CHILDREN'S RIGHTS WORKING GROUP

Children in the Adult Criminal Justice System

Scope. In the U.S., thousands of children under 18 are incarcerated in adult prisons and jails on any given day, while scores more pass through the system on an annual basis. The most recent government data reflects that on a single day in 2012, over 6,800 youth were imprisoned in adult jails and prisons across the United States.¹

Implementation of PREA. The regulations implementing the federal Prison Rape Elimination Act (PREA) require that all youth under the age of 18 placed in adult prisons be provided sight and sound separation from adult prisoners,² but state compliance continues to be a challenge.

• Since the Department of Justice finalized PREA standards in August 2012, 9 years after the Act was passed, not a single state has certified compliance.

• Beginning Oct. 2013, federal grant funds were mandated to be withheld from non-compliant facilities, but because the DOJ has not set a date for states to certify compliance, money has not been withheld. As a result, children continue to be held in prisons and jails without sight and sound separation from adults, limitations on solitary confinement and education and treatment consistent with their juvenile status.

• The state of Michigan has taken the position that PREA’s requirements, including sight and sound separation between children and adults are “recommendations.”³

Life Without Parole Sentences (LWOP). While recent U.S. Supreme Court decisions barring LWOP sentences for children convicted of non-homicide offenses (Graham v. Florida),⁴ and barring mandatory LWOP sentences for children convicted of homicide offenses (Miller v. Alabama)⁵ are a positive step, thousands of individuals continue to serve life without parole sentences for crimes committed as children.

• Miller does not categorically prohibit juvenile LWOP sentences in homicide cases.⁶ Post-Miller, two children have been sentenced to life without parole sentences in the state of Michigan alone.

• Many state courts have refused to give Miller retroactive effect.⁷ Pennsylvania and Michigan incarcerate one third of youth who were punished with mandatory LWOP sentences. To date, both states’ courts have ruled that Miller is not retroactive and continue to enforce LWOP sentences for nearly 1,000 individuals. In Michigan, these individuals are denied rehabilitative programming, including education.

• Some state and federal courts have ruled that sentences of extreme length imposed on children without consideration of their child status and that exceed normal life expectancy – de facto life without parole sentences - are not unconstitutional because they technically are not life without parole sentences.⁸ An unknown number of children are serving de facto life sentences in U.S. prisons.
Educational Inequity – De Facto Segregation in Public Education

Inadequate Federal Response to Disparities in Attainment

Scope: The disturbing conditions in public education noted by the Committee in 2006 remain unchanged seven years later: American students continue to attend schools that are deeply segregated by both race and class, and schools serving low-income families and racial minorities consistently lack the funding, resources, and faculty expertise necessary to improve the outcomes of low-income and minority students. The Department of Education has sought to address educational inequity by providing resources for research and consensus building. It chartered the Equity and Excellence Commission to recommend ways federal policy could address disparities. It also issued an advisory guidance on “Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools.” Yet these small steps are insufficient to address the wide disparities in educational outcomes.

Inadequate Enforcement of Title VI. The Department’s Office for Civil Rights (OCR) has failed to consistently enforce school districts’ compliance with Title VI of the Civil Rights Act of 1964. Even in instances where OCR has investigated, agreements between OCR and school districts have not been strictly enforced, nor have they explicitly required that disparities or gaps be closed. In states across the country, funding disparities persist and when state courts declare these disparities unconstitutional, legislatures refuse to take action to close the gaps.

- The current situation in New York demonstrates the need for the federal government to step in when states fail to comply with their own constitutional mandates. In 2010, in response to Hussein v. State of New York, the New York legislature passed legislation to address funding inequity. After promising to decrease disparities, the state began to direct money at affluent districts, whereas low-income districts, with minority students, received far less. Today, Schenectady schools, receive $62 million less than they should have under the 2010 funding legislation. Schenectady has appealed to the federal government since the state has proven unwilling to address the resource equity disparity. The government should enforce Title VI and protect the rights of students to a quality and equitable education.

- In Kansas, students of color from low-income communities attend resource-deprived school districts. Yet, the state chose not to honor the state court ruling in Gannon v. State of Kansas and instead appealed to the State Supreme Court. Furthermore, the legislature and governor have threatened to strip the Kansas courts of jurisdiction in school finance cases, should the court rule against the state. Regardless of the court's decision, the federal government has a critical role to play: either to enforce the ruling demanding equitable funding from the Kansas legislature, or step in to protect the students’ right to a quality and equitable education should the court fail to uphold the state constitution.

Disparities in School Discipline

Scope. Students of color and students with disabilities have long been the victims of discriminatory punishments, such as zero tolerance policies, suspensions, and expulsions. According to CRDC, African American students are three times more likely to be suspended than their classmates. Students with disabilities account for 20 percent of students who receive one out-of-school suspension, while they only make up 12 percent of the student population.

School Discipline Guidance. Since we submitted our report to the committee, the Department of Education released an advisory guidance on school discipline to address the disproportional impact policies have on students of color and students with disabilities.
However, the Department has not provided a plan for oversight and enforcement related to implementation. Guidance alone will not eliminate such issues as the dropout crisis, race-based achievement gaps, class-based achievement gaps, and the school-to-prison pipeline.

Providing suggestions to schools on how to fix these problems will only go so far. The government must investigate these issues and use enhanced enforcement to eliminate resource and education disparities. One solution is for President Obama and Secretary of Education Arne Duncan to implement the recommendations of the Equity and Excellence Commission, which will require the active involvement of all relevant federal offices.

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vi Miller, 132 S. Ct. at 2469.
