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Central Thesis:
The article examines how zero-tolerance policies, originating from the War on Drugs, have created a school-to-prison pipeline, disproportionately impacting students with disabilities and minority students. Despite legal protections like the Individuals with Disabilities Education Act (IDEA), these policies fail to provide necessary support, leading to increased suspensions and incarceration.

Legal/Academic Issues Addressed:
- Impact of zero-tolerance policies on marginalized students.
- Ineffectiveness of IDEA in protecting students with disabilities.
- Role of law enforcement in schools and its consequences.
- Effects of standardized testing policies on student outcomes.

Methodologies/Data Sources:
- Legal analysis of landmark cases (Goss v. Lopez, New Jersey v. T.L.O.).
- Statistical data from organizations like the ACLU and Department of Education.
- Examination of policies such as IDEA and No Child Left Behind.

Findings/Analysis:
- Disproportionate suspensions and arrests of minority and disabled students.
- Ineffective implementation of IDEA, leading to inadequate support.
- Increased disciplinary actions in schools with police presence.

Recommendations/Implications:
- Replace zero-tolerance policies with positive behavioral interventions.
- Invest in support services like counseling and mentoring programs.
- Provide training for school police on interacting with students with disabilities.

- Advocate for policy reforms addressing the root causes of the school-to-prison pipeline.

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FROM SUSPENSION TO MASS INCARCERATION: PUNISHMENT OF STUDENTS WITH SPECIAL NEEDS AND THE SCHOOL-TO-PRISON PIPELINE

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ABSTRACT

Since their inception in the late 1980s, zero-tolerance policies have been a cornerstone of American school discipline. Passed by legislators with the intent of protecting school children, these policies have disparately upended the education of marginalized students. School discipline of vulnerable students often paves the way to juvenile incarceration, which in turn exponentially increases the likelihood of adult incarceration. Moreover, students with disabilities, especially students of color with learning disabilities, are often physically pushed out of their classrooms through suspensions and other harsh disciplinary policies. This is only made worse by the presence of law enforcement in schools, who treat "difficult" students as suspects rather than individuals in need of support.

All students with learning disabilities are entitled to a free, appropriate public education, and this right is safeguarded through legislation such as the Individuals with Disabilities Education Act ("IDEA"). However, vulnerable students often fall through the cracks of this law in a way that mirrors the trends of adult mass incarceration. If students were given the individualized attention they need rather than punishment and suspension, schools would be more effective in reaching students of all backgrounds and fewer students will be pushed from classroom to prison.

INTRODUCTION

On September 14, 1986, Ronald and Nancy Reagan addressed the nation from the West Hall of the White House.[1] Speaking from their home into the homes of millions, the Reagans spread a message of moral outrage over the crack epidemic. "It's back-to-school time for America's children," President Reagan began.[2] He continued with a warning: "[D]rugs are menacing our society. They're threatening our values and undercutting our institutions. They're killing our children."[3] From there, the Reagans appealed to Americans' moral righteousness, inviting citizens to join in their "national crusade" against drug use.[4] President Reagan promised stronger law enforcement agencies, zero-tolerance policies, and stricter punishments for those caught with drugs.[5] The War on Drugs Era shortly bled into school

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[1] Ronald Reagan & Nancy Reagan, *Address to the Nation on the Campaign Against Drug Abuse*, RONALD REAGAN PRESIDENTIAL LIB. (Sept. 14, 1986), https://www.reaganlibrary.gov/archives/speech/address-nation-campaign-against-drug-abuse.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *See id.*

discipline after drug enforcement policies spread to schools in the 1980s.[6] By the 1990s, Congress found that school systems should be on the frontlines of the crusade against drug use and crime.[7] Under the guise of keeping schools safe, institutions implemented zero-tolerance policies to punish a wide range of behavior with mandatory suspensions and expulsions.[8]

Mass incarceration born out of the zero-tolerance era drug policy has spread to school disciplinary policies, and these policies put disadvantaged students on the path towards prison.[9] While intended to protect children, these policies have instead victimized children of color and children with disabilities, and upended educational careers.[10] Though legislation like the Individuals with Disabilities Education Act ("IDEA") promise equal education for all, those protections are easily skirted, and increased police presence in schools only exacerbates this disparity.[11] Today, approximately 60,000 minors are incarcerated in juvenile jails and prisons in the United States.[12] Juvenile incarceration disrupts family connections, upends education, and often exposes developing brains to further trauma.[13] Even worse, it is estimated that sixty-five to seventy percent of youth involved in the juvenile justice system have a disability.[14] For many of these children, the manifestation of their disabilities led to their incarceration in the first place.[15] For example, between twenty-five to forty percent of individuals currently in jail or prison are believed to have attention deficit hyperactivity disorder

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[6] Miranda Johnson & James Naughton, *Just Another School? The Need to Strengthen Legal Protections for Students Facing Disciplinary Transfers*, 33 NOTRE DAME J. OF L., ETHICS & PUB. POL'Y 69, 71 (2019).

[7] *See id.*

[8] *Id.*

[9] Deborah Gordon Klehr, *Addressing the Unintended Consequences of No Child Left Behind and Zero Tolerance: Better Strategies for Safe Schools and Successful Students*, 16 GEO. J. ON POVERTY L. & POL'Y 585, 590-91 (2009).

[10] *See* Chauncee D. Smith, *Deconstructing the Pipeline: Evaluating School-to-Prison Pipeline Equal Protection Case through a Structural Racism Framework*, 36 FORDHAM URB. L. J. 1009, 1011-1013 (2009).

[11] *See* Mike Garvey, *For Students of Color with Disabilities, Equity Delayed is Equity Denied*, ACLU (May 15, 2018), https://www.aclu.org/news/disability-rights/students-color-disabilities-equity-delayed; West Resendes & Sarah Hinger, *Safe and Healthy Schools Lead with Support, Not Police*, ACLU (Aug. 31, 2021), https://www.aclu.org/news/disability-rights/safe-and-healthy-schools-lead-with-support-not-police.

[12] *America's Addiction to Juvenile Incarceration: State by State*, ACLU, https://www.aclu.org/issues/juvenile-justice/youth-incarceration/americas-addiction-juvenile-incarceration-state-state (last visited Dec. 5, 2023).

[13] *See id.*

[14] Jessica Snydman, *Unlocking Futures: Youth with Learning Disabilities and the Juvenile Justice System*, NAT'L CTR. FOR LEARNING DISABILITIES 2 (2022), https://ncld.org/wp-content/uploads/2023/08/NCLD-Unlocking-Futures-Final-7th-Dec-Updated-.pdf.

[15] Lauren A. Koster, *Who Will Educate Me: Using the Americans with Disabilities Act to Improve Educational Access for Incarcerated Juveniles with Disabilities*, 60 B.C. L. REV. 673, 692 (2019).

("ADHD"), mostly undiagnosed or untreated.[16]

The school-to-prison pipeline works just like mass incarceration, especially for Black students struggling with a learning disability.[17] National surveys of school suspensions show that minority students and students with disabilities are more frequently pushed out through harsh disciplinary policies.[18] During the 2017–2018 school year, twelve percent of Black students received out of school suspensions, compared to the national average of five percent.[19] Furthermore, almost ten percent of students with disabilities were suspended while four percent of students without disabilities were suspended.[20] Black students with disabilities were the most frequently suspended: almost one in five Black students with disabilities were suspended during the 2017–2018 school year.[21] When Black students are disciplined more harshly and students with disabilities are more likely to be reprimanded due to behavior resulting from their disability, these policies culminate in an assembly line of students being funneled out of schools through disciplinary policies instead of getting the heightened attention they need.[22]

I. DISPARITY IN PUNISHMENT AND THE SCHOOL-TO-PRISON PIPELINE

In 1994, President Bill Clinton reauthorized Reagan's policy as the Safe and Drug-Free Schools and Communities Act, along with the Gun-Free Schools Act of 1994.[23] This legislation tied federal funds to the implementation of zero-tolerance policies and reporting student behavior, essentially shifting the role of educators from teaching to discipline and incentivizing punishment.[24] Moreover, the Gun-Free Schools Act mandates that any student found with a firearm at school be expelled for over a year.[25]

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[16] *Undiagnosed ADHD a High Cost for Society*, ATTENTION DEFICIT DISORDER ASSOC. (Apr. 24, 2015), https://add.org/undiagnosed-adult-adhd-a-high-cost-for-society/#:~:text=Between%2025%20and%2040%20percent,the%20general%20population%20has%20ADHD.

[17] *See* Melanie Leung-Gagné et al., *Pushed Out: Trends and Disparities in Out-of-School Suspension*, LEARNING POL'Y INST. (Sept. 30, 2022), https://learningpolicyinstitute.org/product/crdc-school-suspension-report.

[18] *See id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *See id.*

[23] LIBR. OF CONG., SCHOOL SAFETY POLICIES AND PROGRAMS ADMINISTERED BY THE U.S. FEDERAL GOVERNMENT: 1990-2016, at 7-8 (2017), https://www.ojp.gov/pdffiles1/nij/grants/251517.pdf.

[24] Lorna Hermosura, *School-to-Prison Pipeline is a Direct Policy Descendant of Nixon's War on Drugs*, UT NEWS (Apr. 25, 2016), https://news.utexas.edu/2016/04/25/school-to-prison-pipeline-caused-by-war-on-drugs-policy/.

[25] Johnson & Naughton, *supra* note 6, at 71-72.

By calling for these mandatory sanctions, this legislation nearly doubled expulsions and expanded zero-tolerance policies.[26] After the passage of this Act, "most public schools reported having zero-tolerance policies toward serious student offenses."[27] Such "serious" offenses extended to possession of alcohol, drugs, and tobacco on school premises.[28]

The original purpose of this legislation was meant to keep students safe, but the zero-tolerance policies born out of it evolved to include "childish pranks and simple poor judgment."[29] This legislation disparately affected minority students and students with learning disabilities because zero-tolerance approaches to discipline do not account for individualized circumstances that led to the behavior.[30] One 2001 American Bar Association ("ABA") report opposed zero-tolerance policies, noting that:

> Zero tolerance is theoretically directed at students who misbehave intentionally, yet it also applies to those who misbehave as a result of emotional problems. [It also affects students] who merely forget what is in their pocket after legitimate non-school activities. It treats alike first graders and twelfth graders . . . and in many instances also results in having the student arrested.[31]

Zero-tolerance exists to this day, with sixty-two percent of public schools imposing mandatory punishment for certain offenses.[32] A disturbing statistic shows that eighty-two percent of high schools serving mostly Black students enforce zero-tolerance policies, compared to just sixty-eight percent of majority white high schools.[33] While only a small portion of schools with zero-tolerance policies include mandatory punishment for small infractions like defiance, seventy-six percent of schools allowed teachers to dole out suspensions for those violations in 2021-2022.[34]

Students with disabilities, regardless of severity, have the right to receive a "free appropriate public education" ("FAPE").[35] "Appropriate" means an education that meets the requirements of students with disabilities in a

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[26] *Id.*

[27] U.S. DEP'T OF JUST., VIOLENCE AND DISCIPLINE PROBLEMS IN U.S. PUBLIC SCHOOLS: 1996-97 (1998), https://www.ojp.gov/ncjrs/virtual-library/abstracts/violence-and-discipline-problems-us-public-schools-1996-97.

[28] Johnson & Naughton, *supra* note 6, at 71-72.

[29] Robert C. Cloud, *Due Process and Zero Tolerance: An Uneasy Alliance*, 178 WELR 1, 2 (2003).

[30] *Id.*

[31] *Id.*

[32] Rachel Perera & Melissa Kay Diliberti, *Survey: Understanding How U.S. Public Schools Approach School Discipline,* BROOKINGS INST. (Jan. 19, 2023), https://www.brookings.edu/articles/survey-understanding-how-us-public-schools-approach-school-discipline/.

[33] *Id.*

[34] *Id.*

[35] Individuals with Disabilities Education Act, 20 U.S.C. § 1400 §1400(d)(1)(A) (2010).

manner equivalent to the fulfillment of non-disabled students' needs.[36] This fundamental right is safeguarded by federal law, specifically by both Section 504 of the Reformation Act of 1973 ("Section 504") and IDEA, each governing the rights of children with disabilities in educational settings to varying extents.[37] Importantly, under both laws, when public schools discipline students with disabilities, it must be nondiscriminatory.[38]

However, not all students are given the support they are promised by these policies.[39] As a report by the American Civil Liberties Union (ACLU) found, "during the 2017–2018 school year, students with diagnosed disabilities represented 16 percent of national enrollment, but nearly 30 percent of arrests in school."[40] This is because in heavily policed schools, which are also disproportionately attended by Black and Brown students, "[s]tudents with disabilities are charged with disorderly conduct instead of receiving emotional and mental health supports through school-based service plans."[41] In fact, graduation rates are lower in schools that receive federal funding to employ police, while schools that focus instead on hiring mental health providers report "improved student engagement and graduation rates."[42]

II. ADHD DIAGNOSES DEMONSTRATE THE WEAKNESSES OF IDEA

Students in need of special education services are guaranteed tailored education plans under IDEA.[43] IDEA requires schools to identify and evaluate children who may have a disability.[44] Under IDEA, a student is eligible for an individualized education program ("IEP") if they suffer a developmental delay that affects physical, cognitive, social, emotional, or communication development, or if they fall into thirteen categories of

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[36] *Free Appropriate Public Education (FAPE),* U.S. DEPT. OF ED., https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/dis-issue03.html#:~:text=The%20%E2%80%9Cappropriate%E2%80%9D%20component%20means%20that,to%20the%20maximum%20extent%20appropriate (last visited Dec. 5, 2023).

[37] Individuals with Disabilities Education Act, 20 U.S.C. §1400(c) (2010).

[38] Individuals with Disabilities Education Act, 20 U.S.C. §1415(k)(1) (2004).

[39] Claire Raj, *Rights to Nowhere: The IDEA's Inadequacy in High-Poverty Schools*, 53 COLUM. HUM. RTS. L. REV. 409 (2022).

[40] West Resendes & Sarah Hinger, *Safe and Healthy Schools Lead With Support, Not With Police*, ACLU (Aug. 31, 2021), https://www.aclu.org/news/disability-rights/safe-and-healthy-schools-lead-with-support-not-police.

[41] *Id.*

[42] *Id.*

[43] Individuals with Disabilities Education Act, 20 U.S.C. §1400(d)(1)(A) (2010) (ensuring that "all children with disabilities have available to them a free appropriate public education that emphasizes special education...designed to meet their unique needs...").

[44] Individuals with Disabilities Education Act, 20 U.S.C. §1414 (2015).

disability outlined in the law.[45] Notably, attention deficit/hyperactivity disorder ("ADD/ADHD") does not stand alone as a category under IDEA, but a student may qualify for an IEP if:

> (1) "[The student's] ADD/ADHD causes the child to have learning or emotional disabilities and he or she meets the criteria under the category of learning disabilities or emotional disturbance,"[46] or
> (2) "The student meets the criteria for "other health impaired" (OHI); that is, his limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, results in limited alertness with respect to the educational environment, that adversely affects his educational performance."[47]

The experiences of students with ADHD, particularly those from diverse backgrounds, demonstrate the shortcomings of IDEA.[48] ADHD is noted by the Center for Disease Control ("CDC") as "one of the most common neurodevelopmental disorders of childhood."[49] Today, over six million children are diagnosed with ADHD: ten percent of children between the ages of six to eleven are diagnosed with ADHD while thirteen percent of children between twelve to seventeen years old receive the diagnosis.[50] Absent support, children with ADHD are more likely to struggle with impulse control, attention span, need for stimulation, memory, goal-oriented behavior, and other skills that are important in an educational environment.[51] Children with ADHD are thus easily frustrated in the classroom and more likely to get in trouble: one study of children with IEPs in the juvenile justice system found that twenty-eight percent of incarcerated youth had an ADHD diagnosis.[52] Given the increasing commonality of this diagnosis and its links to disruptive behavior in classrooms, it is a massive blind spot that ADHD on its own is not sufficient criteria for special services eligibility under IDEA.

A 2020 study performed the first analysis of the rates of ADHD diagnoses amongst African Americans.[53] Most relevant for this article, the

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[45] Laurie U. DeBettencourt, *Understanding the Differences Between IDEA and Section 504*, 34 TEACHING EXCEPTIONAL CHILDREN 16, 17 (2006), https://www.forsyth.k12.ga.us/cms/lib3/GA01000373/Centricity/Domain/30/IDEA%20vs%20504.pdf.

[46] *Id.* at 17.

[47] *Id.* at 17-18.

[48] Claire Raj, *Disability, Discipline, and Illusory Student Rights*, 860 UCLA L. REV. 860, 903-04 (2018).

[49] *What is ADHD?*, CDC (Sept. 27, 2023), https://www.cdc.gov/ncbddd/adhd/facts.html.

[50] *Data and Statistics About ADHD*, CDC (Oct. 16, 2023), https://www.cdc.gov/ncbddd/adhd/data.html.

[51] *See* Renate Drechsle et al., *ADHD: Current Concepts and Treatments in Children and Adolescents*, 51 NEUROPEDIATRICS 315, 319 (2020).

[52] JOHN MATTHEW FABIAN, LITIGATOR'S HANDBOOK OF FORENSIC MEDICINE, PSYCHIATRY AND PSYCHOLOGY § 28:14 (2023).

[53] *See Individuals with Disabilities Education Act*, CHADD (2023), https://chadd.org/for-parents/individuals-with-disabilities-education-act/#:~:text=Some%20chidren%20with%20ADHD%20will,Health%20Impairment%20(OHI)%20category.

comprehensive study found that Black students of a lower socioeconomic background are more likely to be diagnosed with ADHD.[54] One posited explanation is that teachers are more likely to report symptoms for those students.[55] "Not only do teachers report more symptoms for Black youths," the study found, "but reporting is even higher for Black youths with low [socioeconomic status]."[56] For Black students, teachers are more likely to report ADHD symptoms than parents for three considered reasons: "parents' lack of knowledge of ADHD symptoms, parents' fear of racial discriminations associated with a diagnosis of ADHD, and prejudices based on race and [socioeconomic status] by teachers."[57] Moreover, parents of students from lower socioeconomic backgrounds are less likely to report ADHD symptoms due to limited access to medical insurance or language barriers.[58] Currently, less than half of students with ADHD have an IEP and only thirteen percent receive support through a 504 plan.[59] It is estimated that twenty percent of students with ADHD do not receive any school services and those students are more likely to be from a low income or non-English speaking family.[60]

Unfortunately, many learning disabilities are still stigmatized by adults, which affects children with these disabilities.[61] Thirty-three percent of educators believe that some learning disabilities are just "laziness." This stigma extends to the home: forty-three percent of parents report that they would not want others to know if their child had a learning disability, and doctors report that parents only follow their recommendation to have their child evaluated for a learning disability fifty-four percent of the time.[62] Many parents are simply unaware of the signs of a learning disability and may not even understand what an IEP is, or how to request one for their child. A 2016

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[54] Jude Mary Cénat et al., *Prevalence and Risk Factors Associated with Attention-Deficit/ Hyperactivity Disorder Among US Black Individuals: A Systematic Review and Meta-analysis*, 78 JAMA PSYCHIATRY 21 (2020).

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] George J DuPaul et al., *Predictors of Receipt of Sch. Services in a Nat'l Sample of Youth With ADHD*, 23 J. ATTENTION DISORDERS 1303 (2019).

[60] *Id.*

[61] *See generally* Romanza McAllister, *Catch-22: ADHD, Work, & the "Black Tax,"*, ATTENTION DEFICIT DISORDER ASS'N (May 13, 2020), https://add.org/catch-22-adhd-work-the-black-tax/#:~:text=The. (for a discussion of the stigma for African Americans with diagnosed ADHD) (discussing the amplified pressure African Americans face in school and in employment when also diagnosed with ADHD).

[62] *Facts About Learning Differences*, CTR. FOR LEARNING AND BEHAV. SOL., https://c4l.net/facts-about-learning-differences/ (last visited Dec. 3, 2023).

survey found that only forty-two percent of parents have heard of an IEP.[63]

III. COLLATERAL CONSEQUENCES OF SPECIAL EDUCATION

A teacher's decision to refer a student to special education, while presumably well-meaning, may be impacted by external factors such as implicit biases or available school resources.[64] Unfortunately, these external factors often impact the most vulnerable students. For example, many students of color are referred to special education without actually needing it.[65] Those students are then subjected to inappropriate educational plans and damaging stigma which may have longstanding impacts beyond graduation.[66] As one researcher has commented, "[o]nce students are labeled as learning disabled, teachers tend to lower their expectations of such students and such students then lower their expectations of themselves."[67] Conversely, teachers in schools that lack the resources to fund special education courses will under report students who may need help.[68] Because it is difficult to discern what led to a school administrator's decision to report (or not report) a student's learning disability, the current assessment techniques allow for students to fall through the cracks and receive an inadequate education.[69]

Placement in special programming has collateral consequences that may dramatically affect a student's educational career.[70] Despite the promise of equitable treatment, students served under IDEA experience more frequent and more severe punishments than their neurotypical peers.[71] During the 2017–2018 school year, the most recent year with data available, "students with disabilities served under IDEA represented 13.2% of total student enrollment but received 20.5% of one or more in-school suspensions and 24.5% of one or more out-of-school suspensions."[72] An alarming piece of

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[63] *Special Education: "The State of Learning Disabilities: Understanding the 1 in 5,"* 36 EDUC. WK. 33 (May 31, 2017).

[64] *See* Lyndsay R. Carothers, *Here's an IDEA: Providing Intervention Services for At-Risk Youth under the Individuals with Disabilities Education Act*, 42 VAL. UNIV. L. REV. 543, 562 (2008).

[65] *Id.* at 560-61.

[66] *Id.* at 562.

[67] *Id.*

[68] *Id.* at 564-65.

[69] *Id.* at 560.

[70] *Id.* at 561-62.

[71] *See An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-2018 School Year,* U.S. DEPT. OF ED. OFF. FOR CIV. RTS. (Jun. 2021), https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf.

[72] *Id.*

that data reveals that in the 2017–2018 school year, students served under IDEA comprised eighty percent of those subjected to physical restraint and seventy-seven percent of those subjected to seclusion.[73] Despite its protective purpose, IDEA can often create opportunities that contribute to this disparity. Section 1415(k)(1) of IDEA allows schools to remove students with disabilities for up to ten days:

> School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).[74]

The goal of this provision was to standardize discipline between children with and without disabilities.[75] Instead, this language provides a ten-day window for schools to remove IDEA students without an IEP team meeting or other support resources.[76] This window disadvantages students whose behavior is a manifestation of their disabilities.[77] Some schools even exploit this loophole strategically, distributing these ten days of "free" suspensions throughout the school year.[78] A ten-day suspension is rare in practice, rendering IDEA inadequate to rectify this disparity between suspensions.[79]

Another approach to circumventing the ten-day period involves sending a student home for the day, transferring them to inadequate alternative programs or homebound instructions, seclusion rooms, and other similar methods.[80] Even with IDEA protections, these students miss far more than ten days of school through "informal removals."[81] This is concerning because excessive absence is the most prevalent explanation for student dropout rates.[82] Children who are suspended are not learning. For a student who has received just *one* suspension or expulsion, the risk of having to repeat a grade is doubled, which increases the odds of dropping out entirely.[83] One study of

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[73] *2017-2018 Civil Rights Data Collection: The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools,* U.S. DEPT. OF ED. OFF. FOR CIV. RTS. (Oct. 2020), https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf.

[74] 20 U.S.C. § 1415(k)(1)(B).

[75] *See generally Breaking the School-to-Prison Pipeline for Students with Disabilities*, NAT'L COUNCIL ON DISABILITY 17 (2015), www.ncd.gov/publications/2015/06182015.

[76] *Id.*

[77] *Id.* at 18.

[78] *Id.*

[79] *Id.*

[80] *Id.* at 22.

[81] *Id.*

[82] Jessie Romero, *The Dropout Dilemma*, FED. RSRV. BANK OF RICH. (2014), https://www.richmondfed.org/publications/research/econ_focus/2014/q3/feature1.

[83] Chistopher A. Mallett, *A Lost Generation of Students: The School-to-Prison Pipeline,* 52 CRIM. L. BULL., no. 5, 2016, 1, 6.

Texas students found that suspension or expulsion for discretionary offenses (behavioral infractions that do not involve a weapon) tripled the likelihood of later involvement in juvenile court.[84] From there, the likelihood of later incarceration is significantly higher.[85]

School discipline is not education, and subjecting children with disabilities to punishment rather than support puts students on a trajectory toward the criminal justice system.[86] The shortcomings of IDEA are clear: eighty-five percent of youth in juvenile detention are eligible for special education services under IDEA but only thirty-seven percent receive those services while in school.[87] This suggests that if many of these students received adequate support in the classroom, they may not ever enter the criminal justice system in the first place.[88] As one researcher noted:

> The reality is that a very high proportion of imprisoned children who have special educational needs will have been excluded from school. A great many will have come from families struggling with poverty and a breakdown in local support services. Sending a child who is known to have special educational needs to a seriously under-resourced institution where self-harm, physical restraint and solitary confinement are commonplace is indefensible.89

It is uncontested that success in school and quality of education negatively correlates with interaction with the criminal justice system.[90] The consequences of this push-out are severe: for a concerning number of children, interaction with the juvenile justice system is merely the first of many interactions with the criminal justice system.[91] One study found that forty percent of those incarcerated as juveniles will be incarcerated in an adult facility before they turn twenty-five.[92] IDEA is meant to protect students with disabilities when their behavior could cause them to be isolated from their

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[84] *Id.* at 7.

[85] *Id.*

[86] Andrew Bacher-Hicks et al., *Proving the School-to-Prison Pipeline,* EDUC. NEXT (Jul. 27, 2021), https://www.educationnext.org/proving-school-to-prison-pipeline-stricter-middle-schools-raise-risk-of-adult-arrests/.

[87] *Breaking the School-to-Prison Pipeline for Students with Disabilities*, *supra* note 75, at 5.

[88] *See* Daniel Rivkin, *Public School Investment Reduces Adult Crime, Study Shows,* UNIV. OF MICH. (May 10, 2022), https://record.umich.edu/articles/public-school-investment-reduces-adult-crime-study-shows/.

[89] May Bulman, *Children in Prison Twice as Likely to Have Special Needs, Figures Show*, INDEP. (Aug. 4, 2019), https://www.independent.co.uk/news/uk/home-news/children-prison-special-educational-needs-jail-uk-a9034846.html.

[90] Rivkin, *supra* note 88; *see also* Kathleen Bender, *Education Opportunities in Prison Are Key to Reducing Crime,* AM. PROGRESS (Mar. 2, 2018), https://www.americanprogress.org/article/education-opportunities-prison-key-reducing-crime/.

[91] *See* Chris Sweeney, *Juvenile Detention Drives Up Adult Incarceration Rates, MIT Study Finds*, BOS. MAG. (June 11, 2015), https://www.bostonmagazine.com/news/2015/06/11/juvenile-detention-mit-study/.

[92] *Id.*

schools.[93] The reality is that these students are being sent on the path towards prison, not the classroom.[94]

IV. LAW ENFORCEMENT IN SCHOOLS: LEGAL ISSUES

In 1970, there were only 200 law enforcement officers working in schools in the country.[95] Multiple school districts now employ over 200 law enforcement officers on their own.[96] The officers are trained as police but not trained in working with children and teens.[97] Given this training, they punish first.[98] Perhaps understandably, many advocate for police in schools as a response to contemporary upticks in school shootings.[99] However, police in schools are not a response to the more prevalent crisis students are facing: mental health.[100] Professional standards recommend one counselor and social worker for every 250 students, and one nurse and psychologist for every 750 or 700 students, respectively.[101] Currently, forty-seven states and D.C. do not meet the recommended student-to-counselor ratio.[102] Statistics show:

> 1.7 million students are in schools with police but no counselors;
> 3 million students are in schools with police but no nurses;
> 6 million students are in schools with police but no school psychologists;
> 10 million students are in schools with police but no social workers;
> 14 million students are in schools with police but no counselor, nurse, psychologist, or social worker.[103]

Marginalized students are more likely to attend schools with fewer resources and support, and school staff that are not adequately trained to accommodate children with disabilities.[104] When there are no other support staff to address behavioral problems, some teachers resort to help from law enforcement.[105] Schools with police on premises report three-and-a-half

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[93] *See* Raj, *supra* note 39, at 414.

[94] *See* Dean Hill Rivkin, *Decriminalizing Students with Disabilities*, 54 N.Y. L. SCH. L. REV. 909, 911 (2010).

[95] Amir Whitaker et al., *No Police in Schools,* ACLU CAL. 11 (Aug. 2021), https://www.aclusocal.org/sites/default/files/field_documents/no_police_in_schools_-_report_-_aclu_-_082421.pdf.

[96] *Id.*

[97] AMIR WHITAKER ET AL., COPS AND NO COUNSELORS 7 (Emily Greytak et al. eds., 2019), https://www.aclu.org/report/cops-and-no-counselors.

[98] *Id.*

[99] *Id.*

[100] *See* Resendes & Hinger, *supra* note 40.

[101] Amir Whitaker et al., *supra* note 95, at 4-5.

[102] *Id.* at 12.

[103] *Id.* at 5.

[104] *Id.*

[105] *Id.*

times as many arrests as schools without police.[106] One study shows that students with disabilities are arrested nearly three times more than students without disabilities.[107] As one researcher noted, "[w]hat makes a child most likely to be targeted by a police officer while in school is simply having a disability."[108]

This disparity is exemplified in the case of Cameron McCadden.[109] In 2015, Cameron was a ten-year-old student in Flint, Michigan. Cameron, a student diagnosed with ADHD, kicked over a supply cart during an afterschool program.[110] A Flint police officer responded and handcuffed Cameron's arms behind his back for over an hour.[111] At the time, Cameron weighed only fifty-five pounds.[112] By 2015, the City of Flint had doubled the number of police officers present in schools without implementing any policies or procedures on how to handle students and avoid the use of force.[113] In 2020, a federal judge approved a settlement between the ACLU, on behalf of Cameron and his family, and the City of Flint.[114] Part of that settlement included ongoing training for police officers in schools and changes in policy allowing the use of force.[115]

Under IDEA, there are three categories of conduct that permit students to be removed from the classroom and placed in an alternative educational setting, even when that behavior is the result of a student's disability.[116] This conduct includes possession of a weapon, drug offenses (possession, use, or sale), and infliction of serious bodily injury.[117] In response to this behavior, school officials may remove a student to an interim alternative educational setting for up to forty-five days regardless of disability.[118] This response is a difficult balance when a student with a disability is involved: many critics point out that involving law enforcement counteracts a student's IEP, which emphasizes positive behavioral interventions, support, and strategy.[119]

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[106] *Id.*

[107] *Id.*

[108] *ADA 30 Symposium*, N.Y.U. REV. L. & SOC. CHANGE (Jan. 2, 2021), https://socialchangenyu.com/harbinger/ada-30-symposium/.

[109] *McCadden v. City of Flint*, ACLU, https://www.aclu.org/cases/mccadden-v-city-flint (last updated June 5, 2020).

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] Individuals with Disabilities Education Act, 20 U.S.C. § 1415(k)(1)(g).

[117] *Id.*

[118] *Id.*

[119] Dean Hill Rivkin, *supra* note 94, at 941, 949.

Courts have acknowledged that mass incarceration starts with Black children in the classroom.[120] One noteworthy example occurred in the 2012 federal case of *United States v. City of Meridian*. There, the Department of Justice investigated the city of Meridian, Mississippi, for violating the rights of schoolchildren who were frequently arrested without probable cause on school grounds.[121] Between 2006 and 2009, Meridian police automatically arrested all children referred to them, and all of those students were Black.[122] The rate of suspension for students with IEPs in Meridian was seven times the statewide-rate for Mississippi public schools.[123] Conduct ranged in severity from possession of drugs and weapons, to failing to follow the directions of a teacher, or using profanity.[124]

In the *Meridian* case, the Government alleged that the city had "help[ed] to operate a 'school-to-prison pipeline'" by "arrest[ing], adjudicat[ing], and incarcerat[ing] children for school infractions without exercising appropriate discretion and without regard for their obligations under the United States Constitution."[125] In a complaint filed by the Government, such punishment was described as so severe and arbitrary that it "shock[ed] the conscience and deprive[d] these children of liberty and educational opportunities on an ongoing basis."[126] At the conclusion of that case, the Government and the City of Meridian reached a five-part agreement that, in part, prohibited Meridian police from arresting children for misbehavior that could be addressed in schools and required additional training for police in schools.[127]

Law enforcement in schools can upend education and often mimic the policing patterns of their community. School suspensions and expulsions can lead to a decreased likelihood of graduation and a higher risk of entering the criminal justice or juvenile justice systems.[128] In Virginia, over 127,800 out-of-school suspensions were given to over 73,000 students.[129] That rate disproportionally affected students of color: the suspension rate for Black students was four-and-a-half times higher than the rate for Hispanic and

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[120] *School-to-Prison Pipeline*, ACLU, https://www.aclu.org/issues/juvenile-justice/juvenile-justice-school-prison-pipeline (last visited Nov. 2, 2023).

[121] Complaint at 1-2, U.S. v. City of Meridian, No. 4:12CV168HTW-LRA (S.D. Miss. Oct. 24, 2012).

[122] *Id.* at 8-9.

[123] *Id.* at 9.

[124] *Id.* at 11.

[125] *Id.* at 9.

[126] *Id.* at 2.

[127] Settlement Agreement at 4, U.S. v. City of Meridian, No. 4:12CV168HTW-LRA (S.D. Miss. Oct. 24, 2012).

[128] *See* Ashton Tuck Scott, *Goss v. Lopez as a Vehicle to Examine Due Process Protection Issues with Alternative Schools*, 63 WM. & MARY L. REV. 2091, 2101 (2022).

[129] *Id.*

white students.[130] Black male students with a disability are over twenty times more likely to be suspended than white female students without a disability.[131] Currently, Black girls are the largest growing suspended population in schools. Making up only sixteen percent of female students, Black girls make up "2 percent of girls receiving corporal punishment, 42 percent of girls expelled with or without educational services, 45 percent of girls with at least one out-of-school suspension, 31 percent of girls referred to law enforcement, and 34 percent of girls arrested on campus."[132] These disturbing statistics demonstrate the bias in administration of school punishment, and how frequently the most vulnerable populations are denied the power that comes from an education.[133]

Today, one in nine Black men between ages of twenty to thirty-four are incarcerated, and one in three are "under some form of criminal justice control."[134] Constant police presence and surveillance in schools mimics the feel of prison. This in turn creates a "culture of low expectations and fatalist attitudes" in an environment meant to support and inspire students.[135] For a student in a heavily policed school, "constant police presence . . . represents to students that the school's priority is controlling, not educating, them, and that prison is a normal and expected outcome. This message is reinforced by the merger of the criminalized culture students see inside their schools and the mass incarceration they see in their communities."[136] Students in heavily policed schools, already grappling with the difficulties of being a child or an adolescent in any environment, "are herded daily through intrusive security devices by police officers and . . . are aware that at white schools, students tend to walk unbothered, into schools that instead use their funding for librarians and guidance counselors."[137]

V. FOURTH AMENDMENT PROTECTION IN SCHOOLS

Many searches occur in schools that would be illegal in any other

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[130] *Id.*

[131] *Id.*

[132] Melinda Anderson, *The Black Girl Pushout,* THE ATLANTIC (Mar. 15, 2016), https://www.theatlantic.com/education/archive/2016/03/the-criminalization-of-black-girls-in-schools/473718/.

[133] *See id.*

[134] Aaron Sussman, *Learning in Lockdown: School Police, Race, and the Limits of Law*, 59 UCLA L. REV. 788, 816 (2012).

[135] *Id.* at 817.

[136] *Id.*

[137] *Id.* at 820.

setting.[138] The seminal Supreme Court case, *New Jersey v. T.L.O*, held that students are entitled to a reduced expectation of privacy while in school.[139] There, the Court held that the Fourth Amendment applies to searches conducted by public school officials because "school officials act as representatives of the State, not merely as surrogates for the parents."[140] However, the Court went on to hold that "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject."[141] Thus, the Court expressly did away with a warrant requirement or probable cause standard within schools.[142] Students are thus only afforded the protection of a reasonableness standard for searches by school authorities.[143]

In light of increasing gun violence, police presence in schools and a lower standard for searches may seem warranted.[144] However, there is little indication that police actually create a safer environment for students.[145] In fact, data shows the contrary: students are *more* at risk of violence by police officers.[146] Students are subjected to both physical and emotional harm by police: one study even notes the negative impact that just witnessing police harassment may have on youth.[147] Because police presence is generally more prevalent in schools located in high crime neighborhoods, schools—which should be places of support—become merely an extension of the problems that exist in the streets surrounding them.[148] This creates a disappointing cycle: at risk students, particularly those with learning disabilities, are disproportionally targeted by police in the institutions meant to protect them. Even worse, "[c]ontinued involvement in the juvenile justice system may be a factor in enhancing the student's violent tendencies and increasing his rejection of the school system."[149]

Despite the Supreme Court's promise that students do not "shed their

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[138] *See* Alexis Karteron, *Arrested Development: Rethinking Fourth Amendment Standards for Seizures & Uses of Force in School*, 18 NEV. L.J. 863, 904-06 (2018).

[139] New Jersey v. T.L.O., 469 U.S. 325, 348 (1985).

[140] *Id.* at 336.

[141] *Id.* at 340.

[142] Karteron, *supra* note 138, at 883.

[143] *Id.* at 887-88.

[144] *Id.* at 877.

[145] *See id.* at 908.

[146] *See id.*

[147] Brett G. Stoudt et al., *Growing Up Policed in the Age of Aggressive Policing Policies*, 56 N.Y. L. SCH. L. REV. 1331, 1357-58 (2011).

[148] Sussman, *supra* note 134, at 816-17.

[149] Joseph Lintott, *Teaching and Learning in the Face of School Violence*, 11 GEO. J. POVERTY L. & POL'Y 553, 569 (2004).

constitutional rights . . . at the schoolhouse gate,"[150] research says otherwise, particularly for students with special needs. Although the factors in determining reasonableness that have been addressed by the Court include context, age, and gender, the precedent is silent on protections for students with "known disabilities or vulnerabilities."[151] Even worse, there is no consideration of the disparate impact that police violence in schools has on disabled students, who are more likely to be more traumatized by such encounters compared to their neurotypical counterparts.[152] For anyone, an encounter with the police is a traumatic experience. Such encounters are especially traumatic for students. A lax reasonableness standard in schools is a glaring blind spot in the promises of the Fourth Amendment and IDEA: there is nothing to protect students with disabilities when they are disparately surveilled and punished by police.[153]

VI. DUE PROCESS CONCERNS

The Supreme Court addressed due process protection for students in the disciplinary context in *Goss v. Lopez*. There, the Supreme Court acknowledged constitutional protection against certain school punishments without procedural safeguards.[154] As a bright line rule, for suspensions of ten days or less, the Court held that "due process requires . . . that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story."[155] While *Goss* concerned only short suspensions, the Court noted that "longer suspensions or expulsions . . . may require more formal procedures."[156] However, this language has not yet been extended to certain punishments, such as transferring a student to an alternative school.[157]

Frequently, students with special educational needs who exhibit disruptive

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[150] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969).

[151] Karteron, *supra* note 138, at 870.

[152] *Id.* at 869-70; Barbara Fedders, *The End of School Policing*, 109 CALIF. L. REV. 1443, 1469 (2021).

[153] Karteron, *supra* note 138, at 911.

[154] Goss v. Lopez, 419 U.S. 565, 574 (1975).

[155] *Id.* at 581.

[156] *Id.* at 584.

[157] *See* Scott, *supra* note 128, at 2103-04.

behavior are sent to alternative placement schools.[158] Such alternative placements are punitive, rather than restorative.[159] Once transferred to such an institution, the odds of a student's later involvement in the criminal justice system increases.[160] Such schools gained popularity during the War on Drugs Era, following the popularization of the "broken windows" theory, whereby schools were encouraged to react harshly to minor infractions in order to prevent more serious crimes in the future.[161] Because alternative schools are frequently relied upon by teachers and schools to remove unruly students from the classroom, students with special needs may be particularly vulnerable to receive this punishment.[162]

IDEA is intended to protect students with special needs by mandating a student with an IEP plan remain in their placement during any proceedings against them, for any conduct that is a manifestation of their disability.[163] However, even if a case gets dismissed, students referred to the juvenile justice system frequently miss multiple days of school to attend court and handle their case.[164] Because involvement of law enforcement and juvenile courts is so disruptive, such a response must fall into the category acknowledged in *Goss* as requiring formal procedures.[165] Initiating juvenile proceedings is essentially changing a student's school placement without a modification to the IEP.[166] This largely occurs when schools file criminal complaints against students with disabilities without first offering support guaranteed to them by IDEA.[167]

In *Morgan v. Chris L*, the Sixth Circuit held that referring a student to juvenile court for criminal adjudication without an IEP meeting constitutes a change in a student's classification without due process.[168] That case

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[158] Heather Vogell, *The Failure Track How Students Get Banished to Alternative Schools*, PROPUBLICA (Dec. 6, 2017), https://www.propublica.org/article/how-students-get-banished-to-alternative-schools; *see* Adam Kho & Sarah Rabovsky, *The Students Alternative Schools Serve*, URBAN INST. (July 28, 2022), https://www.urban.org/research/publication/students-alternative-schools-serve; *see also id.* at 2093-94.

[159] *See* Scott, *supra* note 128, at 2096.

[160] *See id.* at 2097.

[161] *See id.* at 2097-98.

[162] *See id.* at 2102.

[163] 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518 (2023); *see* Yael Cannon et al., *A Solution Hiding in Plain Sight: Special Education and Better Outcomes for Students with Social, Emotional, and Behavioral Challenges*, 41 FORDHAM URB. L.J. 403, 468-69 (2013).

[164] Johanna Wald & Daniel Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 99 NEW DIRECTIONS FOR YOUTH DEV. 9, 13 (2003).

[165] *See* Catherine E. Johnson, *Disrupted Lives; Diverted Futures: Zero Tolerance Policies' Impact on Students with Disabilities*, 40 NOVA SOUTHEASTERN L. REV. 425, 443-44 (2016).

[166] *See id.* at 440.

[167] *See id.* at 443.

[168] *See* Morgan v. Chris L. By Mike L., 106 F.3d 401, at 5-6 (6th Cir. 1997) (referring to the IEP meeting as an "M-team meeting").

concerned a middle school student diagnosed with ADHD.[169] Chris L. struggled in school, and administrators were aware of his diagnosis but had not yet formulated an IEP.[170] After an incident where Chris kicked a pipe and caused water damage, the school filed a criminal complaint for vandalism, despite a showing that the behavior was a manifestation of his ADHD.[171] The Sixth Circuit upheld the district court's finding that filing a complaint in juvenile court was improper without first conducting an IEP team meeting due to "the potential which juvenile court proceedings have for changing a child's educational placement in a significant manner."[172] There, the school system was found to have unlawfully skirted IDEA by referring Chris to juvenile court rather than providing the support itself, and improperly referring the student to a new institution without the change in placement procedure required under IDEA.[173] This case established clear instruction for schools: administrators are prohibited from referring unruly students to juvenile court without first providing the services they are required to provide under IDEA.[174]

VII. STANDARDIZED TESTING PUSHES STUDENTS OUT OF SCHOOLS

The purpose of President George W. Bush's 2001 No Child Left Behind ("NCLB") policy was to ensure every student in the United States could read and do basic math by 2014.[175] This program targeted underperforming public schools which received supplemental federal funding in addition to state funds.[176] Those schools were required to publish the results of annual standardized testing in order to demonstrate adequate progress towards the 2014 goal.[177] Schools that did not meet that goal were subject to restructuring.[178] NCLB was ultimately unsuccessful and repealed by the

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[169] Morgan v. Chris L. by Mike L., 927 F. Supp 267, 268 (E.D. Tenn. 1994).

[170] *Id.* at 268-69.

[171] *Id.* at 269.

[172] *Id.* at 271-72.

[173] *Id.* at 270.

[174] *Id.* at 271.

[175] Christina Payne-Tsoupros, *No Child Left Behind: Disincentives to Focus Instruction on Students Above the Passing Threshold*, 39 UDC J. OF L. & EDUC. 471, 471, 473 (2010).

[176] *Id.*

[177] *Id.*

[178] *See* Libby Nelson, *The Scariest Lesson of No Child Left Behind*, VOX (July 27, 2015), https://www.vox.com/2015/7/27/9045491/no-child-left-behind-accountability.

Obama administration in 2015.[179] Because NCLB tied government funding closely to test scores, schools most dependent on federal funds were incentivized to "push out" underperforming students through zero-tolerance disciplinary policies to boost average test scores.[180]

Given the strong ties between test results and school funding, teachers and administrators "may depend upon meeting these standards, and a curriculum that depends too much on testing and accountability may create a culture where test success becomes paramount to educating students. Pushing low-performing students out may ensure that the school will receive increased funding and/or increase administrators' job security."[181] For students with behavioral issues, that means schools may weaponize zero-tolerance policies to "push out students who are not performing well on high-stakes standardized tests and thereby improve schools' scores."[182]

The Obama administration attempted to disrupt the relationship between funding and test scores with the passage of the Every Student Succeeds Act ("ESSA") in 2015.[183] Less penalizing than NCLB, ESSA abolished federal penalties for schools with low test scores.[184] ESSA was intended to be more holistic, mandating that states require factors such as kindergarten readiness, school climate, and absentee rates in addition to standardized test scores when making funding decisions.[185]

Notably, while both NCLB and ESSA provide accommodations for students covered by IDEA for standardized tests, other disadvantaged students lack the same consideration.[186] For example, "students on free-and-reduced lunch, students who are experiencing homelessness, students who are diagnosed with a disability after taking the standardized test, students who are in a period of bereavement, and students experiencing the many other variables that impact their performance" are not entitled the same

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[179] Lyndsey Layton, *Obama Signs New K-12 Education Law That Ends No Child Left Behind*, WASH. POST (Dec. 10, 2015), https://www.washingtonpost.com/local/education/obama-signs-new-k-12-education-law-that-ends-no-child-left-behind/2015/12/10/c9e58d7c-9f51-11e5-a3c5-c77f2cc5a43c_story.html; *see id.*

[180] *See* India Geronimo, *Deconstructing the Marginalization of Underclass Students: Disciplinary Alternative Education*, 42 U. TOL. L. REV. 429, 446 (2011).

[181] *Id.*

[182] Klehr, *supra* note 9, at 602.

[183] *See Every Student Succeeds Act (ESSA)*, U.S. DEP'T OF EDUC., https://www.ed.gov/essa?src=rn (last visited Nov. 2, 2023).

[184] *The New Federal Education Law: A Basis for a Stronger Testing Resistance and Assessment Reform Movement*, FAIRTEST (Dec. 10, 2015), https://fairtest.org/essa-basisforstrongerreformmovement.

[185] James Naughton, *Testocracy: The Undemocratic System of Standardized Testing in the United States*, 31 KAN. J. OF L. & PUB. POL'Y 263, 275 (2022).

[186] *Id.* at 274-25.

consideration during standardized testing.[187] With the implications that standardized test results have on the futures of both students and their schools, such "snapshots" should be more inclusive and holistic.[188]

VIII. THE COMMUNITY AS A STAKEHOLDER IN EDUCATION

Communities have an investment in student outcomes because disrupted education is closely linked to future adult criminality.[189] Disruption of a student's education through draconian disciplinary policies feeds the path toward adult incarceration.[190] In order to reduce mass incarceration, the school-to-prison pipeline must be disrupted.[191] Because there is a strong correlation between suspended students and future criminal involvement, victimization, and incarceration, this punishment should only be reserved for the most extreme circumstances.[192] Moreover, schools with inclusive or positive interventions, rather than zero-tolerance policies, actually have *fewer* incidents of student misbehavior.[193] This is because the community atmosphere of those schools discourages unruly behavior: there, students "feel respected, listened to, and part of a school community."[194] Although many educational plans for students in need are individualized, one study found that behavioral intervention programs addressed to the entire student body, rather than only at-risk students, may have better outcomes overall.[195]

Suspension and expulsion as discipline are short-sighted solutions that upend a juvenile's life.[196] Fight Crime: Invest in Kids, a non-profit organization of law enforcement officers and prosecutors, even noted that "suspension and expulsion often provide troubled kids exactly what they do not need: an extended, unsupervised hiatus from school that increases their risk in engaging in substance abuse and violent crime."[197] Challenging this

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[187] *Id.* at 275.

[188] *Id.*

[189] Kerrin C. Wolf & Aaron Kupchik, *School Suspensions and Adverse Experiences in Adulthood*, 34 JUST. Q. 407, 421 (2017).

[190] *See id.* at 423-24.

[191] *Id.*

[192] *Id.*

[193] *Id.* at 411.

[194] *Id.*

[195] *Practice Profile: Universal School-Based Prevention and Intervention Programs for Aggressive and Disruptive Behavior*, NAT'L INST. OF JUST. (Sept. 8, 2015), https://crimesolutions.ojp.gov/ratedpractices/46#mao.

[196] *See* Kathleen DeCataldo & Toni Lang, *Keeping Kids in School and Out of Court: A School-Justice Partnership*, 83 N.Y. STATE BAR ASS'N J. 26, 26 (2011).

[197] *Id.* at 27.

method of punishment will have positive, long-term impacts on the health of our communities, and end the generational trauma that occurs from incarceration.[198]

The tension between emphasizing individualized education for students with disabilities through IEP plans and zero-tolerance policies that do not consider individualized circumstances for behavior must be rectified.[199] The classroom must be, above all, an environment conducive to learning. But many students misbehave after they "sense that the educational process will not help them—that it is unlikely that they will meet grade level expectations, graduate, attend college, or obtain a well-paying job—they have fewer reasons to behave, take school seriously, master the classroom material, and stay in school."[200] This response is exacerbated in schools that already function like prisons because the environment is punitive, rather than supportive.[201]

Instead of passing legislation like the 1994 Gun-Free Schools Act, which focused on a zero-tolerance approach to penalization, legislators should provide schools with funding for "counselors, mental health services, mentoring programs, after-school services, and programs that build student character, school community, collective responsibility, and trust."[202] One proposed alternative to zero-tolerance policies is School-Wide Positive Behavior Support (SWPBS).[203] This model emphasizes school-wide climate rather than individual interventions.[204] Under SWPBS, schools focus on teaching positive expectations of students and frequently rewarding positive behavior.[205] Schools that use this approach have success: one study noted that "schools that have implemented SWPBS with fidelity have decreased office discipline referrals, decreased out-of-school suspensions, increased teacher retention rates, and increased academic success for all students."[206]

The importance of positive intervention already exists in IDEA, which requires that IEP teams consider "positive behavioral interventions and supports" for children with disabilities.[207] Currently, the government's punitive approach to school environments grants schools enormous amounts

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[198] Mallett, *supra* note 83.

[199] *Id.*

[200] Jason Nance, *Dismantling the School-to-Prison Pipeline: Tools for Change*, 48 ARIZ. STATE L. J. 313, 324-25 (2016).

[201] *Id.* at 326.

[202] *Id.* at 336.

[203] *Id.* at 357-58.

[204] *Id.* at 358.

[205] *Id.*

[206] Klehr, *supra* note 9, at 604.

[207] *Id.* at 608.

to fund security measures.[208] One Department of Justice initiative "allowed schools to request up to $500,000 to support half the cost of their security programs."[209] Diverting funds spent on metal detectors and security measures and investing in fostering a positive and inclusive learning community for all is demonstrated to reverse many of the disciplinary policies that contribute to the school-to-prison pipeline, and should be considered a wise divestment.[210] This could be accomplished by providing teachers with more resources to understand the challenges their students face, providing more therapy and counseling services to students, and implementing programs like SWPBS.[211]

CONCLUSION

The promise of IDEA, to deliver equal educational access to students with disabilities, contradicts zero-tolerance policies born out of the War on Drugs Era. To this day, minority students, particularly Black students with disabilities, are disproportionally punished and pushed out of their classrooms.[212] The experience of many students with ADHD shows that despite the name, IEPs are not always meeting the individualized needs of every student, and too often external considerations become a large factor in the determination of a student's educational trajectory.[213]

Furthermore, over-policed school environments that resemble prisons are less safe and less effective in teaching students in need.[214] Rather than being treated as students, children with disabilities are considered suspects by the law enforcement in their schools. Furthermore, a school environment that looks like a prison sends a message to students that incarceration is their expected outcome.[215] Punishments like suspension and expulsion upend a student's education and start the path toward prison.[216] Instead of punishing first, schools should focus on the positive intervention promised by IDEA and defer to the positive interventions of an IEP team to properly divert students with disabilities.

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208 Jason Nance, *School Surveillance and the Fourth Amendment*, 2014 WIS. L. REV. 79, 98 (2014).

209 *Id.*

210 *Id.* at 99.

211 Klehr, *supra* note 9, at 604; Cannon, *supra* note 163, at 481, 488.

212 Mallett, *supra* note 83.

213 *See id.* at 9-10.

214 Nance, *supra* note 208, at 103-04.

215 *Id.* at 110.

216 DeCataldo & Lang, *supra* note 196.

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