Education and No Child Left Behind in Juvenile Detention Centers

Although the United States Constitution does not make compulsory education a fundamental right for all children, every state Constitution contains an education clause, many of which have been interpreted to include education as a fundamental right. Additionally, the Supreme Court in Brown v. Board of Education spoke broadly of the necessity of education by saying that, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”

Unfortunately, many students are denied the opportunity of a quality education upon their entrance into a juvenile detention facility. The 2001 passage of the No Child Left Behind Act created new standards for American education, but did not tailor these standards to fit the needs and unique problems faced by incarcerated juveniles. No Child Left Behind should be rejected as a standard for juvenile detention facilities, and a new, specially-tailored program involving creative and non-traditional education, a focus on transition back into school, and creative teacher recruitment, should be implemented.

The United States has signed and ratified two different treaties, both of which recognize the right to education as a fundamental human right: The Convention of the Rights of the Child and the International Covenant on Civil and Political Rights (ICCPR). The ICCPR includes a clause stating that primary goal of penitentiaries in member countries should be reformation and

---

social rehabilitation. The ICCRP does not make special distinctions between educational programs for incarcerated juveniles and incarcerated adults, except to say that while incarcerated, juveniles should be kept separate from adults. However, the specification that the goal of incarceration for everyone (including juveniles) should be rehabilitation, speaks to the importance of education within juvenile detention centers.

One of the problems in improving juvenile detention education is that there is a great disparity in the way that different states structure and execute their juvenile education programs. For example, in 17 U.S. states, juvenile education programs are run by state education agencies, but in 16 other states, juvenile justice agencies are in charge of the education programs. Some states divide the execution of these programs among multiple organizations. For example, in 11 states, social services agencies control the programs, and in another 22 states, education is partially run by special correctional school districts or agencies. This fragmented implementation means that it difficult to make generalizations about the state of juvenile justice education in the United States. However, despite the fragmentation, a few trends do emerge.

Education for school-aged students, while always important, takes on an extra importance inside juvenile detention centers. Students in these centers are often at a high-risk of dropping out of school. In New York, more than two-thirds of school aged children who serve time in a detention center do not return to a regular school upon their release. Additionally, recidivism is also correlated to education. A landmark study by the Office of Correctional Education at the

4 Id.
5 Id.
7 Id.
U.S. Department of Education showed that inmates who participated in correctional education programs while incarcerated had lower recidivism rates and were one-third less likely to be re-incarcerated in the future, than the non-participants. This is an incredibly important discovery, but upon reflection, it is not surprising. Education within prison can lower recidivism by giving an individual more job opportunities once released, by teaching him independence and skills he can use to build up a new life, and by encouraging him to look for a new job or further educational opportunities instead of returning to illegal activities as a source of income.

Reducing recidivism should be a top goal of all correctional facilities, and especially for juvenile facilities.

Discussing education in juvenile correctional facilities implores us to examine the goals associated with incarceration, and the theories of punishment. It is generally theorized that there are four different functions of punishment: rehabilitation, incapacitation, deterrence, and retribution. Implementing education plans for prisoners speaks most obviously to the aspect of rehabilitation, since an educated individual is better equipped to re-enter the world and become a productive, independent member of society. However, education also speaks to the deterrence aspect of punishment, because individuals that are more education are more likely to find jobs and lead stable lives, and thus may be deterred from committing additional crimes in the future.

Education in juvenile corrections is important because it lowers recidivism, and focuses resources on deterrence and rehabilitation. But despite the obvious advantages, these educational programs are often plagued with problems. The agencies and organizations that control

---

9 Id.
11 24 C.J.S. Criminal Law § 1997
education for incarcerated juveniles face enormous hurdles, above and beyond those of regular schools. The most obvious hurdle results from the demographics of the students. For example, the ratio of students with disabilities to non-disabled students is three times higher in detention centers than in regular schools. In fact, studies estimate that as many as 70% of incarcerated juveniles have learning disabilities alone. Additionally, juveniles in detention facilities have far more risk factors, on average, than the typical school population. In addition to the elevated presence of disabilities, incarcerated students are much more likely to be low-income, male, and minority. These statistics set up daunting hurdles for teachers and educational agencies who attempt to implement programs.

One of the major factors influencing the educational climate in the U.S. today is No Child Left Behind (NCLB), a body of laws passed by Congress and enacted by the Bush Administration in 2001. NCLB focuses on yearly progress of schools and students, and measures that progress through yearly standardized testing. When NCLB was adopted in 2001, lawmakers set the goal that all students would score at ‘proficient’ levels on these standardized tests by the year 2014, and each year until then, “adequate yearly progress” would be made in the direction of that goal. Schools that fail to meet these standards of progress face increasingly harsh yearly penalties including loss of funding, mandated allowance for parents to send their children elsewhere, and possible government take-over of a school.

NCLB was designed as a broad-based program to apply to schools across the country. But NCLB also contains a provision that all states receiving federal funding for education must

13 Id.
15 Id.
monitor the education that takes place in juvenile detention centers, and the detention centers should meet similar standards as regular schools.\textsuperscript{17} However, in contrast to the strict consequences for school that fail NCLB standards, juvenile detention centers that fail to meet standards, or fail to report their statistics at all, have typically faced much less harsh penalties, if any at all.\textsuperscript{18} One study showed that in recent years, 19 of the 50 states have not even included data about juvenile detention centers when they aggregate state-wide data regarding adequate yearly progress.\textsuperscript{19}

It is an obvious reality that the structure of NCLB does not lend itself well to application within juvenile detention facilities. The entire concept of yearly adequate progress is premised on the idea that students are making measurable changes from year to year. However, the turnover rate of students within juvenile detention centers is considerable, as compared to a typical school. Juveniles often cycle in and out of detention centers in months, weeks, or even days. In fact, in facilities that are publicly operated, the average juvenile stays for just six months.\textsuperscript{20} The purported ‘yearly progress’ within a detention center is not, then, a measure of progress of one group of students over time. Instead, it is a measure of one random group of students that took the test one year, and then a measure of the proficiency of mostly different group of students a year later. Whether or not a detention center has improved its educational offerings from one round of incarcerated students to the next to another is not likely to be shown

\textsuperscript{17} Center for Criminology and Public Policy Research, \textit{Incarceration, Education, and Transition in the Life Course of Delinquents}, Florida State University, College of Criminology and Criminal Justice.
\textsuperscript{19} Id.
in standardized test results, because of this high turnover rate.\textsuperscript{21} As a result, AYP reporting is inaccurate in this context, and it is difficult to judge what is effective and what is not.

Another tenant of NCLB is employing ‘highly qualified teachers’. A teacher is designated as ‘highly qualified’ when he or she is fully licensed to teach in that particular state, who holds at least a bachelor’s degree from a four-year college or university, and who successfully demonstrates competence in the subject area he or she teaches.\textsuperscript{22} This is a standard with which it is often difficult for juvenile detention centers to comply. In recruiting the top teachers, juvenile detention centers have to compete with public and private schools. Many teachers may be hesitant to work in detention centers because of the high turnover rate of students and the educational difficulties presented by a classroom inside a jail.\textsuperscript{23} The highly qualified teacher requirement is a perfect example of how NCLB is not tailored to the needs and struggles of detention facilities; NCLB requires detention facilities to comply with its basic guidelines about the quality of teachers employed, but this may be simply impossible for a detention center to execute. A detention center could make a serious and good faith effort to recruit qualified teachers and train its current teachers, yet still be unable to meet the highly qualified teacher standard.

Since the importance of education for incarcerated youth and the hurdles that these institutions face in implementing their programs are clear, I will present my own proposal for a new program. My proposed program first requires the acceptance that NCLB is not a realistic or useful program for juvenile detention centers. Because of this, I would stop requiring states to


\textsuperscript{22} State Board of Education, \textit{No Child Left Behind: Answers to Questions Regarding Highly Qualified Teachers}, Public Schools of North Carolina, (May 15, 2012 8:15 PM), \url{http://www.dpi.state.nc.us/nclb/highly/faqs/}.

apply the ill-filling NCLB policies to juvenile detention centers, and create an entirely separate plan for incarcerated youth, that recognizes the unique challenges presented. Allowing detention centers to operate outside the framework of NCLB would take the focus off of yearly adequate progress, and encourage the centers to focus on rehabilitative, quality education. My plan consists of three main components: 1) re-imagining and focusing the goals of juvenile education, 2) implementing a ‘transitions’ program for students who are nearing their release dates, 3) creating new avenues for teacher recruitment.

The first component is re-imagining goals of education within a detention center. Whereas in regular educational institutions, yearly adequate progress is the hallmark of a ‘successful’ school, I have established that this is not applicable to incarcerated students. In light of the fact that so many juveniles do not return to school after being released, the goal of education inside a correctional facility should be to foster appreciation and enthusiasm for education. This goal should trump even the substance or the breadth of information taught to the students. At first glance, this might sound impractical or overly optimistic, but I think that it has actual applicability. Many incarcerated juveniles have likely struggled in traditional classroom settings in the past, so less traditional, more creative educational methods might be refreshing and inspiring for these students. For example, instead of a typical classroom lecture format, maybe each student could be instructed to design a project in an area of specific interest to them, and then execute it with the oversight of their teacher. They would certainly lack the same resources present at a normal school, but if a detention center has computers or even a set of encyclopedias, a student could easily chose a topic of interest to them, and research this topic area. The self-direction and flexibility of this approach may be able to rekindle an interest in learning or education that was previously lost by incarcerated youth.
Some facilities may be hesitant to move away from a typical classroom approach and implement such a nontraditional learning style. However, I would counter this with the fact that the traditional system has already demonstrated itself to be a failure. As cited above, two-thirds of juveniles do not return to school upon release from a detention facility. Raising that number should be a priority, and a nontraditional educated style might be just the change of pace that some incarcerated juveniles need in order to renew their interest in an education.

The second component of my plan is implementing a ‘Transitions’ program. This would either involve each detention center hiring one new employee to act as a ‘transitions counselor’, or dividing this responsibility up among existing educators and staff. The transitions counselor would begin individual meetings with a juvenile starting approximately one month before that juvenile’s release date from the facility. The purpose of these meetings would be to help prepare the student to re-enter society and to return to school. The meetings would happen regularly during that month, perhaps once a week. At first, the focus of the interaction would be to engage the student in conversation regarding his or her plans upon release, including where he or she will live, go to school, work, etc. It is true that release dates are not always concrete and determinable from one month out, and a student’s status at the facility can change quickly. However, a facility should just make a good faith effort to put a transitions counselor into contact with students before their release, to whatever extent that this is possible.

In addition to being a one-on-one counseling resource for incarcerated juveniles, the transition counselor would also work as a liaison between the detention center and the school to which the juvenile intends to return. If possible, the transitions counselor could contact that school, and ask the teacher and staff at that school how to make the transition easier for them and

---

for the student. This might include getting missed classwork in advance, for the student to complete while incarcerated, so they do return to school already behind. Lastly, if the student completed a semester or a full-year of courses while incarcerated, the transitions counselor would contact the school to see if those credits could transfer as that student re-enters the school.

The third component is creating new avenues for teacher recruitment. The reality of the situation is that juvenile detention centers are rarely, if ever, going to be able to hire the top teachers. They are likely unable to pay salaries that would sway top teachers away from the best private and public schools. Additionally, many teachers may be reasonably hesitant to step into the high turnover rate and risk-factor filled world of a juvenile detention classroom. Therefore, a creative new avenue for teacher recruitment is needed. I propose that juvenile detention centers create a program modeled after AmeriCorps or Teach for America to recruit young, intelligent individuals to spend a year or two teaching incarcerated youth.

The obvious disadvantage of this program is that these teachers would lack experience. But I think the advantages far outweigh a lack of experience. Teach for America has had success in hiring intelligent and motivated individuals, placing them in underprivileged schools, and turning them into excellent teachers, despite a lack of experience. AmeriCorps also recruits young individuals to work for non-profits or government programs for short-term programs, and pays their salary using federal grant money.

This program might be particularly appealing to recent college graduates who are searching for a job, and would be interested in a 1-year program that would impart valuable teaching and job experience. Additionally, the nontraditional learning environment that I proposed above might be particularly well-implemented by these young, inexperienced new teachers, who could be more creative than older, more traditional teachers. Additionally,
although a program where teachers commit for only one or two years could be detrimental inside a regular school, this effect would be mitigated inside a juvenile detention facility. Since the turnover rate of students is so high, a similarly high turnover rate of teachers starting and finishing the program might not be as much of a disadvantage. The transience of both the teaching staff and the students would not be problematic in the individualized, student-focused, and nontraditional learning environment that I discussed above. Additionally, since young teachers recruited by this program would be close in age to the incarcerated youth, they could serve as role models in addition to teachers, in a way that older, established teachers may not be able.

The cost of implementing these changes is certainly a huge consideration. As federal and state budgets are slashed, it might seems impractical or impossible to hire transitions counselors, or launch a teacher recruiting program, both of which would certainly cost additional money. Funding is difficult at all levels of education. Incarcerated students were particularly affected in 1994 when Congress passed the Violent Crime Control and Law Enforcement Act. This act excluded all federal and state prisoners from receiving Pell Grants, meaning prisoners are unable to apply for federal funds to pay for college courses that were available at correctional facilities. Although this did not directly affect younger, school-aged children, it led to an overall degradation of the higher-education programs inside facilities, since students were unable to pay and the programs suffered.25 This type of attitude that devalues the education of incarcerated individuals creates a dangerous, slippery slope. As demonstrated above, incarcerated youth are at a high risk for dropping out of school and education for these individuals is directly tied to decreasing recidivism.

A decrease in recidivism means a decrease in expenditures later, and thus, a worthwhile investment overall. Some may argue that whether or not an individual returns to jail after being released is somewhat irrelevant from a taxpayer perspective, because whether they are being educated in a prison or in a public school, a taxpayer’s dollar is still funding that education. However, the dollar figures do not translate quite so laterally. A study done in Philadelphia determined that on average, taxpayers spend $150,000 to educate one child from kindergarten through senior year of high school (generally a span of about 13 years). However, it costs $300,000 to incarcerate a young person for 10 years (a figure that includes education costs as well as other general living expenses). Therefore, money spent on education to reduce recidivism can lead to a net gain since the cost of incarceration is much higher than the cost of educating non-incarcerated students.

Education for juveniles in the justice system is ripe for improvement. Instead of following the ill-fitting guidelines of NCLB, I proposed a more tailored program that hinges on a creative, non-traditional teaching style, helps students make smooth transitions out of incarceration, and recruits young, motivated individuals to devote a year or two of their careers to incarcerated youth. A tailored program that recognizes the specific needs of juvenile detention centers could go a long way toward decreasing recidivism and increasing the opportunities of incarcerated youth.

---

27 Id.