

Youth of Color with Disabilities in Chicago: Criminalization as a Violation of Human Rights

By Anna Gurolnick

Advocates' Forum

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In the 2011–2012 school year, there were 49 million students enrolled in school in the United States. Of those, 3.5 million received in-school detention, 1.9 million were suspended, and 130,000 were expelled (Mallett, 2016). These figures emerge, in large part, from zero-tolerance disciplinary policies. According to the U.S. Department of Education, the subjects of these disciplinary actions are overwhelmingly students of color and students with disabilities: Black students were suspended and expelled three times more often than White students and students with disabilities receive out-of-school suspensions at twice the rate of their non-disabled classmates (DOE, 2016b). Students who receive such disciplinary measures are often referred to juvenile courts, even when suspected of minor offenses and misdemeanors. This interconnecting network of systems that keep youth of color from school and trapped by under- or un-employment and permanent detention makes up the infamous school-to-prison pipeline (STPP), or school-prison nexus (Meiners, 2011).

The purpose of this paper is to illuminate the overlap between students of color, students with disabilities, and the criminalization of youth of color. It builds on existing literature that argues how the status of “disabled” is used to segregate students of color from the general education classroom, thereby entrenching them in an alternate pathway of the STPP—a process that proves to be a fundamental violation of their human rights. While this intersection of disability and punishment has been treated in the literature, this paper

focuses on the role of social workers in the educational settings and the context of Chicago, Illinois. Historical and school-level policies and practices foundational to perpetuating this violation will be a part of the analysis. Policy and practice recommendations are made for social workers and the role they can play at the micro-, mezzo-, and macro-levels in advocating on behalf of these youth and upholding their human rights.

Violating National and International Education Policy

Special Education (SPED) encompasses a range of school-provided services and is meant to support youth with a wide variance of disabilities and needs. Such accommodations are part of standard education policy throughout the United States but also recognized as a universal human right. However, in Chicago's public school district, and in districts across the country, SPED has become a means of segregation and punishment for Black and other youth of color through the creation of *multiply marginalized* students (Annamma & Morrison, 2018). As a result, many students who should not be in SPED are categorized as such so as to deny them the opportunity to learn alongside their peers in the general education setting. Students who are in actual need of SPED supports are thus left underserved by schools that dilute already limited resources. The schools also neglectfully fail to uphold the Individualized Education Plans (IEPs) of students with legitimate needs. In Chicago, such students also face reprimands from School Resource Officers who have little to no training in special education services (Menzel, 2010). These circumstances result in many SPED students leaving school prematurely—through expulsion or choice. A significant proportion of these students will wind up in the juvenile and adult legal systems.

According to the United Nation's Convention on the Rights of Persons with Disabilities (CRPD), all state parties must act in the best interests of children with disabilities and are required to provide the necessary

supports to facilitate their learning without discrimination or exclusion from the general education system based on a disability (Articles 7, 24). Moreover, the United Nation's Convention against Discrimination in Education prohibits member states from depriving any person or group access to education of any type on the basis of race (Article 1). Under the United States' Individuals with Disabilities Education Act (IDEA), all students with disabilities are entitled to a Free and Appropriate Education (FAPE) in the Least Restrictive Environment (LRE), which includes the development and use of an Individualized Education Plan (IEP) to meet their specific needs. Despite being required by law, IDEA remains unenforced in school districts that serve low-income students and families of color (Tulman & Schofield, 2015; IDEA, 2020).

Special Education as a Pathway of the Pipeline

Historically, students of color have been assigned SPED status at higher rates than their white peers. Annamma et al. (2016) argue that Disability Critical Race Theory, or DisCrit, can be used to illuminate these forms of segregation on the intersecting basis of ability and race. DisCrit attempts to show how racism and ableism are socially constructed and intentionally interwoven to maintain racial hierarchies—by imposing hyper-surveillance, stigmatizing disability, and using disability labels to perpetuate discrimination against historically oppressed groups. Students placed in the SPED domain are disadvantaged by not being able to access relevant and responsive curriculums, create authentic relationships with teachers, and are stigmatized in a way that lowers self-esteem and motivation (Annamma & Morrison, 2018; Sacks, 2019).

This social segregation occurs in tandem with physical segregation. Predominantly white, female teachers have been found to be prone to excluding non-white students—with both cultural and behavioral differences—from their general education classrooms through the use

of SPED referrals (Mahon-Reynolds & Parker, 2016; Sacks, 2019). Mahon-Reynolds and Parker (2016) describe how white teachers working in schools with higher numbers of students of color lack cultural humility, have lower student expectations, and maintain a *racial working identity* by acting on biases and perceptions of students and their families whose culture and socioeconomic status does not comply with white dominant norms, leading them to see these differences as deficits that can easily be classified as disabilities. Therefore, students of color are more likely to be marked with lower-status disabilities like emotional disturbance (ED) or intellectual disability (ID) whereas disabilities such as attention deficit/hyperactivity disorder (ADHD), speech/language impairment, and autism spectrum disorder are designations that keep students within general education classrooms (Fish, 2019).

Indeed, Black and Hispanic students are diagnosed as needing SPED services at rates 40% and 20% higher than their white peers and are more likely to be segregated to SPED classrooms once labeled. It is these “soft” disabilities, such as ED, ID, and learning disability (LD), that are much more reliant on often-racialized subjective assessments and staff perceptions of ability (Annamma & Morrison, 2018; Annamma et al., 2016; DeWitt, 2017; Meiners, 2011; Mallett, 2016). Research by Fish (2019) found that white students having difficulty in school are more likely to be sorted into higher-status disabilities that provide greater teacher resources, greater accommodations to remain within the general education curriculum, and a “destigmatizing explanation for low performance.” At the same time, Fish writes, “in the context of racial distinctiveness, Black, Latinx, and, less consistently, Native American students who are struggling in school are sorted into lower-status disabilities, excluding them from the general education classroom, segregating them with other lower-performing peers, and allocating a stigmatizing label” (p. 2595).

Black and Latinx adolescents do have higher rates of mood disorders, anxiety, and PTSD compared to their white peers, and at the same time, they are significantly less likely to receive the appropriate mental

health treatment. Therefore, teachers and other school staff who view disruptive classroom behaviors as signs of a disability may well be failing to see indicators of distress from adverse childhood experiences (ACEs) or trauma.

While 45% of country's children and adolescents have had a traumatic experience, Black and Latinx children are traumatized at higher rates (61% and 51% respectively). They are also more likely to have multiple exposures to trauma and adversity stemming from living in communities that are often neglected by public systems from receiving social services. This community neglect causes and perpetuates community violence, domestic violence, or substance abuse and the chance of witnessing it, and sexual, physical, and/or emotional abuse and neglect. Racism and discrimination only exacerbate the negative mental and physical health outcomes of such traumas (Cronholm et al., 2015; Hughes et al., 2020; Pemberton & Edeburn, 2021). Culminating and prolonged trauma can affect cognitive, social, and emotional developments. Such trauma manifests in behavioral issues like impulsivity and anger, difficulty focusing on and retaining school content, withdrawal, lack of trust towards teachers and other school staff, and increased referrals to special education. Students externalizing symptoms of trauma are then disciplined as if acting on choice and kept from receiving appropriate mental health supports (Menzel, 2010).

There is a financial incentive for schools and districts to accept this segregation of students of color. The era of school accountability, building off of neoliberal policies from the late 20th century, was marked by the passage of No Child Left Behind (NCLB) under the Bush Administration in 2001 and Race to the Top under the Obama Administration in 2009. These policies used standardized testing results as a funding incentive—schools with lower test results could have Department of Education funding reduced. When poor-performing students were assigned to SPED classes, however, they were no longer tied to the school's overall performance, giving schools reasons to increase their SPED referrals (Tomlinson, 2016).

Multiply marginalized students are already more likely to attend under-funded and poorly resourced schools, already mired in classrooms that lack high-quality special-education teachers, engaging, culturally responsive and appropriate curriculums, and other SPED resources and technologies (Annamma & Morrison, 2018). In 2016, the U.S. Department of Education under the Obama Administration set forth a regulation known as “Equity in IDEA,” which was designed to ensure that students with disabilities are protected from over-identification, segregation, and harsh discipline—an acknowledgement that there are widespread disparities in the treatment of youth of color with disabilities. The regulation was set to take effect at the start of the 2018-2019 school year and would have required schools who identified disparities in their identification, segregation, and discipline practices to use 15% of their federal special education funds to address these issues (DOE, 2016). Instead, the Trump Administration delayed its implementation despite strong opposition from parents, teachers, districts, and disability rights organizations.

This limited access to quality resources leads to decreased instruction time, increased disengagement, and worsening behavioral problems for those students assigned to SPED and as a result suspension, expulsion, and dropout rates increase. Segregating youth of color from the general classrooms becomes the first step in removing them from the school altogether (McCarter, 2016; Sacks, 2019). Students with a SPED diagnosis are three times more likely to receive an out of school suspension compared to those without disabilities and Black students with disabilities are three times more likely to be removed from school compared to others with disabilities. Those marked as LD or ED are suspended most frequently while Black students with ED drop out of school at a rate of 58% (Annamma et al., 2014; Mallett, 2016).

The Violation Begins in Chicago

Given that Black youth are most likely to be labeled ED and 73% of all U.S. students with ED are arrested, it comes as no surprise that in Chicago 79% of juvenile arrests (in 2013–2014) were Black youth (Annamma et al., 2014; Kaba, 2013, p. 1). Conversely, in 2005, 90% of the minors in the Cook County Juvenile Temporary Detention Center were identified as disabled in some form and in need of SPED services. It was only once these adolescents became detained did it come to light that they were already entitled to, or should have been identified as needing, such services. This is often because their schools were overcrowded, underfunded, and failed to keep and transfer updated records. Where there were IEPs in place, they tended to be generic and vague and remained unmet by the school or schools of attendance (Menzel, 2010).

Seen in this light, Chicago Public Schools (CPS) has been violating the human rights of its students through its discriminatory practices. There is a relevant history here. Scott and Saucedo (2013) detail how the first ever juvenile court and detention center was created in Chicago by Jane Addams. Their original purpose was to keep youth out of adult jails and prisons, but with the mandatory sentencing laws that came in the 1970s and 1980s, there was the increased incarceration of young people. The proliferating criminalization of young people continued into the 1990s, when the Illinois General Assembly passed the Reporting Drug Violations Act. The law's use of drug-free school zones meant drug offense arrests took students from schools to youth or adult courts. Zero tolerance policies came with the Gun Free School Zones Act of 1990 while the Chicago Gang Congregation Ordinance of 1992 allowed for the surveillance and arrest of young men of color in poor communities on the assumption of gang affiliation and Chicago Public Schools' expulsion numbers increased from 81 to 1,000 from 1995 to 1998 (McCarter, 2016; Scott & Saucedo, 2013).

Black students represent 31% of school-based arrests despite only making up 16% of the national school population, and Black students with disabilities are arrested at the even higher rate of 40% compared

to white peers with disabilities at 27% (Annamma et al., 2014; Froelich, 2020). In 2003, the Illinois Criminal Justice Information Authority reported a high correlation between a county having a detention center increased detention rates. By 2012, Illinois had six Juvenile Correctional Facilities and 17 county-based Juvenile Detention Centers, for a total of 23 sites where those aged 11-16 could be incarcerated (Scott & Saucedo, 2013). These policies contribute to the creation of Chicago's STPP, criminalizing and incarcerating youth of color with disabilities as a violation their human rights.

School Resource Officers Perpetuate the Pipeline

In more recent years, Cook County and CPS have contracted police to work in schools as School Resource Officers (SROs). Their job is to monitor and detain students under the illusion of school safety, which lead to a series of further human rights abuses. In 2010, CPS spent \$51.4 million on SROs, which was fifteen times more than the \$3.5 million spent on college and career coaches. CPS gave high schools the opportunity to exchange POs for \$25,000 and only four schools out of 122 (3%) gave up both of their assigned officers while 12 gave up one officer (10%). By 2016, 67% of SROs in Chicago had complaints filed against them, 31% had received three or more complaints, and 11% had 10 or more complaints and between 2012-2016, CPS paid over \$2 million in SRO misconduct settlements, with 75% of the settlements citing excessive force against a minor (Froelich, 2020; Kaba, 2015).

Until 2020, the 248 police working as SROs in CPS were not required to have any formalized or specialized training in adolescent psychology or development, how to work with youth experiencing violence and trauma, or on behavioral safeguards for students with IEPs, even though just under 15% of CPS students in the 2019-2020 school year had IEPs and 75% of children had at least one traumatic

experience at the national level (Froelich, 2020). CPS had no formalized agreement with the Chicago Police Department (CPD) regarding their explicit roles and responsibilities in schools and were unable to produce an accurate list of which POs were stationed in which schools. There was no policy preventing SROs from inaccurately listing students in the CPD gang database and from 2009-2018—CPS ran over 87,000 gang database inquiries, making CPS ranked third in number of database inquiry conductions made by an external agency. CPD used an additional separate database tool (known as CLEAR) that allowed SROs to file reports on students just for violating school policies and was kept confidential from the public.

Froelich (2020, p. 126) details the case of Dnigma Howard, one that clearly demonstrates CPS' violations of Human Rights Conventions 1 and 2. Howard was a student at Marshall Metropolitan High School and her IEP allowed her to ask for the school social worker at any time she has behavioral or emotional issues while at school. In 2019, then 16-year-old Dnigma's teacher demanded SROs escort her out of school for having a cell phone in class. Before security footage was released showing that unprovoked, she had been tackled down a flight of stairs, beaten, and tasered in front of teachers and classmates, she was charged with two counts of felony aggravated battery, which would have led to her expulsion and jail time.

The social worker was unavailable to her on the day of her attack. In 2018, CPS had a 1,200:1 ratio of students to social workers, 950 students more than the 250:1 ratio recommended by the National Association of Social Workers (NASW), and there were more SROs than social workers in Dnigma's school during her arrest (Froelich, 2020).

The Role of Social Workers in Changing Policy and Practice

The University of Chicago Consortium on School Research suggests school climate and quality of relationships do more to create safe

schools than do metal detectors or SROs (McCarter, 2016, p.55). Social workers within Chicago's education and juvenile legal systems can and must protect the human rights of youth who are—fairly or unfairly—diagnosed with disabilities. At the mezzo level, social workers in schools and Juvenile Correctional Facilities (JCFs) can work with legal staff and disability civil rights organizations—such as *Equip for Equality*—to support student re-enrollment, reverse expulsions, and transition schools away from punitive policies and towards appropriate behavioral supports, interventions, and evaluations. Regarding mental health services at the micro level, clinicians such as licensed social workers are skilled in trauma-informed care (TIC) and can help create school and classroom environments that are trauma-informed where educators and other school personnel are unable to recognize signs of trauma and the effects of trauma on student learning and achievement. A trauma-informed community is one that provides physical and emotional safety, something especially important for students of color and with disabilities who may have intersecting experiences with discrimination (Pemberton & Edeburn, 2021). SAMSHA's TIC framework is made up of six guiding principles of (1) safety; (2) trustworthiness and transparency; (3) peer support; (4) collaboration and mutuality; (5) empowerment, voice, and choice; and (6) cultural, historical, and gender issues (SAMSHA, 2014). In tangent with this, social workers can help schools adopt multi-tiered systems of support (MTSS) by employing practices of Positive Behavioral Interventions and Supports (PBIS) and Social and Emotional Learning (SEL) to support all students in the general classroom environment, and provide more targeted support and services to those diagnosed with ED or struggling with externalizing behaviors to increase their sense of belonging, self-regulation, and self-worth (Korinek, 2020; Mallett, 2016; McCarter, 2016; Osher et al., 2012).

Social workers can also promote choice and voice as a trustworthy adult who works closely with youth, in addition to school staff and parents, by acting as an advocate on the IEP team and ensuring that the appropriate accommodations are upheld in practice. Having a

foundation in social-justice oriented work that always looks at the mutual interactions between a person and their environment, social workers can also provide professional development to staff on cultural humility and involve parents, students, and community members to collaboratively strengthen school climate and create culturally informed practices. When implemented effectively and appropriately, social workers can have success with Restorative Practices like the study that Mallet (2016) highlights that identified four high schools in the Chicago Public School system that had implemented varying degrees of restorative programming including mediation, peer juries, conferences, and peace circles over two academic years and saw up to 80% reductions in student misconduct and arrests and improvements in attendance.

Legal aid services are another avenue that would benefit from the integration social workers at the mezzo level. Tulman and Schofield (2015) describe a D.C. case study that involved legal aid lawyers transforming delinquency defendants into special education plaintiffs by enforcing existing constitutional rights that are already guaranteed by IDEA and FAPE for students who should be receiving special education services, but are usually ignored in practice. Their lawyers worked predominantly with minoritized families with low economic status (i.e., those least likely to receive appropriate special education needs). If a similar system were instituted in Chicago, social workers who are versed in special education law, trauma-informed services, and the criminal legal system should be tasked with training and working alongside legal aid advisors to support and advocate for youth at the court level. They can also collaborate to ensure instruction continues during out of school suspensions and to ensure juvenile detentions centers have the appropriate SPED services to assess and identify student learning needs, and can advocate for credit transfers when youth are re-enrolling in school.

At the macro level, social workers must create systemic policies and uphold SPED law to dismantle the pipeline, ensuring that students are provided the appropriate services since up to 85% of children in JCSs

have disabilities that are eligible for SPED services, but only 37% received any kind of services in their home schools (Mahon-Reynolds & Parker, 2016; Menzel, 2010). Social workers can improve data collection, analysis, and dissemination of information to different but overlapping sectors (McCarter, 2016) to explain the ways that education, juvenile justice, and child welfare systems cohesively violate the human rights of students of color with disabilities. Knowing that punishment in the form of suspension and expulsion are likely indicators of future incarceration that disproportionately impact both students of colors and those with disabilities, and for the sake of helping to generate sustainable and long-term solutions, social workers must consider their current role in this intersection of school-based policies and practices and the criminal legal system (Meiners, 2007, p. 3). This work is urgent and demands acknowledgement and action now.

Author Note

The core of my piece originally came from a course prompt regarding human rights. The United States is one of the only countries to not acknowledge that children have human rights. Beyond this, we know that historically marginalized youth are even more susceptible to having their human rights violated. With my background in education, including coming from a family of educators, I began exploring the ways in which social work, juvenile justice, and education interact to impact the well-being of youth. I took a particular interest in learning how this intersection exists in Chicago, given that I was born and raised in the city and have seen the many ways inequities are perpetuated across the school district. As a future social worker, I am seeking to work at the intersection of policy, research, and practice to ensure that we are creating practice-inspired policies built from the ground up and led by the voices of those most impacted by these policies. Education is the backbone of our country and schools should be sites for change and imagination. Yet, we see so much harm done to our students, especially in the ways that youth of color and those

with disabilities are punished and restricted from learning, connecting, and growing into their full potential. Knowing that social work and education has been dominated by white women, and in writing this piece as a white woman, it was necessary for me to be critical of the ways we have perpetuated and upheld inequitable power dynamics and to be reflective of my own perspectives and positionalities while researching, writing, and suggesting solutions to harms we have caused. Students of Chicago are innovative, boundless, and passionate agents of change, and we have much to learn from them. Writing this piece encourages me to be a part of adapting the systems and practices of the very school system I was a part of and that shaped much of who I am today. My journey of lifelong learning continues with this piece, and I look forward to finding new ways to learn from and work alongside the students, parents, teachers, and communities that are the heart of Chicago.

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Author Biography

Anna Gurolnick (she/her) is a Chicago native and dual-degree student studying social work and public policy at the Crown Family School of Social Work, Policy, and Practice and Harris School of Public Policy. She is passionate about doing work that is rooted in community, collaboration, and youth-empowerment.

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