gender.”). Although black females are suspended at a higher rate than females of all other racial groups, black males still experience exclusionary discipline in even greater numbers. *Id.* While outside the scope of this essay, this topic is ripe for examination.

47. *See* RUSSELL J. SKIBA & NATASHA T. WILLIAMS, THE EQUITY PROJECT AT IND. UNIV., ARE BLACK KIDS WORSE? MYTHS AND FACTS ABOUT RACIAL DIFFERENCES IN

studies that examined race, student behavior, and discipline found that black students did not misbehave any more than their white peers.<sup>48</sup> Furthermore:

White students were referred to the office significantly more frequently for offenses that appear more capable of objective documentation (e.g., *smoking, vandalism, leaving without permission, and obscene language*). African-American students, however, were referred more often for *disrespect, excessive noise, threat, and loitering*—behaviors that would seem to require more subjective judgment on the part of the referring agent.<sup>49</sup>

### C. Juvenile Delinquency and Incarceration

In the juvenile justice system, disproportionate minority representation can be divided into two categories. The first—confinement—relates to the disproportionate number of minority youth removed from home and placed in a facility. The second—contact—describes a child's initial interaction with the juvenile justice system, which may be caused by police or a referral from a school, parent, victim, or member of the local community. Disproportionate minority representation occurs at every point in the juvenile system—initial referral, intake, charging, pre-trial detention, transfer decisions, dispositional decisions, and post-adjudication confinement in youth or adult facilities.

From 2002 to 2004, African Americans made up “37% of the detained population.”<sup>50</sup> During the same time period, African American children comprised 38% of youth in juvenile placements and 58% of youth in adult prisons.<sup>51</sup> Researchers found African American juveniles were detained more frequently prior to adjudication and were more frequently transferred to juvenile court.<sup>52</sup> Black children with one or more

---

BEHAVIOR 3 (2014), available at [www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior\\_031214.pdf](http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf).

48. LOSEN & SKIBA, *supra* note 35, at 10.

49. *Id.* at 10-11.

50. NAT'L COUNCIL ON CRIME & DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 3 (2007), available at [http://www.nccdglobal.org/sites/default/files/publication\\_pdf/justice-for-some.pdf](http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf).

51. *Id.*

52. *Id.* at 8, 12.

prior admissions were also seven times more likely to be detained than white youth, and once detained, African Americans were held for longer periods of time.<sup>53</sup> Black youth with no prior admissions were incarcerated in adult facilities at six times the rate of white children, and Latino youth were jailed at three times the rate of white youth.<sup>54</sup> A 2013 report distributed by the Annie E. Casey Foundation stated that although the overall juvenile confinement rate declined from 1997 to 2010, African American youth were “five times more likely to be confined than their white peers.”<sup>55</sup> While the numbers for youth of color are not good in general, African American youth clearly face greater challenges.

If a child’s first contact with the juvenile justice system results from a school referral, administrators will likely suspend the child or the child will transfer to another school, regardless of whether law enforcement takes the child into custody. If the referral comes from a source other than the school and the incident occurred away from campus, juvenile justice officials will still likely notify the school, and administrators may decide to send the child to an alternative school. In our current system, this could occur prior to any adjudication of delinquency. If a child is taken into custody and detained prior to adjudication, the staff at the detention center must provide him or her with an education. Therefore, even before an actual adjudication of delinquency, the opportunity for a successful education is interrupted.

Any arrest has a detrimental effect on education, but arrest at an early age is even more detrimental.<sup>56</sup> One 2003 study “found that police or juvenile justice intervention during adolescence increased the probability of dropout nearly fourfold.”<sup>57</sup> For high school students, a court appearance had an even more detrimental effect—one study indicated a “first-time arrest during high school nearly double[d] the odds of high school dropout, while a court appearance nearly quadruple[d]

---

53. *Id.* at 2.

54. *Id.*

55. ANNIE E. CASEY FOUND., REDUCING YOUTH INCARCERATION IN THE UNITED STATES 2 (2013), available at <http://www.aecf.org/m/resourcedoc/AECF-DataSnapshotYouthIncarceration-2013.pdf>.

56. See Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 466 (2006).

57. *Id.*

the odds of dropout.”<sup>58</sup> The same report suggested that “justice system involvement increased the odds of dropout 3.6 times.”<sup>59</sup>

As with child welfare and school suspension, much of the debate on disproportionate minority representation in juvenile delinquency matters attempts to determine the cause of these disparities. Some attribute the high number of African American youth in the delinquency system to higher levels of misbehavior; others blame institutionalized racism. This is a chicken and an egg question—which came first? The bottom line is that a disproportionate number of African American children are trapped in the net of the juvenile court system. Accordingly, more children of color miss out on educational instruction and opportunities. African American youth, who will one day become adults, ultimately experience negative outcomes—including higher rates of unemployment and poverty, critical health conditions, and strained family relationships.

Furthermore, numbers show the disparate impact on African American youth increases as children progress through the delinquency system. Higher numbers of black youth are referred to the system, but an even greater percentage of African American youth are charged and held in confinement. Rather than allowing individual biases to enter this discussion, we must address this issue to reduce the disproportionate number of black youth in the justice system.

In the early 2000s, African American youth comprised only 16% of the youth population, but experienced 30% of the juvenile court referrals.<sup>60</sup> During this period, African American youth were over twice as likely to be referred to the juvenile justice system as other children.<sup>61</sup> Schools, police, and other referral sources create this problem for African American boys and girls. After referral, the gap between white and black youth continues to grow. For example, approximately 50% of white youth involved in drug cases were formally charged from 2002 to 2004, but over the same period, law enforcement charged over 75% of black youth.<sup>62</sup> As a society, we must redirect our

---

58. *Id.*

59. *Id.* at 473.

60. NAT’L COUNCIL ON CRIME & DELINQUENCY, *supra* note 50, at 3.

61. *Id.* at 8.

62. *Id.* at 2.

focus away from a justice system that fails to serve all youth and instead focus on preventative and rehabilitative measures. The juvenile and criminal justice systems are the end of the road of criminalization for our children of color. But in reality, the process starts much earlier.

### III. INTERRUPTIONS TO THE EDUCATION OF YOUTH AND THE CONSEQUENCES

Contact with the legal or school disciplinary systems interrupts a child's education and leads to lost educational opportunities. Education is the surest measure of future success and has a positive impact in all areas of adult life. Higher education levels lead to lower unemployment rates<sup>63</sup> and higher incomes.<sup>64</sup> Adults with a college education are also less likely to suffer from chronic health problems and more likely to live longer lives.<sup>65</sup> Clearly, lost educational opportunities have negative ramifications on children that will last for the rest of their lives. If young students do not receive appropriate educational services, they are more likely to fall behind, be held back a grade, drop out of school, and become involved with the juvenile and criminal justice systems as adolescents. Interruptions begin for foster children when they are removed from home or have an out-of-home placement changed. Rarely can temporary foster care adequately meet a child's needs. Children also lose educational instruction following exclusionary discipline. In the delinquency system, similar interruptions occur throughout the process, from initial contact to detention, during confinement in a juvenile or adult facility, and even after release from a youth or adult prison.

---

63. The Bureau of Labor Statistics reported the unemployment rate for individuals without a high school diploma was 7.1% in 2007. See PETER LEONE & LOIS WEINBERG, CTR. FOR JUVENILE JUSTICE REFORM, ADDRESSING THE UNMET EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN THE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS 5 (2010), available at <http://cjjr.georgetown.edu/pdfs/ed/edpaper.pdf>. High school graduates had an unemployment rate of 4.4%, and only 2.2% of individuals with a bachelor's degree were unemployed. *Id.*

64. In 2008, the median income for individuals with a bachelor's degree was \$47,000 per year; those with a high school diploma earned \$27,000 per year, and those without a high school diploma made only \$19,000 per year. *Id.*

65. See *id.* ("Individuals with higher levels of education have lower rates of chronic illness, such as heart disease and diabetes, and greater life expectancy. Researchers have found these differences independent of demographic and labor market factors.")

## A. Mobility of Placements

The child welfare and delinquency systems often remove children from their home and move them between different placements. One report found a child placed out of home will live in two to three different places each year.<sup>66</sup> These placement movements often cause school changes, and children find themselves constantly adjusting to new environments, both in the home and at school. A child's new school may have a different curriculum or procedures. Constant changes also lead to poor academic performance,<sup>67</sup> which can be explained in part by the fact that children often lose several days of instruction during transitions because the receiving school must await the appropriate paperwork.

Youth in the delinquency system also change placements frequently. Data from 2003 indicated over half of detained youth spent more than fifteen days in detention, and over half of committed youth spent 105 days or more in public facilities or over 121 days in private placements before transferring to another program or returning to their community.<sup>68</sup> This has a lasting impact—changes in schools usually trigger higher rates of academic failure and cause students to drop out of school at higher rates.

---

66. LEGAL CTR. FOR FOSTER CARE & EDUC., BLUEPRINT FOR CHANGE: EDUCATION SUCCESS FOR CHILDREN IN FOSTER CARE 1 (2d ed. 2008), *available at* [http://www.americanbar.org/content/dam/aba/publications/center\\_on\\_children\\_and\\_the\\_law/education/blueprint\\_second\\_edition\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/education/blueprint_second_edition_final.authcheckdam.pdf). In a national study, researchers found that out of 1000 former foster youth, 68% attended three or more elementary schools and 33% attended five or more. *Id.* Another study found that two-thirds of the 16,000 children in Chicago's foster care system changed schools shortly after arriving at their placement. *Id.*

67. See John Eckenrode et al., *Mobility as a Mediator of the Effects of Child Maltreatment on Academic Performance*, 66 CHILD DEV. 1130, 1131 (1995). In a long-term study of former foster children, over half of which had experienced seven or more placements, researchers found the reduction of one foster care placement change a year almost doubled the likelihood that the child would graduate high school. PETER J. PECORA ET AL., CASEY FAMILY PROGRAMS, ASSESSING THE EFFECTS OF FOSTER CARE: EARLY RESULTS FROM THE CASEY NATIONAL ALUMNI STUDY 44 (2003), *available at* [http://www.casey.org/media/AlumniStudy\\_US\\_Report\\_Full.pdf](http://www.casey.org/media/AlumniStudy_US_Report_Full.pdf).

68. HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 215 (2006), *available at* <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/nr2006.pdf>.

### B. Educational Records

Movement from placement to placement, and therefore from school to school, also delays the transfer of school records.<sup>69</sup> This causes children to miss learning days and places school administrators and teachers in a poor position to serve students who are frequently on the move.<sup>70</sup> This could create particular problems for children with special needs, as their educational and behavioral plans may not be readily available at the new school. Even worse, a child may move again before the records arrive at the new school.<sup>71</sup> School disciplinary procedures often force children to transfer to an alternative school or receive educational services at home. If the records transfer is delayed, the child's education is interrupted. Finally, youth in detention facilities or long-term juvenile placements frequently fail to accumulate the credits needed to return to their home school or their normal placement.<sup>72</sup> In all three systems, administrators must work to ensure records are transferred in a timely manner in order to avoid unnecessary delays to the education of our children.

### C. Lack of Understanding and Collaboration Between Agencies

Schools, child welfare agencies, and the juvenile justice system often demonstrate mistrust and a lack of communication when working with one another. Records are not often shared in a timely manner, and no common protocol among agencies for the sharing of information presently exists.<sup>73</sup> Each system must address this problem because the more information each agency has, the better it can help children attain a meaningful education.

### D. No Single Person to Advocate for Youth

Today's social workers have large caseloads, and child welfare agencies experience high turnover.<sup>74</sup> Probation officers in juvenile facilities work on an enormous number of cases at

---

69. See LEONE & WEINBERG, *supra* note 63, at 16-17.

70. *Id.* at 17.

71. See *id.* at 16-17.

72. See *id.*

73. *Id.* at 20.

74. LEONE & WEINBERG, *supra* note 63, at 20.



once.<sup>75</sup> Foster parents and staff at group homes are not always effective advocates and frequently lack the necessary skills to work with schools to guarantee proper educational services are provided to the children in their care.<sup>76</sup> Ideally, an adult should always make sure that a child properly leaves one school before enrolling in another. This ensures the child does not receive failing grades from his or her previous school. Adults should also enroll the child in the new school as soon as his or her placement changes. Unfortunately, it is not always clear who is responsible to make sure this occurs. Foster parents and staff at group homes are also responsible for the child's regular attendance at a school that provides core academic subjects. Regrettably, the system seems to fail our youth more often than not when it comes to these basic responsibilities.

Many children facing suspension do not always have a hearing or legal representation before administrators impose harsh sanctions. Furthermore, students that experience exclusionary discipline may not receive any in-home educational services. Although in-home instruction should be an automatic part of the process, our current system often delays delivering an education, offers inadequate programs, or fails to offer instruction at all.

### E. Inappropriate School Services

Children in foster care and the delinquency system are both over- and under-represented in special education.<sup>77</sup> Some schools fail to properly diagnose learning disabilities or miss telltale signs of a child's need for special education services due to the constant moving of a child.<sup>78</sup> Conversely, some children are diagnosed with special needs in order to get into a particular placement or to obtain additional services the school district otherwise does not have the resources to provide.<sup>79</sup>

---

75. *Id.* at 50.

76. *See id.*

77. *Id.* at 20-21.

78. *Id.* at 21.

79. LEONE & WEINBERG, *supra* note 63, at 21.

## F. Stigmatization

Schools are frequently notified of student misconduct whether a child is detained or not, even if the incident did not occur at school. This leads schools to label students, and the lack of adequate counseling in schools may exacerbate the feelings of stigmatization. This lack of necessary resources increases the likelihood that the student will drop out and never achieve academic success. One researcher determined that a first-time arrest in high school doubled the chance that a student would drop out, and others found a court appearance or interaction with the juvenile justice system nearly quadrupled the chances of dropout.<sup>80</sup> Court involvement also exposes children to others in the juvenile delinquency system, encouraging further delinquent behavior and “less attachment to high school, leading to poorer educational outcomes.”<sup>81</sup>

Furthermore, a student’s foster child status also leads to labeling in schools. Teachers and administrators may lower their expectations for the child’s academic success or, even worse, fail to advocate for a child based on misguided notions of the child’s lower value to society. Today’s punitive school discipline policies also label misbehaving children as troublemakers. African American students in particular are suspended in large numbers, even in preschool, and this can follow a child throughout his or her academic career. Once a child is labeled in school, the stigma is difficult to shake.

Disruptions in the education of youth result in reduced educational opportunities. In 2009, less than half of the youth held in juvenile detention centers for ninety days or longer earned a single high school credit.<sup>82</sup> The same year, only 9% of incarcerated youth obtained a high school diploma or GED, and only 2% enrolled in a two- or four-year college.<sup>83</sup> Nationally, only 15% of incarcerated youth showed any improvement of

---

80. Sweeten, *supra* note 56, at 473.

81. *Id.* at 477.

82. S. EDUC. FOUND., JUST LEARNING: THE IMPERATIVE TO TRANSFORM JUVENILE JUSTICE SYSTEMS INTO EFFECTIVE EDUCATIONAL SYSTEMS: A STUDY OF JUVENILE JUSTICE SCHOOLS IN THE SOUTH AND THE NATION 15 (2014), *available at* <http://www.southerneducation.org/getattachment/cf39e156-5992-4050-bd03-fb34cc5bf7e3/Just-Learning.aspx>.

83. *Id.* at 15-16.

their reading skills, and in the South, only 9% of students in custody demonstrated improvement.<sup>84</sup>

Labeling youth as delinquents, troublemakers, or foster children leads them to drop out of school. Labeling further stigmatizes our youth, which lowers their self-esteem. Labeling also tends to deny children access to educational opportunities because the system finds it wasteful to allocate scarce resources to this group of students. Placing children with behavioral problems, mental illnesses, or criminal histories together encourages additional delinquent behavior, school failure, and higher dropout rates.<sup>85</sup>

Involvement with the child welfare system and in school disciplinary actions increases a child's odds of future contact with the juvenile justice system, and involvement in all three systems dramatically reduces the chances of academic success. With this in mind, it is important to enact policies that will decrease the number of children in the juvenile and criminal justice systems and increase successful educational opportunities for all youth. This makes fiscal, if not moral, sense because incarcerating a child costs more than educating one. In 2009, it cost the State of Georgia between \$88,000 and \$91,000 to place a single child in a secure state facility.<sup>86</sup> Costs in other states were even higher.<sup>87</sup> Our system does not spend nearly this much on educating children each year—in 2008, the annual average cost to educate a child in Georgia was \$5352.<sup>88</sup> Failing to educate our youth is a recipe for increasing the number of students who will graduate, not from high school to college, but from juvenile facilities to adult prisons. Our society needs young adults who possess the skills to run our governments, manage our businesses, provide our medical services, and lead our initiatives to help society.

---

84. *Id.* at 17.

85. Sweeten, *supra* note 56, at 477.

86. S. EDUC. FOUND., *supra* note 82, at 29.

87. *See id.* (“In Louisiana, the annual average cost was \$119,073. In Virginia, the average was an estimated \$101,037 per year and in Tennessee the average cost of a residential placement in the juvenile justice system was \$92,060.”).

88. *Id.* at 30.

#### IV. POLICY RECOMMENDATIONS AND PROGRAMS THAT WORK

##### A. Foster Care

A group of national foster care organizations gathered to form the National Working Group for Foster Care and Education, which developed the *Blueprint for Change: Education Success for Children in Foster Care*.<sup>89</sup> This document outlined eight goals intended to tackle the systemic barriers to the education of foster care youth:

- (1) Youth Are Entitled to Remain in Their Same School When Feasible
- (2) Youth Are Guaranteed Seamless Transitions Between Schools and School Districts When School Moves Occur
- (3) Young Children Enter School Ready to Learn
- (4) Youth Have the Opportunity and Support to Fully Participate in All Aspects of the School Experience
- (5) Youth Have Supports to Prevent School Dropout, Truancy, and Disciplinary Actions
- (6) Youth Are Involved and Engaged in All Aspects of Their Education and Educational Planning and Are Empowered to Be Advocates for Their Education Needs and Pursuits
- (7) Youth Have An Adult Who Is Invested in His or Her Education During and After His or Her Time in Out-Of-Home Care
- (8) Youth Have Supports to Enter into, and Complete, Post-Secondary Education<sup>90</sup>

The drafters of *Blueprint for Change* did more than simply suggest policy goals. The revised report analyzed new legislation and national programs created to meet them. For example, the Fostering Connections to Success and Increasing Adoptions Act of 2008 promotes educational stability for foster children.<sup>91</sup> This legislation mandated state child welfare

---

89. See LEGAL CTR. FOR FOSTER CARE & EDUC., *supra* note 66, at iii (noting the initiative).

90. *Id.* at ii.

91. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008).

agencies to provide “[a] plan for ensuring the educational stability of the child while in foster care.”<sup>92</sup> The law required this plan at all stages of the child’s placement in foster care and also directed agencies to develop an educational plan for when the child exited placement.<sup>93</sup> Additionally, many national organizations, including the American Bar Association’s Center on Children and the Law, the Child Welfare League of America, the National Council of Juvenile and Family Court Judges, the National Children’s Law Network, and others, have developed toolkits and checklists to help judges, child welfare workers, foster parents, and biological parents better serve foster children—and even help youth become stronger advocates for themselves.<sup>94</sup> These toolkits and checklists inform various parties in the foster care system of their roles in achieving the eight goals outlined by the drafters of the *Blueprint for Change*.<sup>95</sup> Additionally, the report provided benchmarks to evaluate each goal and illustrated steps taken by national and state organizations toward each benchmark.<sup>96</sup> Reports such as the *Blueprint for Change* keep policymakers and the public aware of the issues faced by foster youth. However, they also serve as a painful reminder of the progress not yet achieved.

One change that could be implemented nationally is to guarantee legal representation to children at all stages of abuse and neglect proceedings. If a child has consistent legal representation throughout the process, positive outcomes will likely be reached. Representation also will provide a child with a consistent advocate in the school setting, protecting the child during disciplinary actions and fighting to ensure appropriate educational services are provided. Currently, children only have a constitutionally guaranteed right to counsel in delinquency proceedings.<sup>97</sup> However, since children in dependency cases

---

92. See 42 U.S.C. § 675(5)(H) (2012).

93. 42 U.S.C. § 675(1)(G).

94. LEGAL CTR. FOR FOSTER CARE & EDUC., *supra* note 66, at 4, 50-60 (listing reports by these organizations and others).

95. The report also highlighted specific programs at the state level. See *id.* at vii-ix.

96. See, e.g., *id.* at 13-24 (listing benchmarks for “Goal 2”—“Youth Are Guaranteed Seamless Transitions Between Schools and School Districts When School Moves Occur” and noting national and state efforts toward the benchmark).

97. See *In re Gault*, 387 U.S. 1 (1967) (holding the Fourteenth Amendment’s Due Process Clause and the Fifth Amendment’s privilege against self-incrimination entitled children to notice of the charges, the right to counsel, and the right to confront and cross-examine witnesses).

also face serious repercussions following these hearings, it is imperative that they have legal counsel. Representation could change the number and type of placements and ensure appropriate services are provided.

The High/Scope Perry Preschool study demonstrated the value of early childhood intervention. The program, started in 1962, provided preschool education to a group of low-income African American three- and four-year olds in Ypsilanti, Michigan.<sup>98</sup> The children attended a high-quality program that encouraged the children to make choices, provided a staff of certified teachers, maintained a low student-teacher ratio, and required teachers to make weekly visits to each child's home.<sup>99</sup> The study followed the children and their families throughout the children's educational careers and into their adult lives.<sup>100</sup> The results were overwhelmingly positive—the children academically outperformed their peers at ages fourteen and fifteen, demonstrated greater literary skills as young adults, and ultimately had higher incomes and were more likely to own their own homes later in life.<sup>101</sup> Foster children and their families, both foster and biological, could benefit greatly from these types of programs.<sup>102</sup>

Providing programs to foster and biological parents that train them to interact with children in different ways could also benefit abused and neglected children. A program called Attachment and Biobehavioral Catch-Up helped foster children learn to monitor and control stress levels with help from their foster parents.<sup>103</sup> This program consisted of ten intensive, in-home training lessons complete with a comprehensive manual that instructed adults on providing “nurturing care” to foster children.<sup>104</sup> A study of participants showed increased control by foster children and fewer behavioral issues.<sup>105</sup>

---

98. See LEONE & WEINBERG, *supra* note 63, at 34.

99. *Id.*

100. *Id.*

101. *Id.*

102. Another study posited that using the same educational principles employed during the High/Scope Perry Preschool study in juvenile detention environments could create a positive educational experience for children confined in facilities. See S. EDUC. FOUND., *supra* note 82, at 28-29.

103. LEONE & WEINBERG, *supra* note 63, at 35.

104. *Id.*

105. See *id.*

### B. Schools

Teachers and administrators may utilize any number of methods to reduce the number of education days lost by students due to suspensions and expulsions. Most obvious among them is to suspend students only for serious offenses, and even then, only as a last resort. Some schools are beginning to recognize that changing conduct policies to reflect this philosophy creates more positive school environments and reduces misbehavior more effectively than suspension.<sup>106</sup> By looking at “evidence-based” solutions, schools have found that expanding “Schoolwide Positive Behavioral Interventions and Supports” decreased the need for school suspensions.<sup>107</sup> For these programs to work, however, school personnel must be properly trained so they can implement different strategies to curb misbehavior.<sup>108</sup>

Finally, students should receive legal representation before a school initiates disciplinary action.<sup>109</sup> This will ensure schools implement disciplinary measures in a fair and non-discriminatory fashion. It also calls attention to the proper use of suspensions, thereby discouraging misuse. Parents and students should demand school conduct codes take normal adolescent behavior into consideration when determining punishment. Any school’s code of conduct should minimize the disruptions to the learning environment while simultaneously providing a mechanism that helps our young people become strong members of the community.

---

106. See DANIEL J. LOSEN & TIA ELENA MARTINEZ, CTR. FOR CIV. RTS. REMEDIES, *OUT OF SCHOOL & OFF TRACK: THE OVERUSE OF SUSPENSIONS IN AMERICAN MIDDLE AND HIGH SCHOOLS* 21 (2013), available at [http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-Of fTrack\\_UCLA\\_4-8.pdf](http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-Of fTrack_UCLA_4-8.pdf).

107. See *id.* at 25.

108. *Id.*

109. At the October 2014 symposium held in New York, National Bar Association President Pamela J. Meanes stated that the NBA intends to collaborate with local school districts and volunteer lawyers to ensure students are represented at disciplinary hearings. In areas where the NBA cannot implement this, law schools could encourage their students to volunteer and appear at these hearings.

## C. Delinquency

*What if the kids who needed the most got the best that we had to offer? What if that was our starting point?*<sup>110</sup>

David Domenici and James Forman, Jr. founded the Maya Angelou Academy as an alternative to the education offered in public schools for students who struggled in traditional settings.<sup>111</sup> Following the initial success of the school, officials asked the pair to take over Oak Hill Juvenile Detention Center, the school for confined youth in Washington, D.C.<sup>112</sup> The school sought to provide children with the best education possible—the best teachers, a comprehensive curriculum, and resources to help the children succeed.<sup>113</sup> Domenici and Forman first removed the entire teaching and administrative staff and started from scratch.<sup>114</sup> They wanted teachers who could meet their high expectations.<sup>115</sup> Each candidate was asked to respond to a writing prompt and had to teach a sample lesson.<sup>116</sup> Everyone had to have the same philosophy—the scholars should expect the best and the best should be expected from the scholars.<sup>117</sup> Each candidate was asked to provide examples of “how they would approach working with teenagers who could barely read, students who had been labeled as needing special education throughout their school lives, [and] students with little understanding of what it meant to be successful in school.”<sup>118</sup> Teachers were to have high expectations for the scholars despite the many obstacles in their way.<sup>119</sup> Domenici and Forman

---

110. *Rock Center: Making a Difference: Turning Troubled Teens into Scholars* (NBC television broadcast July 5, 2012), available at <http://www.nbcnews.com/video/rock-center/48085402#48085402> (comment by James Forman, Jr.).

111. *Id.*

112. *Id.*

113. At the school, students are called scholars, not “inmates,” “prisoners,” or “students.” *Id.* The philosophy was that given the right tools, atmosphere, and resources, the incarcerated students would receive positive reinforcement and become “scholars” who achieved higher goals. *Id.*

114. *Id.*

115. David Domenici & James Forman, Jr., *What It Takes to Transform a School Inside a Juvenile Justice Facility: The Story of the Maya Angelou Academy*, in *JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM* 283, 288 (Nancy E. Dowd ed., 2011).

116. *See id.* at 287.

117. *See id.*

118. *Id.* at 288.

119. *Id.* at 287.



developed a curriculum that allowed scholars to complete modules while detained at Oak Hill, and the number of modules completed depended on the length of stay.<sup>120</sup> This allowed each student to return to school with credit and to keep up with former classmates following their release.<sup>121</sup> Their stay in the detention center was not a waste of time. A visitor to the school once opined:

The Maya Angelou Academy at the New Beginnings Youth Development Center is one of the best education programs in a confinement facility I have had the opportunity to observe. Scholars in the model units are receiving an excellent education. The strength of the leadership and the staff, the people and material resources available to them, and the processes and program design all contribute to the overall effectiveness of the program.<sup>122</sup>

All detention and youth correctional facilities should adopt standards similar to the Maya Angelou Academy. It is critical that the same professional standards that apply to teachers in public schools be used in youth facilities. A child with learning difficulties in a locked facility deserves the best we have to offer, not the worst. His or her only hope is to obtain some skills and knowledge that can put him or her on a constructive path. It is also essential that administrators develop curricula tailored to meet the needs of students in placement and facilitate their return to their communities. No one curriculum will meet the needs of youth in every detention center.

The philosophy behind the program development is even more important. We should not think of these youth as throwaway kids. Rather, we should recognize that any child can succeed if given support, nurturing, and the proper tools. Taking some of the ideas from the High/Scope Perry Preschool study could be beneficial:

While early childhood learning takes place during a child's most formative stages of brain development, the longer-term benefits from methods of teaching and learning that integrate "thinking about thinking," "learning how to

---

120. Domenici & Forman, *supra* note 115, at 293.

121. *Id.*

122. James Forman, Jr., *Education Behind Bars?: The Promise of the Maya Angelou Academy*, in *CHOOSING THE FUTURE FOR AMERICAN JUVENILE JUSTICE* 120, 124-25 (Franklin E. Zimring & David S. Tanenhaus eds., 2014).

effectively learn,” and developing the habits of cooperation and persistence appear especially promising for juveniles.<sup>123</sup>

Reform must also improve collaboration and communication between juvenile correctional facilities and public schools. Frequent delays in the transfer of education records prevent facility teachers from providing appropriate educational services. Furthermore, facility managers must familiarize themselves with the curricula used in the public school system to ensure that youth leaving a facility can transfer credits earned and graduate on time following their release.

Schools at juvenile correctional facilities also need administrative and fiscal autonomy. This can be accomplished by fostering cooperation between school and facility administrators, and educational decisions should be left to the professionals. Schools need to be run with professional standards, public school criteria and curricula, and the needs of students in mind. School administrators cannot make long-range educational planning absent fiscal autonomy. A budget for the facility should include a category for education determined by a realistic assessment of local school costs, per-student costs, and the average number of students in the facility.

Instructional methods in youth correctional facilities must account for the varying education levels of students, the need for additional instruction time, and low student-teacher ratios. If student-teacher ratios are too high, a student cannot receive the individual attention he or she needs, and if the school day is too short, students will receive inadequate instruction time. Without sufficient time, qualified personnel, and a curriculum that fits individual educational needs, school programs will not make any difference in students’ educational achievement. This is because most detention facilities group youth by offense and/or age, and do not pay attention to the learning levels of each class. It is key that class sizes be limited in order for students to receive the appropriate one-on-one instruction they need.

#### D. Policies

Attorney General Eric Holder and Education Secretary Arne Duncan recently issued a report that outlined the

---

123. S. EDUC. FOUND., *supra* note 82, at 29.

educational rights of children detained in youth facilities and called for the need to provide a quality education to all children, even those in the juvenile justice system.<sup>124</sup> Attorney General Holder acknowledged, “in this great country, children—and I mean all children—deserve equal access to a high-quality education . . . [a]nd this is no less true for children who are in the juvenile justice system.”<sup>125</sup>

The report outlined five core principles that promise to influence the development of educational programs for incarcerated youth:

- (1) A safe, healthy facility-wide climate that prioritizes education, provides the conditions for learning, and encourages the necessary behavioral and social support services that address the individual needs of all youths, including those with disabilities and English learners.
- (2) Necessary funding to support educational opportunities for all youths within long-term secure care facilities, including those with disabilities and English learners, comparable to opportunities for peers who are not system-involved.
- (3) Recruitment, employment, and retention of qualified education staff with skills relevant in juvenile justice settings who can positively impact long-term student outcomes through demonstrated abilities to create and sustain effective teaching and learning environments.
- (4) Rigorous and relevant curricula aligned with state academic and career and technical education standards that utilize instructional methods, tools, materials, and practices that promote college- and career-readiness.
- (5) Formal processes and procedures—through statutes, memoranda of understanding, and practices—that ensure successful navigation across child-serving systems and smooth reentry into communities.<sup>126</sup>

---

124. See U.S. DEP’T OF EDUC. & U.S. DEP’T OF JUSTICE, GUIDING PRINCIPLES FOR PROVIDING HIGH-QUALITY EDUCATION IN JUVENILE JUSTICE SECURE CARE SETTINGS (2014), available at <http://www2.ed.gov/policy/gen/guid/correctional-education/guiding-principles.pdf>.

125. Moriah Balingit, *Holder, Duncan Outline Educational Rights for Juvenile Offenders*, WASH. POST (Dec. 8, 2014), [http://www.washingtonpost.com/local/education/holder-duncan-outline-educational-rights-for-juvenile-offenders/2014/12/08/44c29a20-7ecf-11e4-81fd-8c4814dfa9d7\\_story.html](http://www.washingtonpost.com/local/education/holder-duncan-outline-educational-rights-for-juvenile-offenders/2014/12/08/44c29a20-7ecf-11e4-81fd-8c4814dfa9d7_story.html).

126. U.S. DEP’T OF EDUC. & U.S. DEP’T OF JUSTICE, *supra* note 124, at iv.

Youth in delinquency facilities have the same right to an education as students in traditional public schools. Now, teachers in these facilities must meet the same state and federal educational credentials that are mandated for all schools.

A program that could help children and service providers from all of the involved agencies would be cross-systems work groups. Youth in all three groups—foster care, traditional public schools, and juvenile detention facilities—experience similar difficulties with obtaining a suitable education. When state and county agencies work together to eliminate barriers to education, provide strong leadership through these work groups, and demonstrate “a willingness to expend resources such as funding and staff time,”<sup>127</sup> it is more likely that change can be achieved.

## V. CONCLUSION

Education is the great equalizer that can provide all youth with an opportunity for academic and life success. This is crucial to the well-being of our nation. Too many African American children find themselves in situations where their access to a quality education is considerably diminished. There are three ways that we can keep the education of black youth from becoming the new Jim Crow. First, we must address the implicit racial bias that places disproportionate numbers of African American youth in the foster care, school discipline, and juvenile justice systems. Second, the number of children who continue to languish in foster care, the number of students who experience more punitive school discipline, and the number of youth who are given harsh and lengthy sentences in juvenile and criminal detention facilities must be reduced. Finally, for those children who do find themselves in one of these situations, we must provide them with a quality, nurturing education. If we do not, we will continue to see higher dropout rates, fewer students with a college degree, fewer adults with appropriate job skills, higher unemployment rates, higher rates of poverty, more people with critical health issues, more strained family relationships, and numerous other troubling trends. Education is the key to success, and the success of our youth is the key to everyone’s future.

---

127. LEONE & WEINBERG, *supra* note 63, at 42.