



Advocates for Justice and Education, Inc.

The federally designated Parent Training and Information Center for Washington DC

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District of Columbia Council
Committee on the Judiciary & Public Safety Public Hearing
on
B23-0039, the “Special Education Rights for Youth Defendants Amendment Act of 2019”
and
B23-0095, the “Protecting Children Through Mandatory Reporting Amendment Act of 2019”

Thursday, July 11, 2019

My name is Stacey Eunnae and I am a Senior Staff Attorney at Advocates for Justice and Education, Inc. (AJE) and a D.C. resident. AJE is the federally designated Parent Training and Information Center (PTI) for the District of Columbia. Parents and adult students contact us for advice, guidance and support in understanding and protecting their rights to ensure children have access to an appropriate education. At AJE, we are a small but mighty core staff of six people. While we manage to respond to nearly 800 calls from families each year, we simply do not have the capacity to adequately serve the hundreds of D.C. youth detained in D.C. and scattered throughout the country who experience, or face the risk of, incarceration and separation from their families and schools. Over the past six years, I have represented hundreds of D.C. youth harmed by the school-to-prison pipeline at AJE, in private practice and as a supervising attorney in U.D.C.’s Juvenile & Special Education Law Clinic.

Today I testify on behalf of AJE in support and gratitude for the Special Education Youth Defendants Act. My primary goal is to help explain why it is critical that D.C.’s court-involved youth with disabilities and their guardians have access to legal representation expressly focused on protecting the youth’s rights to special education and related services.

We know that students who attend D.C. schools in areas with concentrated gun violence and poverty, or neighborhood schools where one-third of enrolled students are students with disabilities, have not had access to the necessary resources and required staff to meet their academic and socio-emotional needs.¹ Schools need these resources to fund grief counselors, provide specialized instruction in smaller classrooms and ensure staff has the trauma-informed specialized training to support students. Instead, schools in these areas are not even receiving the base funding they need to hire and maintain their core staff.²

¹ “D.C. Schools Short Change At-Risk Students” (June 25, 2019), Office of the D.C. Auditor, available at: <http://dcauditor.org/report/d-c-schools-shortchange-at-risk-students/>.

Without a doubt, D.C. must take steps to address funding inequity and the lack of transparency in our public school system; however, we must also address and rectify the harm and continued injustice experienced by youth defendants funneled into the criminal penal system precisely *because* they were denied access to appropriate educational services.

Education Attorneys can help youth reduce or avoid further contact with the criminal system and assist the Court in its mandate to promote and ensure justice.

Special education attorneys provide a number of critical benefits for defendants with disabilities, such as protecting their constitutional rights when it comes to Miranda warnings and confessions—if that student has a cognitive or communication disability, they may need accommodations when it comes to Miranda warnings and confessions. Attorneys can assist courts and other social service agencies involved in diversion courts by obtaining a student’s records from school and helping a judge during sentencing by determining which programs, treatments, and placements are most appropriate; and by ensuring youth defendants successfully receive the full extent of the legal protections and services they are entitled to pursuant to the I.D.E.A.³

“Overrepresentation of students with disabilities in the juvenile justice system is a well-documented problem both nationwide and in the District of Columbia.”⁴ Over 90% of Department of Youth Rehabilitation Services (DYRS) committed youth have both an IEP and either an AXIS 1 or AXIS 2 mental health diagnosis.⁵

Many youth who end up in the system are from families lacking resources and skills needed to “work” the system,⁶ which is where attorneys can help them access special education and related services

² In February 2019, I testified before the D.C. Council’s Committee on Education about the blatant dismissal of civil rights laws apparent by DCPS’s “5-star” selective admission high schools self-reporting 0% students enrolled with special education needs, contrasted with “1-star” neighborhood schools that report nearly one-third students enrolled with special education needs. For example, Ballou High School, which received a one-star rating, [reported](#) that out of 1024 students, nearly one-third (26%) had special education needs

³ General Comment No. 17: Rights of the child (Art. 24), International Covenant on Civil and Political Rights 07/04/89. “The Committee notes in this regard that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural...In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression.”

⁴ *Students in the Care of the District of Columbia*, Working Group Recommendations https://static1.squarespace.com/static/528921fce4b089ab61d013d3/t/5b4f93a7aa4a990c172f8320/1531941800839/07182018+Students+in+the+Care+of+DC+Report_FINAL.pdf

⁵ Id.

through schools, residential facilities and detention centers and tailor each student's education according to their individual needs.⁷

Special education attorneys are better equipped to address violations of special education and disabilities with out-of-state facilities.⁸ D.C. Code offenders are often sent to facilities throughout the country, including Georgia, Indiana and Texas, despite the Bureau of Prisons' (BOP) policy to attempt to place them within 500 miles of D.C. This distance isolates offenders from the support systems of family, friends, and local service providers that are crucial to their successful return.⁹

Teenagers and young adults often return to their communities with few credits and insufficient supports and experience difficulty re-enrolling in public schools upon their return. A special education attorney can assist youth with navigating this path which will ultimately increase their likelihood of obtaining legal employment and reducing recidivism rates. An education attorney could ensure that an adequate re-entry plan is in place before the student is released and assist a student in enrolling in school and accessing public benefits they are entitled to which could keep them off the street. Research shows that people with mental health issues and complex trauma are disproportionately more likely to be arrested, incarcerated, and to recidivate than the general population.¹⁰

I know from personal experience that enforcing special education laws can help reduce harm caused by, and in some cases can even *reverse*, the school-to-prison pipeline. I have effectively challenged hundreds of proposed suspensions and expulsions by piecing together an individual's story, identifying unmet educational needs and manifestations of disability. The most common status offenses are truancy and running away—which often result from unmet needs at school or at home. Education attorneys can help prevent court-involvement on the front end by addressing those unmet needs but we can also reduce the harm and reverse the school-to-prison-pipeline by doing the same thing with the aid of the court. Many times youth need targeted legal assistance to even become aware of untreated mental illness and other unmet education needs if the student has never been evaluated and identified as a child with a disability. The first time that a child acting out behaviorally is evaluated by a psychologist for disability should not be in court—it should be, by law and principle, in schools.

⁶ *Justice-Involved Youth with Intellectual and Developmental Disabilities, A Call to Action for the Juvenile Justice Community, The Arc National Center on Criminal Justice and Disability*” (2015), available at <https://www.thearc.org/document.doc?id=5343>.

⁷ Id.

⁸ Id.

⁹ *Beyond Second Chances: Returning Citizens Struggles and Successes in the District of Columbia* http://www.courtexcellence.org/uploads/publications/BSC_FINAL_web_1.pdf

¹⁰ *Improving Mental Health Services and Outcomes for All: The D.C. Department of Behavioral Health and the Justice System*, Office of District of Columbia Auditor (http://www.courtexcellence.org/uploads/publications/ODCA_Report_Audit_of_DBH_2.pdf)

We need court-appointed educational attorneys to link youth with services they are already entitled to but cannot access because community- and school-based interventions are ultimately more effective and far less harmful than imprisonment, which should always be a last resort.

When I was a supervising attorney in the Juvenile and Special Education Law Clinic at U.D.C., I had the opportunity to represent a 19-year-old student who resided at the D.C. jail for nearly a year awaiting trial for a felony. This student's mother had concerns early—and he was identified as having severe cognitive and emotional disabilities at a young age. He received full-time special education services from DCPS schools for “at-risk” children, all of which have since been closed. He was reading at a second-grade level at the time and had not been in school for years—he was entirely unaware that he had a right to receive educational and mental health services, and it took a fight to get him access to those services. When this young man is released, he will have access to funds he can use to get help from professionals to access public benefits, mental health services and job training—without having to rely on the existing system which has never worked for him anyway.

Comments on the mandatory reporting bill also being considered today:

AJE recently testified before the Committee on Education about instances of child abuse that occurred at charter schools but were not reported by staff to authorities until weeks or months later. The purpose of providing those examples was to demonstrate the need for increased transparency in schools, as a means to increased accountability in public education. AJE agrees it is critical to strengthen protections for children by ensuring that professionals who work the closest with children—including, teachers, social workers, principals, doctors and religious leaders-- are held accountable when they fail to report known instances of child sexual and physical abuse. Research and personal experience shows that students with disabilities are often disproportionately impacted by abuse, corporal punishment, restraint and seclusion. Requiring all mandatory reporters to receive training and certification on their responsibilities by imposing a fine of up to \$300 and promptly notifying the appropriate licensing authorities if they violate their responsibilities should help to incentivize reporting. However, I implore this Committee to seek more community input before criminalizing this behavior through the threat of imprisonment due to concerns about the unintended harm it may cause children. Many of my clients have had child protective services called on them for “educational neglect” when they face the impossible choice of potential criminal charges or fines for refusing to send their child to an unsafe environment or when schools improperly send their children home. Individual parents, teachers and social workers should not be jailed for systemic failures. We do not want to perpetuate a system of service providers vs. parents, or parents vs. service providers—when in reality it is their cooperation most likely to protect our children. Perhaps the Committee would consider amending the bill to impose fines on school districts or institutions that employ or employed staff who did not report—as a way of encouraging the institution itself to train and monitor its employees.

IN CONCLUSION:

The DC Council should ensure that special education programs, alternatives to suspension and At-Risk funds are fully funded and go to the students that need these supports most. Creating a right to ensure youth defendants’ in D.C. have access to educational advocacy in delinquency and criminal proceedings is an important step—it will in some cases reduce the need for incarceration by assisting youth with disabilities in complying with probation requirements and accessing school- and other community-based resources. In other cases, special educational attorneys can assist the court by recommending appropriate placements and ensuring judges have access to critical educational records that inform sentencing and other decisions.

More than fifty years after *Brown v. Board*, D.C. schools are still racially segregated and failing to provide students, primarily students of color and with disabilities, with appropriate educational services. As the Supreme Court stated in that decision, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”¹¹ This bill offers exactly that—the opportunity of an education and to disrupt the school-to-prison-pipeline.

¹¹ *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).