

Chapter 8 SCHOOLS AND THE JUVENILE JUSTICE SYSTEM

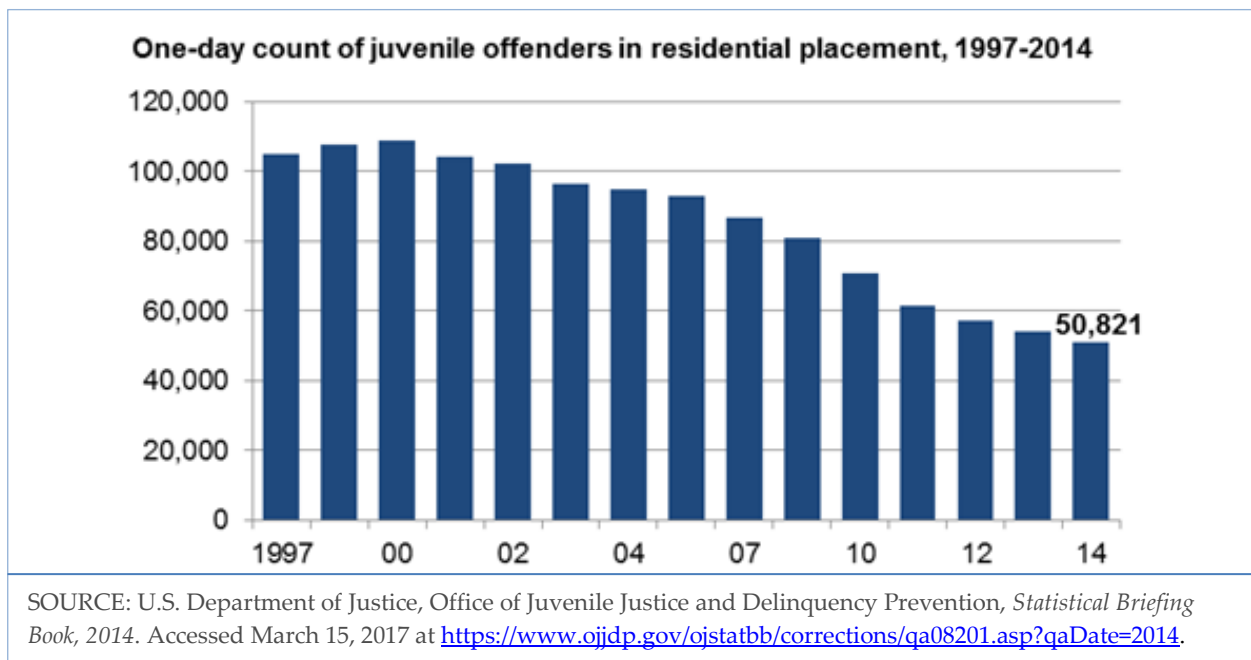
The Impact of Disciplinary Policy

A school's approach to discipline has a major impact on students' academic success. Disciplinary problems, such as disruptive behavior, foul language and truancy, should be handled within the school, rather than being addressed inappropriately by the removal of the student through suspension and arrest. The task force believes that students should be removed from school only as a last resort, not as a first response. Students who are suspended often become stigmatized and fall behind in their studies; many decide to drop out of school altogether, and some commit crimes in the community.

Moreover, the schools become entry points to the juvenile justice system, a concern expressed by the U.S. Departments of Justice and Education in 2014.

Juveniles who have been placed in state detention or treatment facilities face many hurdles once they are released, including readmission to the public school system. In many cases, school districts place these students in home instruction or alternative schools, settings that are adverse to the structured environment they are leaving. Parents often are unaware of their ability to seek emergent relief or mediation through the Office of Administrative Law, or they are reluctant to do so.

The U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention *Statistical Briefing Book, 2014* reported 50,821 youth held in residential placement facilities in the United States, a 50% drop from the 1997 figure, but still a matter of deep concern.



New Jersey's commitment rate is relatively low; in 2013, the rate per 100,000 New Jersey teenagers was less than half of the national rate, and the state had the seventh lowest residential placement rate in the country.

U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Statistical Briefing Book*, 2014. Accessed March 15, 2017 at <https://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qaDate=2014>.

The Civil Rights Data Collection (CRDC), an effort of the U.S. Department of Education Office of Civil Rights, shows that large numbers of students are losing important instructional time due to exclusionary discipline.

U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection of 2013-14: A First Look*; New Release for 2016, Issued June 7, 2016, revised October 28, 2016. Accessed March 15, 2017 at <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

The use of disciplinary sanctions, such as in-school and out-of-school suspensions, expulsions or referrals to law enforcement authorities, creates the potential for significant, negative educational and long-term outcomes, and can contribute to what has been termed the "school to prison pipeline." Studies have suggested a correlation between exclusionary discipline policies/practices and an array of serious educational, economic, and social problems, including school avoidance and diminished educational engagement; decreased academic achievement; increased behavioral problems; increased likelihood of dropping out; substance abuse; and involvement with juvenile justice systems.

U.S. Department of Education and U.S. Department of Justice, "Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline," by Catherine E. Lhamon and Jocelyn Samuels., January 8, 2014. Accessed March 15, 2017 at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

While illiteracy and poor academic performance are not direct causes of delinquency, empirical studies consistently demonstrate a strong link between marginal academic skills and the likelihood of involvement in the juvenile justice system. Youth entering custody have a non-enrollment rate more than four times the rate of peers in the general population. Nearly one-half of youth in custody function below the grade level appropriate for their age. Sixty-one percent of youth in custody say they were expelled or suspended during the year before they entered custody and 25% report that they were held back a year in school.

Sedlak, Andrea J. and Karla S. McPherson, "Youth's Needs and Services: Findings from the Survey of Youth in Residential Placement," *Juvenile Justice Bulletin* (April 2010): 1-12. Accessed March 15, 2017 at https://syrp.org/images/Youth_Needs_and_Services.pdf.

School Resource Officers

A significant number of schools have law enforcement officers or school resource officers (SROs) in place — 24% of elementary schools, 42% of high schools and 51% of high schools with high black and Latino student enrollment. The [guidance issued by the U.S. Departments of Justice and Education](#), discussed at length below, includes valuable suggestions for school district interaction with these officers.

U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection of 2013-14: A First Look*; New Release for 2016, Issued June 7, 2016, revised October 28, 2016. Accessed March 15, 2017 at <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

School Disciplinary Practices and Residential Placements

The U.S. Department of Education’s Civil Rights Data Collection of 2013-14 reports the following statistics:

- Overall, 6% of K-12 students received one or more out-of-school suspensions. When broken down by race and gender, the percentage was 18% for black boys; 10% for black girls; 5% for white boys; and 2% for white girls;
- Black K-12 students are 3.8 times as likely to receive one or more out-of-school suspensions as are white students;
- Black girls make up 8% of enrolled students, but represent 13% of students receiving one or more out-of-school suspensions;
- Black students are 1.9 times as likely to be expelled from school without educational services as white students;
- Black students are 2.2 times as likely to receive a referral to law enforcement or be subject to a school-related arrest as white students; and
- Black boys and white boys represent 8% and 26% of all students, respectively, but 18% and 43% of students subject to restraint or seclusion.

U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection of 2013-14: A First Look*; New Release for 2016, Issued June 7, 2016, revised October 28, 2016. Accessed March 15, 2017 at <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

Residential Placement

According to the U.S. Department of Justice, rates of residential placement also vary widely by race.

Placement in Residential Correctional Facilities, by Race (2013) <i>Per 100,000 Students</i>		
	U.S.	New Jersey
BLACK	464 (per 100,000 non-Hispanic black students in U.S.)	439 (per 100,000 non-Hispanic black students in N.J.)
HISPANIC	173/100,000	87/100,000
WHITE	100/100,000	17/100,000

SOURCE: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, “Census of Juveniles in Residential Placement: 1997-2013, Age on Census Date by Race/Ethnicity for United States, 2013,” *Statistical Briefing Book, 2014*. Accessed March 15, 2017 at https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Age_Race.asp.
 “Age on Census Date by Race/Ethnicity for New Jersey, 2013,” Accessed March 15, 2017 at https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Age_Race.asp?state=34&topic=Age_Race&year=2013&percent=rate.

In 2013, New Jersey ranked third in the proportion of non-white youth in residential placement (90%) among states and jurisdictions. Only Hawaii and the District of Columbia ranked higher, both at 96%.

U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, “The Census of Juveniles in Residential Placement, Race/Ethnicity by State: 1997-2013,” *Statistical Briefing Book, 2014*. Accessed March 15, 2017 at https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Race.asp?state=&topic=State_Race&year=2013&percent=row.

School Discipline

In January, 2014, the U.S. Department of Education and the U.S. Department of Justice issued a “Dear Colleague” letter to guide public elementary and secondary schools in meeting their obligations under federal law to administer student discipline without discriminating on the basis of race, color, or national origin.

The guidance includes the following comments about racial discrimination in the administration of school discipline:

The Departments recognize that disparities in student discipline rates in a school or district may be caused by a range of factors. However, research suggests that the substantial racial disparities of the kind reflected in the CRDC data are not explained by more frequent or more serious misbehavior by students of color.... Indeed, the Departments’ investigations, which consider quantitative data as part of a wide array of evidence, have revealed racial discrimination in the administration of student discipline. For example, in our investigations we have found cases where African-American students were disciplined more harshly and more frequently because of their race than similarly situated white students. In short, racial discrimination in school discipline is a real problem.

U.S. Department of Education and U.S. Department of Justice, “Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,” by Catherine E. Lhamon and Jocelyn Samuels., January 8, 2014. Accessed March 15, 2017 at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

Youth with Disabilities

The U.S. Department of Education’s Civil Rights Data Collection of 2013-14 also reports the following statistics:

- Students with disabilities served by [the federal Individuals with Disabilities Education Act, or IDEA] are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities; and
- Students with disabilities served by IDEA represent 12% of all students, but 67% of students subject to restraint or seclusion.

Nearly one-third of youth in custody report that they were diagnosed with a learning disability, a rate more than seven times that of the general population. IDEA requires that learning-disabled youth offenders be identified, even in short-term facilities, and given special education and related services when eligible. Youth self-reports suggest that only about half of those with a diagnosed learning disability are attending a special education program while in custody.

Sedlak, Andrea J. and Karla S. McPherson, “Youth’s Needs and Services: Findings from the Survey of Youth in Residential Placement,” *Juvenile Justice Bulletin* (April 2010): 1-12. Accessed March 15, 2017 at https://syrp.org/images/Youth_Needs_and_Services.pdf.

Disabling conditions do not *cause* delinquent behavior, but some behaviors associated with disability may also be *associated with* delinquent behavior. Researchers and advocates have advanced various understandings about the link between disability and delinquency. Some suggest that youth with disabilities may be more susceptible to engaging in delinquent behavior than their non-disabled peers. Others maintain that child-serving agencies are more likely to identify youth with disabilities as delinquent and to refer them to the juvenile justice system. Regardless of the specific approach, the overrepresentation of youth with disabilities in correctional facilities has long been linked with school failure, marginal literacy, poorly developed social skills, and inadequate school and community supports.

Rutherford, Robert B., C. Michael. Nelson and Bruce I. Wolford, "Special Education Programming in Juvenile Corrections," *Remedial and Special Education* 7 (1986): 27-33.

Leone, Peter E. and Sheri Meisel, "Improving Education Services for Students in Detention and Confinement Facilities," *Children's Legal Rights Journal* 17 (1997): 1-12. Accessed March 15, 2017 at http://www.edjj.org/Publications/list/leone_meisel-1997.html.

Academic Programs in Juvenile Corrections

The U.S. Department of Education Office for Civil Rights maintains that "one of the first steps to successful reentry of youth to the community is ensuring that they have uninterrupted access to high quality education while in confinement." Helping youth acquire educational skills is also one of the most effective approaches to prevention of delinquency and reduction of recidivism. Literacy skills are essential to meet the demands of a complex, high-tech world in school and at work.

U.S. Department of Education, Office for Civil Rights, *Protecting the Civil Rights of Students in the Juvenile Justice System* (2016), 1. Accessed March 15, 2017 at <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-juvenile-justice.pdf>.

While the majority of detained and committed youth have severe to moderate skill deficits and records of truancy, suspension and expulsion, others may perform at or above grade level. As a result, juvenile correctional education programs need to provide a comprehensive range of options, including:

- Literacy and functional skills for students with significant cognitive, behavioral, or learning problems;
- Academic courses associated with Carnegie unit credits for students likely to return to public schools or who may earn a diploma while incarcerated;
- General Educational Development (GED) preparation for students not likely to return to public schools; and
- Pre-vocational and vocational education related to student interests and meaningful employment opportunities in the community.

National Center on Education, Disability and Juvenile Justice, "Juvenile Correctional Education Programs." (College Park, MD). Accessed March 15, 2017 at <http://www.edjj.org/focus/education/>.

Problems implementing quality academic programs within juvenile corrections are associated with characteristics of incarcerated youth and of the facilities themselves. Youth enter correctional settings with skill deficits, behavioral problems, and substance abuse issues that present difficulties in educational programming. At the same time, juvenile correctional institutions often have limited capacity to support appropriate educational interventions for the youth confined to their care and custody. Systemic impediments include overcrowding, insufficient fiscal resources, ineffective governance structures, isolation of correctional schools from education reform practices and from public schools, inadequate transition and aftercare services, and a lack of collaboration between treatment and security components within the juvenile facility.

U.S. Departments of Education and Justice, *Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings* (Washington, D.C., December 2014). Accessed March 15, 2017 at <https://www2.ed.gov/policy/gen/guid/correctional-education/guiding-principles.pdf>.

Providing basic access to adequate special education services continues to be problematic in many juvenile correctional facilities. Special education services in juvenile corrections are implemented in the context of general academic and vocational programs. Moreover, juvenile correctional education programs may fail to adequately educate youth with disabilities when they lack effective processes to screen, evaluate, and identify youth for special education; implement instructional strategies to address learning or behavioral problems; involve parents, guardians, or surrogates; implement appropriate instructional strategies to address learning or behavioral problems; and organize transition services for youth released to the community. In addition, accommodations for youth with disabilities are not always implemented in the school. Youth with disabilities who do not receive appropriate special education and related services may be more vulnerable to exclusion from school for alleged disciplinary infractions in the correctional education program and within the larger institution.

U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection of 2013-14: A First Look*; New Release for 2016, Issued June 7, 2016, revised October 28, 2016. Accessed March 15, 2017 at <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

U.S. Department of Education, Office of Special Education and Rehabilitative Services, "Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities," by Melody Musgrove, Ed.D. and Michael K. Yudin, December 5, 2014. Accessed March 15, 2017 at <https://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>.

The Schools and Law Enforcement

In January 2014, the civil rights units of the U.S. Departments of Justice and Education issued guidelines on the equitable application of discipline in the schools. The document provides specific guidance on non-discriminatory use of disciplinary measures and, in an appendix, a broad array of recommendations for school districts. Topics include the following:

- Safe, inclusive, and positive school climates;
- Training and professional development for all school personnel;

- Appropriate use of law enforcement;
- Non-discriminatory, fair, and age-appropriate discipline policies;
- Communicating with and engaging school communities;
- Emphasizing positive interventions over student removal;
- Monitoring and self-evaluation; and
- Data collection and responsive action.

U.S. Department of Education and U.S. Department of Justice, “Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,” by Catherine E. Lhamon and Jocelyn Samuels., January 8, 2014. Accessed March 15, 2017 at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

In a 2013 letter to the NJSBA School Security Task Force, Glenn A. Grant, acting administrative director of the courts for the State of New Jersey, reiterated the need for school districts to take a nuanced approach to juvenile justice, based on graduated intervention strategies:

Research has established that youth who are disconnected from their familiar school environments, whether through suspension, expulsion, arrest, or dropping out, are undeniably at greater risk of following a path to crime and prison.

Removal can set in motion a set of unintended consequences that ultimately leave the community less safe and the juvenile more likely to become involved with the juvenile justice system and, later, the criminal justice system. The best intervention strategies are those that “prevent juveniles from entering the juvenile justice system in the first place.”

According to Grant, the least-intrusive enforcement methodology should also apply to delinquency complaints and “generally provides the most desired outcome for the juvenile, the family, and the community,”

“We urge law enforcement to consider curbside and stationhouse adjustments whenever possible,” he wrote.

Glenn A. Grant, letter to the NJSBA School Security Task Force, June 24, 2013.

Stationhouse adjustment, a process that allows for the handling of minor offenses informally and outside of the juvenile justice system, was specified in one of the state’s first official guides to SRO implementation.

N.J. Department of Law and Public Safety and New Jersey Department of Education, *The New Jersey Guide to Establishing a Safe Schools Resource Officer Program in Your Community*, by Christine Todd Whitman, Peter Verniero and Leo Klagholz. (Trenton, N.J., 1998), 5. Accessed March 15, 2017 at www.state.nj.us/oag/dcj/pdfs/safeschl.pdf.

In its final report, issued October 22, 2014, the NJSBA School Security Task Force addressed the role of school resource officers and law enforcement in the school environment and the need to distinguish violations of school disciplinary policy from violations of criminal/juvenile justice code. Following are two of the School Security Task Force recommendations on the relationship of law enforcement and the schools:

- The training of school resource officers (SROs) must stress conflict resolution, restorative justice and stationhouse adjustment practices, as well as awareness of gang and drug abuse activities.
- In developing [a Memorandum of Agreement with local law enforcement agencies], school district/charter schools ... should clearly address the intersection of school policy/disciplinary code, Criminal Code and the Juvenile Justice Code. They must ensure that student behavior that is in violation of school codes of conduct be addressed by school officials and not be imposed on police. Based on federal and state law and school policy, such guidance should ensure the following: immediate response to crises; protection of the safety and interests of students affected by violent acts; the appropriate avenues of discipline and referral for student offenders; and the recognition of state requirements in areas such as student possession of firearms and weapons on school grounds, and harassment, intimidation and bullying.

What Makes School Safe? Final Report of the New Jersey School Boards Association School Security Task Force, October 22, 2014. Accessed March 15, 2017 at www.njsba.org/schoolsecurity2014.

RECOMMENDATIONS

Chapter 8 – Schools and Juvenile Justice System

For Boards of Education and School Districts

59. Review all consequences of disciplinary infractions in terms of equity and effectiveness, and consider alternatives to teach appropriate behaviors. The goal of assigning a consequence should be to modify behavior. Consequences should be differentiated to ensure effectiveness.
60. Establish a database that tracks student infractions (including consequences and student age, race and gender). Analyze the data to identify patterns, and use the information to develop methods to improve student behavioral choices.
61. Establish a database that tracks alternative school placements (including length of time in program, age, race, gender, success, and recidivism). Analyze the data to identify patterns, and use the information to develop methods to improve student behavioral choices.
62. Establish a database that tracks student involvement with the juvenile justice system (including charges against students, their disposition, and student age, race and gender). Analyze the data to identify patterns and use the information to develop methods to improve student behavioral choices.

For Boards of Education and Local Law Enforcement

63. Clarify the responsibilities of School Resource Officers. Boards of Education should compare their student discipline policies and practices with the Recommendations for School Districts, Administrators, Teachers, and Staff in the U.S. Departments of Education and Justice guidance, issued January 8, 2014.

U.S. Department of Education and U.S. Department of Justice, "Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline," by Catherine E. Lhamon and Jocelyn Samuels., January 8, 2014. Accessed March 15, 2017 at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

For the Juvenile Justice System

64. Juvenile correctional education programs should provide a comprehensive range of options:
 - Literacy and functional skills programs for students with significant cognitive, behavioral, or learning problems;
 - Academic courses associated with Carnegie unit credits for students who are likely to return to public schools or to earn a diploma while incarcerated;
 - General Educational Development (GED) preparation for students not likely to return to public schools; and
 - Pre-vocational and vocational education related to student interests and meaningful employment opportunities in the community.