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Madison Neale

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BREAKING BARRIERS: EXAMINING THE IMPACT OF
SPECIAL EDUCATION SERVICES ON JUVENILE JUSTICE
INVOLVEMENT

*Madison Neale**

* Madison Neale is a 3rd year law student at the University of Richmond School of Law. During her time at UR, she has dedicated her studies to public interest legal matters with the ultimate goal of becoming a Public Defender after graduation. To that end, Madison has had several internships with both public and private criminal defense offices, and participated in both the Wrongful Convictions Clinic and the Children's Defense Clinic at UR, where she has worked on a variety of criminal legal matters with child and adult clients. She is also part of such organizations as the Richmond Criminal Justice Forum, Richmond Women's Law, and serves the role of Copy Editor on the Richmond Public Interest Law Review. Much of Madison's legal education has been undertaken with an eye toward defending child clients, which sparked her interest in the intersection between special education and juvenile justice involvement, which embodies a pervasive problem in the juvenile justice space. As Madison nears the end of her tenure as a law student, she aims to continue exploring the causes of and solutions to juvenile justice involvement, employing a client- and child-centered approach.

ABSTRACT

The following article is an exploration of the intersection between special education—namely, the long-repudiated practice of removing children with moderate disabilities from general education classrooms and placing them into “self-contained” classrooms away from their peers—and the involvement of those children in the criminal legal system. The article analyzes the parallels between the “othering” effect of segregating children with disabilities in schools, and the eventual segregation from their communities that they face in juvenile detention facilities. In a juvenile justice system where a disproportionate number of its children have been diagnosed with some form of intellectual or behavioral disability, this article implores the reader to ask whether the public education system is complicit in setting children with disabilities on a path to incarceration, and what changes in attitude and policy will be required to change this. Finally, this article provides a stark reminder of the fact that the problems which face children with disabilities are only compounded by issues of race and class, to which legal counsel and the public education system must not turn a blind eye.

INTRODUCTION

In the ever-evolving landscape of American education, the journey toward equitable practices for students with disabilities is a narrative of both progress and persisting challenges. With the enactment of the Individuals with Disabilities Education Act (IDEA) in 1975, a monumental stride was taken toward ensuring every child’s right to a “free appropriate public education” (FAPE).¹ Yet, the echoes of historical discrimination still reverberate, particularly within the realms of special education and juvenile justice. As we delve into this critical juncture, we confront the stark realities faced by students with disabilities, from the complexities of classroom placement to the staggering statistics of juvenile incarceration. Their stories, entwined with the threads of policy, practice, and prejudice, compel us to unravel a narrative that holds profound implications for both education and justice for youth in our society.

In the grand scheme of the American education system, modern practices for educating students with disabilities are still in their infancy.² The Individuals with Disabilities Education Act (IDEA), formally known as the Education for All Handicapped Children Act (EHA), is the primary law

¹ See Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476, 104 Stat. 1103, 1112 (1975) (codified as amended at 20 U.S.C. § 1400 (2019)).

² See THINK change TTT, Disability and School-to-Prison Pipeline, YOUTUBE (Apr. 10, 2020), <https://www.youtube.com/watch?v=qj7OSVQ1n88>.

laying out current requirements that public schools must meet in order to provide a comprehensive education to students with disabilities.³ The EHA, passed in 1975 by President Gerald Ford, was truly a landmark bill at the time of its passage, mandating that students with disabilities be given access to a “free appropriate public education” for the first time in American history.⁴

Prior to the passage of the EHA, less than fifty years ago, public schools were legally allowed to discriminate against students solely on the basis of their disability, leading to many children and adults with a range of disabilities being institutionalized and receiving no formal education.⁵ Children were denied access to schools based on physical impairments (blindness, deafness, mobility impairments, etc.), intellectual disabilities, and emotional disturbances.⁶ These practices lead to nearly 1.8 million children with diagnosed disabilities being separated from their peers and denied a formal education.⁷

Diagnosis in the 1970s and earlier lacked the formality that schools employ today, leading to results that are irreconcilable with modern concepts of how best to address disabilities and mental health impairments. Stigma surrounding mental health led to the individual needs of children being ignored or very poorly addressed.⁸ Children with intellectual disabilities were broadly labeled as “mentally retarded” with no other specification, a term which has fallen out of use due to the discriminatory behavior with which it was linked.⁹ To the contrary, IDEA has now designated thirteen categories of disabilities under which children can be diagnosed, which cover cognitive, behavioral, and physical impairments.¹⁰ If a child is found to fit the criteria of one or more of these categories, they will receive an Individualized Education Program (IEP), which can include a range of services designed to

³ A History of the Individuals with Disabilities Education Act, U.S. DEP'T OF EDUC. IDEA, <https://sites.ed.gov/idea/IDEA-History#Pre-EHA-IDEA> (last visited Jan. 3, 2024).

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Anna Cataldo-Holmes, *Mental Health in Special Education*, TRINITY COLL.: TRINITY BANTER (May 4, 2018), <https://commons.trincoll.edu/edreform/2018/05/mental-health-in-special-education-comparing-the-1970s-to-today/>.

⁹ Id.

¹⁰ IDEA Disability Classification, CMTY. INCLUSION & DEV. ALL., https://cidainfo.com/import_ant_laws-idea-disability-classification/ (last visited Jan. 3, 2024).

accommodate their needs and ideally ensure their ability to reap the full benefits of their education.¹¹

Today, IDEA is not the only federal law that impacts students with disabilities; to the contrary, the legal landscape of special education is fairly complicated. IDEA works in conjunction with Title II of the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973—both of which protect against unlawful discrimination on the basis of a person’s disability.¹² Accommodations under Section 504, like IDEA, can help a child receive services throughout the school day based on a disability that impairs “major life activities.”¹³ Section 504 accommodations differ slightly from IEP accommodations in that they are not specifically directed at addressing discrete learning impairments.¹⁴ Additionally, the No Child Left Behind Act (NCLB) creates national standards of performance for all students learning in public schools, with an eye towards improving the academic performance of the nation’s poor and disadvantaged students.¹⁵ However, despite the numerous and expansive legislation created to address the uneven landscape of the American education system, pervasive inequities persist.

The United States Department of Education (DOE) touts the success of IDEA and related legislation for opening the door to students with disabilities into the world of public education.¹⁶ However, the implementation of IDEA has often been incongruous with its mission statement to provide a “free appropriate public education” to all students.¹⁷ Many criticize IDEA and its lackluster application, which some view as allowing for modern-day

¹¹ See Individualized Education Program (IEP), VA. DEP’T OF EDUC., <https://www.doe.virginia.gov/programs-services/special-education/iep-instruction/individualized-education-program-iep> (last visited Jan. 3, 2024).

¹² See Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat 327 (codified as amended in scattered sections of 42 U.S.C. and 47 U.S.C.); The Rehabilitation Act of 1973, 29 U.S.C. §§ 701-796(l); About IDEA, U.S. DEP’T OF EDUC., <https://sites.ed.gov/idea/about-idea/> (last visited Jan. 3, 2024).

¹³ Your Rights Under Section 504 of the Rehabilitation Act, U.S. Dep’t of Health and Hum. Services (June 2006), <https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/504.pdf>.

¹⁴ See IEP’s and 504 Plans, Va. Legal Aid Soc’y, <https://vlas.org/special-programs/ask-advocating-for-special-kids/special-education/pre-school-through-12th-grade/ieps-and-504-plans/#:~:text=An%20IEP%20requires%20that%20a,or%20her%20ability%20to%20learn> (last visited Jan. 3, 2024) (“[a]n IEP requires that a child has one or more of the 13 disabilities listed in IDEA and the disabilities must affect his or her educational performance or ability to learn from the general curriculum. A 504 plan only requires that a child has any disability which interferes with his or her ability to learn”).

¹⁵ See Candace Cortiella, NCLB and IDEA: What Parents of Students with Disabilities Need to Know and Do, Nat’l Ctr. on Educ. Outcomes 1, 6 (2006), <https://nceo.umn.edu/docs/onlinepubs/parents.pdf>.

¹⁶ See A History of the Individuals with Disabilities Education Act, *supra* note 4.

¹⁷ Education of the Handicapped Act Amendments of 1990, 20 U.S.C. § 1400.

segregation reminiscent of the days of “separate but equal.”¹⁸ All too often, students with a range of disabilities are placed into classrooms separate from their peers, where they are given an incomplete education and are cast as “other” in the eyes of their classmates.¹⁹

There is no denying that IDEA has improved overall access to education for students with disabilities since its inception (as the EHA).²⁰ Still, despite IDEA’s mission to equalize education for all students, it has had a markedly uneven application, namely across socioeconomic and racial lines.²¹ Children from financially disadvantaged homes and children of color have not received equal treatment under IDEA as compared to their wealthier and whiter peers.²² For advocates of equitable special education services, opening the door is not enough; now the fight is to break down the barriers within the schools themselves.

Policy watchers fear that, not only have public schools failed to meet the goals set forth by IDEA, but that failed implementation of IDEA’s principles is contributing to the school-to-prison pipeline.²³ The American Civil Liberties Union (ACLU) calls the school-to-prison pipeline “a disturbing national trend wherein youth are funneled out of public schools and into the juvenile and criminal legal systems.”²⁴ Vulnerable children—children from poor and often predominantly non-white communities—are neglected, undereducated, and over-punished, the culmination of which can eventually land them in a juvenile detention and/or adult correctional facility.²⁵ A disproportionate amount of these children have diagnosed disabilities.

While thirteen to fifteen percent of children in American public schools have a diagnosed disability, that number rises to thirty to sixty percent in

¹⁸ See *Plessy v. Ferguson*, 163 U.S. 537 (1896).

¹⁹ See *Breaking the School-to-Prison Pipeline for Students with Disabilities*, Nat’l Council on Disability 33 (2015), www.ncd.gov/publications/2015/06182015.

²⁰ See *A History of the Individuals with Disabilities Education Act*, *supra* note 4.

²¹ See Kara Arundel et al., *Equity in IDEA: Why Racial Disparities Are Increasing in Special Ed Programs, K-12 DIVE* (July 31, 2023), <https://www.k12dive.com/news/Schools-examine-racial-disparities-in-special-education/688716/#:~:text=Education%20Department%20statistics%20for%20the,2.3%25%20of%20total%20student%20enrollment>.

²² See Laura A. Schifter et al., *Students from Low-Income Families and Special Education*, The Century Found. (Jan. 17, 2019), <https://tcf.org/content/report/students-low-income-families-special-education/>.

²³ See Kara Arundel et al., *supra* note 22.

²⁴ *School-to-Prison Pipeline*, ACLU, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline> (last visited Jan. 3, 2024).

²⁵ *Id.*

juvenile detention centers—a shocking contrast worth evaluating.²⁶ Both anecdotal evidence and quantitative data indicate that placing students with disabilities into self-contained classrooms, when they are capable of learning in a general education classroom, exacerbates the challenges these students face and can, in extreme cases, become the catalyst for a host of behavioral problems that worsen over time. The cumulative effect of poor placement, lack of services, detachment from peers, and punitive responses to behavioral challenges all come to play a role in the school-to-prison pipeline phenomenon.²⁷

Furthermore, despite the overrepresentation of students with disabilities in juvenile correctional facilities, educational resources within those facilities are even more seriously lacking. The isolation and sub-par education that students risk facing in self-contained classrooms is exponentially heightened in juvenile correctional facilities.²⁸ Rates of illiteracy, mental health challenges, and recidivism, among other things found within the juvenile correctional context, further emphasize the harm that is done onto children with disabilities when they are isolated. The interconnected nature of these issues within the school-to-prison pipeline is indicative of the systemic nature of these problems.

Part I of this essay will explore how inappropriately placing students into self-contained classrooms while they are in public school plays a role in the school-to-prison pipeline through segregation and the inadequate provision of resources to already vulnerable students. Part II will explore how failure to comply with IDEA and NCLB requirements within juvenile detention centers perpetuates the under-education of students with disabilities, furthering the achievement divide between those students and their peers and worsening issues like recidivism, school attendance, and other interrelated concerns.

²⁶ NCLD Report Examines Disproportionate Involvement of Youth with Disabilities with the Juvenile Justice System, Council for Exceptional Child. (Dec. 9, 2022), [https://exceptionalchildren.org/blog/ncld-report-examines-disproportionate-involvement-youth-disabilities-juvenile-justice-system#:~:text=Approximately%2065%2D70%20percent%20of,30%2D60%20percent%20have%20disabilities.%;%20https://www.ncl.org/wp-content/uploads/2022/12/NCLD-Unlocking-Futures-Final-7th-Dec-Updated-.pdf%20\(p.2\);Jessica%20Snydman,Nat'l%20Ctr.%20for%20Learning%20Disabilities,%20Unlocking%20Futures:%20Youth%20with%20Learning%20Disabilities%20&%20the%20Juvenile%20Justice%20System%206%20\(2022\);The%20State%20of%20Children%20With%20Disabilities%20and%20Special%20Health%20Care%20Needs,%20Annie%20E.%20Casey%20Foundation%20\(Aug.%209,%202023\),%20https://www.aecf.org/blog/the-state-of-children-with-disabilities-and-special-health-care-needs#:~:text=Students%20With%20Disabilities&text=Since%202010%2D11%2C%20this%20total,total%20public%20school%20student%20population.](https://exceptionalchildren.org/blog/ncld-report-examines-disproportionate-involvement-youth-disabilities-juvenile-justice-system#:~:text=Approximately%2065%2D70%20percent%20of,30%2D60%20percent%20have%20disabilities.%;%20https://www.ncl.org/wp-content/uploads/2022/12/NCLD-Unlocking-Futures-Final-7th-Dec-Updated-.pdf%20(p.2);Jessica%20Snydman,Nat'l%20Ctr.%20for%20Learning%20Disabilities,%20Unlocking%20Futures:%20Youth%20with%20Learning%20Disabilities%20&%20the%20Juvenile%20Justice%20System%206%20(2022);The%20State%20of%20Children%20With%20Disabilities%20and%20Special%20Health%20Care%20Needs,%20Annie%20E.%20Casey%20Foundation%20(Aug.%209,%202023),%20https://www.aecf.org/blog/the-state-of-children-with-disabilities-and-special-health-care-needs#:~:text=Students%20With%20Disabilities&text=Since%202010%2D11%2C%20this%20total,total%20public%20school%20student%20population.)

²⁷ See Marilyn Elias, *The School-to-Prison Pipeline*, Teaching Tolerance, Spring 2013, at 39.

²⁸ See Karen Sullivan, *Education Systems in Juvenile Detention Centers*, 2018 BYU EDUC. & L.J. 71, 89-91 (2018).

I. SELF-CONTAINED CLASSROOMS IN PUBLIC SCHOOLS

Students with disabilities may be placed in either a general education classroom, sometimes called an integrated or inclusive classroom, or they can be placed into self-contained classrooms, which are classrooms entirely made up of other students with disabilities.²⁹ They may be placed in either of these classrooms exclusively, or they might alternate between the two throughout their school day. Broadly speaking, inclusive classrooms have been shown to produce far better outcomes for students with disabilities. In contrast, self-contained classrooms have been shown to produce worse outcomes for students in a number of categories. These categories include things like proficiency in reading, writing, and math, the number of suspensions or expulsions a student receives, and whether or not the student eventually graduates with a high school diploma at all, to name a few.³⁰

It is important to note that, for children with more severe disabilities, a self-contained classroom environment may be necessary in order for those students to receive individualized attention throughout the day.³¹ However, most students are unlikely to have a disability so severe that they cannot learn in an inclusive classroom for all or part of the school day.³² IDEA is meant to provide guidance to school staff regarding how to place students in either inclusive or self-contained classrooms appropriately, however, the current language is highly discretionary.³³ This, combined with external biases and a general lack of legislative compliance, leads to students being placed in self-contained classrooms more frequently than is necessary.

The fact that inclusive classrooms produce better outcomes for most students is no secret. In 2004, IDEA was updated to align more closely with NCLB, and one of the primary changes was to mandate that students learn in the “least restrictive environment” (LRE) possible.³⁴ Under IDEA, students should have a “continuum” of settings made available to them to best address

²⁹ Trina D. Spencer, Self-contained Classroom, in *Encyc. of Autism Spectrum Disorders* 2721-2722 (Fred R. Volkmar ed., 2013).

³⁰ Special Education Indicators, Va. Dept. of Educ., <https://www.doe.virginia.gov/data-policy-funding/data-reports/data-collections/special-education/special-education-indicators> (last visited Jan. 3, 2024).

³¹ Grace Chen, Understanding Self Contained Classrooms in Public Schools, *Pub. Sch. Rev.* (May 12, 2023), <https://www.publicschoolreview.com/blog/understanding-self-contained-classrooms-in-public-schools>.

³² How Much Time Do Students With Disabilities Spend in “Regular” Classrooms?, *Univ. of Wash.: Disabilities, Opportunities, Internetworking, and Tech.* (April 9, 2021), <https://www.washington.edu/doit/how-much-time-do-students-disabilities-spend-regular-classrooms>.

³³ See generally Individuals with Disabilities Education Act, 20 U.S.C. § 1400(d) (2004).

³⁴ Candace Cortiella, NCLB and IDEA: What Parents of Students with Disabilities Need to Know and Do, *supra* note 16, at 8.

their needs while keeping them engaged with their school community.³⁵ This means placing students with disabilities in self-contained classrooms only when absolutely necessary.³⁶ IDEA states that students should only be placed in self-contained classrooms when “the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”³⁷ Despite this declaratory language, uniform enforcement of these standards has proven difficult to achieve. Studies have found that implementation of these standards is far from uniform across racial and economic groups, and that self-contained classrooms are still being generally overused despite IDEA’s guidance.³⁸

The students under the umbrella of special education who have been shown to suffer the most from inconsistent application of IDEA principles are students of color.³⁹ The National Assessment of Educational Progress (NAEP), also referred to as “the nation’s report card,” provides the most comprehensive data depicting learning achievement on a national scale.⁴⁰ Data from NAEP shows that, not only do students with disabilities score worse on reading and math comprehension than do students without disabilities, but furthermore that non-white students with disabilities consistently score worse than white students with disabilities.⁴¹ One reason for this is undoubtedly that students with disabilities who are also people of color (POC) are more frequently funneled into self-contained classrooms when their white peers are not.⁴²

The U.S. Department of Education conducted a study, which found that in public schools, 64.5% of white students with disabilities were in a regular class for eighty percent or more of the day.⁴³ This is more than any other racial demographic considered by the study.⁴⁴ Students of all other races

³⁵ Six Principles of IDEA The Individuals with Disabilities Education Act, ASK Res. Ctr., <https://www.askresource.org/resources/six-principles-of-idea> (last visited Jan. 3, 2024).

³⁶ Candace Cortiella, NCLB and IDEA: What Parents of Students with Disabilities Need to Know and Do, *supra* note 16, at 8.

³⁷ 20 U.S.C. § 1412(a)(5)(A).

³⁸ U.S. Dep’t of Educ., 36th Ann. Rep. to Cong. on the Implementation of the Individuals with Disabilities Educ. Act 1, 27 (2014).

³⁹ See Letter from Jonathan M. Young to the President of the United States (Oct. 31, 2011) (on file with the National Council of Disability).

⁴⁰ About NAEP, Nat’l Ctr. of Educ. Progress (Aug. 16, 2023), <https://nces.ed.gov/nationsreportcard/about/#:~:text=The>.

⁴¹ Letter from Jonathan M. Young to the President of the United States, *supra* note 40.

⁴² U.S. Dep’t of Educ., 36th Ann. Rep. to Cong. on the Implementation of the Individuals with Disabilities Educ. Act 79 (2014).

⁴³ *Id.*

⁴⁴ *Id.*

considered by the study (American Indian or Alaskan Native, Asian, Black or African American, Hispanic/Latino, Native Hawaiian or Other Pacific Islander, and “two or more races”) found themselves in “regular class” (inclusive classrooms) less frequently.⁴⁵ Of the POC included in the study, children identified as Native Hawaiian/Pacific Islander fared the worst, with only 53.9% of those children being placed in inclusive classrooms for eighty percent or more of the day.⁴⁶ Although other non-white students fared much better, they were all still less likely to be placed in inclusive classrooms than their white peers.⁴⁷ 55.6% of Black students, 56.6% of Asian students, 62.6% of American Indian or Alaskan Native students, and 60.1% of Hispanic/Latino students were in inclusive classrooms eighty percent or more of the day.⁴⁸ Although seemingly minimal, small percentage points account for large numbers of students across the country.

The correlation between poor academic performance and over-placement in self-contained classrooms underscores IDEA’s position, which emphasizes using self-contained classrooms only when necessary. Variables such as the pace of learning, levels of comprehension, and specific required services can vary dramatically from one child to another and are influenced by a myriad of individual characteristics, including their unique disabilities. Removing a child from an inclusive classroom setting not only deprives them of a more enriching academic environment, but it also hinders collaborative learning experiences with their peers. It can also limit them to receiving instruction tailored to students with different abilities than they have, which may not meet their academic needs.

Scholars strongly believe that discrepancies in placement are largely a result of implicit biases.⁴⁹ Distinguishing between implicit and explicit racial bias in this context is crucial because an individual’s implicit biases are not always detectable in their outward attitudes and abstract beliefs, but are visible through their actions.⁵⁰ Implicit bias may lead teachers or school administrators to place a student of color in a self-contained classroom because they view that child as less capable of meeting goals than white students. An article in *Educational Researcher* explains that “explicit attitudes and implicit associations are only mildly correlated . . . this may help explain why racial disparities in schools can persist even when genuine,

⁴⁵ Id.

⁴⁶ Id. at 47.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ See Natasha Warikoo et al., *Examining Racial Bias in Education: A New Approach*, 45 EDUC. RSCH. 508, 509 (2016).

⁵⁰ Id.

well-motivated efforts are made to reduce them.”⁵¹ Implicit biases like these are more difficult to guard against with optional procedures, and instead require mandatory policies to weed out bias even where one might think there is none. IDEA’s policies that require inclusion “where appropriate” and “to the maximum extent appropriate” fail to adequately address the implicit racial bias in the process of assessing and providing services to students with disabilities.⁵²

Unnecessary placement in a self-contained classroom cannot only be detrimental to a student’s learning but to their self-image as well. An article written in 1972, shortly before the first iteration of IDEA was passed, reported the following regarding placing students in self-contained classrooms: “Research at the elementary school level . . . indicated that the young child’s self-concept drops following placement in a self-contained special class for the educable mentally [disabled].⁵³ At the high school level, the self-concept of the special class educable [disabled] student was found to be lower than that of non [disabled] students in regular classes.”⁵⁴ These sentiments still ring true today. Many children are embarrassed by the fact that they have to learn in a modified setting, making them feel less capable than their classmates.⁵⁵

A person’s self-image at such a young age is often critical to their life-long development; low self-image may lead to the development of defiant behaviors during adolescence, potentially creating a self-fulfilling cycle.⁵⁶ When placed in self-contained classrooms, students with disabilities may internalize a sense of being “different” or “less capable” than their peers in inclusive settings. Such feelings of inadequacy can erode their confidence and self-esteem over time, ultimately affecting not only their academic performance but also their social interactions and long-term aspirations.⁵⁷ Consequently, it becomes imperative that educational environments foster

⁵¹ *Id.*

⁵² *See* 20 U.S.C. § 1412(a)(5)(A).

⁵³ Reginald L. Jones, *Labels and Stigma in Special Education*, 38 COUNCIL FOR EXCEPTIONAL CHILD. 553, 560 (1972).

⁵⁴ *Id.* (the article quoted uses the word “retarded,” which was the accepted language at the time. This has been changed to say “disabled,” to reflect the appropriate language of today).

⁵⁵ *Id.* at 560-61.

⁵⁶ *See* Michal (Michelle) Mann et al., *Self-Esteem in a Broad-Spectrum Approach for Mental Health Promotion*, 19 HEALTH EDUC. RSCH. 357, 362 (2004) (“[w]hile the causes of such behaviors are multiple and complex, many researchers have identified self-esteem as a critical factor in crime prevention, rehabilitation and behavioral change”).

⁵⁷ *See id.*

inclusivity and provide every student, regardless of their abilities, with the opportunity to thrive, learn, and develop a positive sense of self.⁵⁸

Furthermore, whether or not a student with a disability is actually displaying challenging behaviors, something known as the “labeling phenomenon,” can cause children to be associated with negative behaviors merely because they have been diagnosed with a disability.⁵⁹ This is yet another form of implicit bias which can work its way into the student-teacher relationship. Separating students into self-contained classrooms can serve as confirmation that those students are more “difficult” than students without disabilities. These practices can form a vicious cycle wherein the student is labeled as difficult, treated as such, and then develops defiant behaviors as a response, confirming the teacher’s bias. It can be difficult to extract what behaviors are a product of the child’s environment and what are not. These exchanges so often lead to school-based punishment—the first step of the school-to-prison pipeline for far too many students.⁶⁰

Students of all races with a disability are more likely to receive in-school and out-of-school suspensions than their classmates.⁶¹ However, students of color with disabilities have the odds further stacked against them. A study from 2014 found that twelve percent of white boys with disabilities and six percent of white girls received out-of-school suspensions in public schools.⁶² By comparison, twenty-seven percent of black boys with disabilities received out-of-school suspensions, and nineteen percent of black girls.⁶³ Other non-white students also experienced many more suspensions than white students; with students categorized as “Asian” being the only non-white racial demographic that experienced the same or fewer number of out-of-school suspensions.⁶⁴ Tracking the rate at which children are suspended from school is critical, because for some students, school-based punishment can be a stepping stone toward incarceration. Children suspended from school may eventually be referred to law enforcement by their schools—something that is unlikely to happen unless a child has a history of disciplinary action taken against them.

⁵⁸ *See id.*

⁵⁹ JESSICA SNYDMAN, *supra* note 27, at 11.

⁶⁰ *See* Marilyn Elias, *supra* note 28.

⁶¹ U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE 3 (2014), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>; *see generally* JESSICA SNYDMAN, *supra* note 27, at 10-11.

⁶² CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE, *supra* note 62, at 4.

⁶³ *Id.*

⁶⁴ *Id.*

Despite what the data regarding out-of-school suspensions reflects, there are measures in place designed to avoid disciplining students for behaviors directly related to their disabilities. IDEA mandates that after ten days of out-of-school suspension, consecutive or discontinuous, the families of a child with an IEP are entitled to a meeting with the school to determine whether the expulsions are “substantially related” to the child’s disability.⁶⁵ If they are, the child can no longer be removed from the school as a form of disciplinary action. However, what advocates argue and what the data seems to support, is that this policy is inadequate to ensure that children with disabilities are not unduly punished. In many cases, after ten days of a suspension, the damage to a child’s learning and their self-confidence is already done.⁶⁶

IDEA’s ten-day policy takes a binary approach to something that is not so easily extractable. Determining what behaviors are part of a child’s disabilities and what are not assumes that the child essentially has two selves: their disabled self and their non-disabled self, which is simply not the case. Disabilities may affect certain classroom behaviors more strongly, but that same child’s personality, interests, quirks, etc. will also be informed in part by their disability. The interconnected functions of the brain are something that even modern medicine is far from fully understanding. A policy which places educators into the position of trying to untangle the root cause of these behaviors leaves much to be desired.

The ten-day approach also gives schools a possible get out of jail free card, so to speak. Because identifying behaviors that are disability-related or not disability-related is so difficult, it would be hard to question a school that simply says the behavior is unrelated, therefore allowing the suspension to proceed. The more a child is suspended, and the less they see school as a positive environment, the more they are likely to act out. This ultimately creates the appearance that their suspensions are justified, creating a snowballing pattern of punishment.

Disturbing trends showing an overall increase in the use of suspensions and other punitive measures in schools have been a cause for concern in recent years. “Between 1974 and 2010, according to data collected by the US Department of Education’s Office for Civil Rights Data Collection (CRDC),

⁶⁵ See *Honig v. Doe*, 484 U.S. 305, 325 n.8 (1988); see also *Special Education Discipline: Suspensions and Expulsions*, KIDS LEGAL, <https://kidslegal.org/special-education-discipline-suspensions-and-expulsions> (last visited Jan. 3, 2024); Individuals with Disabilities Education Act, 20 U.S.C. § 1415(a), (k)(1)(C) (2023).

⁶⁶ See *Special Education Discipline: Suspensions and Expulsions*, supra note 66; see also *Fact Sheet: Discipline of Students with Disabilities*, PROT. AND ADVOC. FOR PEOPLE WITH DISABILITIES, INC., <http://www.pandasc.org/wp-content/uploads/2016/07/Discipline-of-Students-with-Disabilities.pdf> (last visited Jan. 3, 2024).

the rate at which students across the country were suspended and expelled from schools almost doubled, from 3.7% (1.7 million students) suspended in 1974 to 6.6% (over 3 million students) suspended in 2009–2010.”⁶⁷ More punitive responses to youthful misbehavior have made the school to prison pipeline something with which Americans are all too comfortable. Suspension, expulsion, incarceration—these are increasingly seen as an appropriate response to childlike defiance—a normal part of growing up for every child.⁶⁸ For children with disabilities who don’t always communicate or behave the same way as their peers, these practices have been to their detriment.

Furthermore, the increase in punitive measures in public schools assumes that this approach has some significant effect on curbing misbehavior—but the data says the opposite. Studies have found that schools with higher rates of suspension tend to have a worse “school climate” and that children with negative impressions of their school environment are more likely to display defiant behavior.⁶⁹ As for the students facing the suspensions, they are likely to become disillusioned with the benefits of school and to engage less over time. This may be especially problematic for students with disabilities who often have a more difficult time learning school curriculum than their peers without disabilities. Ultimately, not only are students with disabilities more likely to become ensnared in the cycle of discipline, but they are often more effected by this kind of negative treatment. Given all of the information we have surrounding youth discipline and disabilities, it is sadly not surprising that these children are so disproportionately represented in the juvenile justice system.

Not only are out of school suspensions ineffective at addressing misbehavior, they take the child out of the classroom and deprive them of critical learning time. Studies show that students who are frequently suspended or expelled from school increasingly fall behind on their classroom work, sometimes to the point where they cannot catch up.⁷⁰ These problems are even more pronounced for students with disabilities, who need additional supports in order to stay on track.⁷¹ Once a student with a disability falls behind significantly in their classes, the path to getting back on track can

⁶⁷ Russell J. Skiba et. al., *More Than a Metaphor: The Contribution of Exclusionary Discipline to a School-to-Prison Pipeline*, 47 EQUITY & EXCELLENCE IN EDUC. 546, 549-550 (2014).

⁶⁸ See KRISTIN HENNING, *THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH* 135 (2021).

⁶⁹ Russell J. Skiba et. al., *supra* note 68, at 552-53.

⁷⁰ See Tara M. Brown, *Lost and Turned Out: Academic, Social, and Emotional Experiences of Students Excluded from School*, 42 no.5 URB. EDUC. 432, 445-46 (2007).

⁷¹ DANIEL J. LOSEN & PAUL MARTINEZ, *LOST OPPORTUNITIES: HOW DISPARATE SCHOOL DISCIPLINE CONTINUES TO DRIVE DIFFERENCES IN THE OPPORTUNITY TO LEARN* 19 (2020).

seem impossible to navigate. The more a child becomes uninterested in learning, the harder it may be for them to conform to the school environment. Suspensions seem to have the very opposite effect that they are intended to have, which is purportedly to force the child to comply with school norms and rules. It is not difficult to see how the cycle of discipline and punishment can form slowly over time; but by the time the problem is obvious, it may be too late to reverse course.

Students with disabilities are already facing an uphill battle when it comes to their education. They require additional supports, are often stigmatized due to their disabilities, and face higher rates of school discipline than do students without diagnosed disabilities. Segregating students with disabilities into self-contained classrooms only heightens these problems. Their learning and self-image suffer, and they are often viewed as “other” by their peers and educators. Segregating them away from the population of the school serves as a confirmation bias—a deeply troubling reaction to a diagnosis outside of a child’s control. The overuse of self-contained classrooms exacerbates the existing problems of an overly punitive educational system, and can contribute to the development of negative behaviors, excessive punishment, and in extreme cases, incarceration. Unfortunately for those students affected, these problems do not end once they leave the school building. The over-representation of children with disabilities inside juvenile detention centers, as well as the limited resources within these facilities, often results in further harm being perpetuated onto these vulnerable children.

II. SPECIAL EDUCATION IN JUVENILE DETENTION CENTERS

Juvenile detention centers are required to meet the same standards set forth by IDEA as public schools: to provide every child with a “free appropriate education” (FAPE) in the least restrictive environment possible.⁷² However, while many public schools are not able to remain in compliance with IDEA, juvenile detention centers tend to do even worse. Juvenile detention centers across the country have become somewhat notorious for their severely

⁷² Joseph C. Gagnon, et. al., *Issue Brief: Key Considerations in Providing a Free Appropriate Public Education for Youth With Disabilities in Juvenile Justice Secure Care Facilities*, NAT'L TECH. ASSISTANCE CTR. FOR THE EDUC. OF NEGLECTED OR DELINQUENT CHILD. AND YOUTH, Dec. 2015, at 7 (“IDEA requires that ‘to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities [for juveniles], are educated with children who are nondisabled’ and that ‘special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily”); LRE Requirements, 34 C.F.R. § 300.114(a)(2) (2014).

inadequate education programs, despite the fact that participation in an educational program during a period of incarceration has been shown to greatly reduce the likelihood of recidivism.⁷³ As a result of this and other systemic issues within the country's carceral system, rates of recidivism are alarmingly high across both juvenile and adult facilities.⁷⁴

According to the Bureau of Justice Statistics, “among [juvenile] inmates from thirty states, 67.8% . . . were arrested within 3 years of release, and 76.6% were arrested within 5 years of release.”⁷⁵ These are startlingly high numbers, especially when one considers that these are youth “offenders.” Unsurprisingly, one of the most effective ways of curbing such extreme rates of recidivism is to provide incarcerated youth with educational resources. Simply stated, “[h]elping youths acquire educational skills is one of the most effective approaches to the prevention of delinquency and the reduction of recidivism.”⁷⁶ Curbing recidivism, or ideally avoiding youth incarceration in the first place, are critical goals for children at risk of becoming trapped in the cycle of incarceration. One study from the Massachusetts Institute of Technology (MIT) found that “juvenile incarceration is estimated to decrease high school graduation by 13 percentage points and increase adult incarceration by 23 percentage points.”⁷⁷ Children who are incarcerated are at risk of subsequently experiencing a sharp downward trajectory in terms of outcomes and opportunities.

Alternatives to incarceration do exist. A nonprofit in New York City called Avenues for Justice is a deferred adjudication program that takes children charged with crimes and provides them with resources aimed at rehabilitation.⁷⁸ Children who successfully complete the program can have their charges dismissed, leaving them with a clean record upon graduation of the program.⁷⁹ Avenues for Justice prevents ninety-seven percent of their juvenile clients from recidivating within three years of their graduation from the program.⁸⁰ And so much of their success is due to the understanding that

⁷³ Karen Sullivan, *supra* note 29, at 76.

⁷⁴ Richard Mendal, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, THE SENTENCING PROJECT (Mar. 1, 2023), <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>.

⁷⁵ Karen Sullivan, *supra* note 29, at 76.

⁷⁶ Peter Leone & Candace Cutting, *Appropriate Education, Juvenile Corrections, and No Child Left Behind*, 29 BEHAV. DISORDERS 260, 261 (2004).

⁷⁷ Anna Aizer & Joseph Doyle, *Juvenile Incarceration, Human Capital & Future Crime: Evidence from Randomly-Assigned Judges*, THE Q. J. OF ECON., Feb. 2, 2015, at 4.

⁷⁸ PBS NewsHour, *How One Group is Breaking the Cycle of Youth Returning to Prison*, YOUTUBE (Oct. 27, 2022), <https://www.youtube.com/watch?v=4VBPhQ1G0So>.

⁷⁹ *Id.*

⁸⁰ *Id.*

education services are a critical aspect of rehabilitation. The primary component of the program is tutoring and test preparation services.

Programs like Avenues for Justice function with the understanding that crime and delinquency don't happen in a vacuum, and that all children have the capacity to lead productive lives if given the proper resources and opportunities. Unfortunately, most children charged and convicted of crimes are not so fortunate to be given these opportunities. Instead, they find themselves in juvenile detention centers or other similar settings which are nearly always under-resourced and are often not capable of providing the services necessary for rehabilitation. For children with disabilities, who need more educational support than other students, the learning loss they experience while incarcerated can be especially severe.

The No Child Left Behind Act (NCLB) is even more significant in the juvenile justice context, given its key goal is to allocate needed resources for disadvantaged children.⁸¹ The requirements to receive funding are relatively minimal: juvenile correctional facilities receive funding if they can “provide at least 20 hours per week of instruction in juvenile facilities, coordinate services with youths' home schools, meet the provisions of IDEA, provide transition services and support, and meet other requirements.”⁸² Many facilities cannot even do this, precluding them from receiving the funding they so desperately need. NCLB has been widely criticized—in the general education context and the juvenile corrections context—for creating unrealistic standards that struggling schools cannot meet and for the fact that certain standards bear little relation to improved educational outcomes.⁸³ For a statute that was written to benefit the most marginalized members of the community, it makes strikingly little effort to consider the concerns of correctional facilities. NCLB's broad requirement of complying with IDEA is also problematic, making no mention of how detention centers should do this given the added safety and security concerns they must consider.

Under current procedures, there are thirteen categories of disabilities under which a child can be designated to receive an IEP or 504 plan.⁸⁴ Those categories range significantly in the type of disability and what services are needed to address them; they are: “Autism, blindness & deafness (have both), emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment (ex: ADHD,

⁸¹ No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425, § 1001 (2002); see Peter Leone & Candace Cutting, *supra* note 77, at 260.

⁸² Peter Leone & Candace Cutting, *supra* note 77, at 262.

⁸³ *Id.* at 262-63.

⁸⁴ *IDEA Disability Classification*, *supra* note 11.

epilepsy, etc.), specific learning disability (such as dyslexia, dyscalculia, dysgraphia and other learning issues), speech or language impairment, traumatic brain injury, deafness, visual impairment; including blindness.”⁸⁵ It’s clear from this list that a child’s disability can entail a vast range of required accommodations. Some of these may be impossible to meet given the security concerns of a detention facility—many others have proven impossible to meet due to lack of resources. Neither IDEA nor NCLB makes any mention of how to balance these competing interests.⁸⁶

There is currently little movement towards improving access to special education services within correctional facilities. The complete lack of resources has caused a stalemate. A study conducted between 2012 and 2013 found that less than half of children in detention facilities who were diagnosed with a disability received special education services that year.⁸⁷ This is simply a fact of the carceral process for these children. The lack of willingness to allocate resources reflects a dark truth about the so-called justice system these children find themselves in; children who become incarcerated are not seen as being worth the time, energy, or money of the community.

Yet another troubling contour of the pipeline is that not all disabilities listed under IDEA are equally represented within the juvenile carceral system. One national study found that, among children being housed in juvenile correctional facilities who had been diagnosed with a disability, 47.7% of them were categorized as having an emotional disturbance.⁸⁸ Other studies have similarly found emotional disturbance to be extremely common among incarcerated youth.⁸⁹ These statistics, coupled with the over-representation of children with disabilities in youth corrections generally, calls to question whether youth are ultimately being incarcerated as a direct result of their disability. It further calls into question whether it is appropriate to incarcerate children with disabilities at all if their behavior can be directly correlated to their disability. Akin to the ten-day rule under IDEA, many would suggest that segregating a child from their peers due to disability-

⁸⁵ *Id.*

⁸⁶ See No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425 (20 U.S.C. § 6301); see generally Individuals with Disabilities Education Act of 2010, 20 U.S.C. § 1400.

⁸⁷ *Supporting Youth with Disabilities in Juvenile Corrections*, U.S. DEPT OF EDUC. OFF. OF SPECIAL EDUC. & REHAB. SERVS. BLOG, (May 23, 2017), <https://sites.ed.gov/osers/2017/05/supporting-youth-with-disabilities-in-juvenile-corrections/>.

⁸⁸ Mary Magee Quinn, et al., *Youth with Disabilities in Juvenile Corrections: A National Survey*, 71 EXCEPTIONAL CHILDREN 339, 342 (2005).

⁸⁹ See *Position Statement 51: Children with Emotional Disorders in the Juvenile Justice System*, MENTAL HEALTH AM., <https://mhanational.org/issues/position-statement-51-children-emotional-disorders-juvenile-justice-system> (last visited Jan. 3, 2024).

related behavior is contrary to public policy. This is not an issue that courts or the legislature have taken up directly, but the concern is evident.

As a result of the many shortcomings discussed, incarcerated children suffer learning loss which then frustrates their capacity to resume school once they are released back into their community. This is how the cycle perpetuates itself. These children fall further behind in school, and they are likely to be traumatized from the experience of being incarcerated. Their behavior continues to deteriorate, and they find themselves incarcerated again in the future. With the benefits of education stripped away, incarcerated children do not have the same skills as their peers to enter the adult world. These things can happen to any child, but children with disabilities are more likely to be labeled as problematic to begin with, and the restraints of incarceration can affect them more severely. The approach of segregating children with disabilities away from their peers and community, for many, begins with the self-contained classroom. The school-to-prison pipeline transforms into a cycle of incarceration, and another child becomes trapped.

CONCLUSION

The journey of students with disabilities through the American education system has progressed since the enactment of the Education for All Handicapped Children Act (EHA) in 1975, which then evolved into the Individuals with Disabilities Education Act (IDEA). However, despite the strides made, it is evident that challenges persist, particularly in the implementation of IDEA's principles. The practice of placing students with disabilities in self-contained classrooms has become overly prevalent and inequitably applied. While IDEA emphasizes the importance of the "least restrictive environment," research indicates that inclusive classrooms yield better outcomes for most students. However, implicit biases, especially those associated with race, continue to influence placement decisions, leading to disparities in educational experiences. This racial disproportionality within special education settings is not only unjust, but it also perpetuates systemic inequalities.

The consequences of inappropriate placement are far-reaching. Beyond academic implications, it affects a student's self-image, potentially leading to behavioral challenges and further reinforcing negative stereotypes. Moreover, the alarming rates of suspensions and expulsions for students with disabilities, particularly those of color, underscore the urgent need for reform. The overuse of punitive measures exacerbates the existing disparities and, in some cases, contributes to the school-to-prison pipeline, a deeply concerning trend in our educational system.

Transitioning from the public school system to juvenile detention centers, students with disabilities face even greater hurdles. While these facilities are bound by the same IDEA requirements as public schools, the reality is far from compliance. Inadequate resources, coupled with a lack of emphasis on rehabilitation, perpetuate a cycle of disadvantage. Education is a proven tool in breaking this cycle, yet juvenile detention centers often fail to provide meaningful educational opportunities. The long-term consequences of incarceration on a child's educational trajectory cannot be understated. Learning loss and trauma suffered within these facilities hinder their ability to reintegrate into society, perpetuating a cycle of incarceration and disadvantage.

The school-to-prison pipeline is not the result of one singular issue. However, trends like the ones discussed in this article are worth taking note of in order to begin addressing the problem. Schools and teachers are under-resourced and often under-trained on how to teach students with disabilities. Stigmas about children with disabilities also seem to persist despite the frequent use of rhetoric about inclusivity and equity. The result is problematic. There is a disconcerting similarity between putting a child in a self-contained classroom away from their peers and putting them in juvenile detention away from their families and communities. The notion that segregation will be a solution to misbehavior has proven false time and time again.

The educators in public schools are often ill-equipped to deal with challenging behaviors. Educators may feel that suspension or referral to law enforcement are their only ways to address those behaviors. Unfortunately for those students being referred, once they come into contact with the juvenile justice system, they are more likely to get sucked into the cycle of incarceration. Juvenile detention centers that are under-resourced themselves can do little to actually help students develop skills to cope with their disabilities. Those students then return to their communities worse off than they were before they were incarcerated.

Organizations like Avenues for Justice support rehabilitation for incarcerated youth through educational and community-outreach based programs.⁹⁰ They say, however, that the best way to help a struggling child is not to incarcerate them at all.⁹¹ Whether or not a child's school is able to effectively address the problem(s) they are having, incarcerating the child

⁹⁰ See Ricky House, *How One Group is Breaking the Cycle of Youth Returning to Prison*, PBS (Oct. 27, 2022), <https://www.pbs.org/newshour/classroom/daily-news-lessons/2022/10/how-one-group-is-breaking-the-cycle-of-youth-returning-to-prison#:~:text=When%20children%20are%20incarcerated%20at,after%20a%20three%20year%20period>.

⁹¹ *Id.*

tends only to exacerbate the problems they are facing. The American education system has become increasingly punitive, and any step away from that is a step in the right direction, according to organizations like Avenues for Justice that have been working with children for years and have seen far more positive outcomes using more holistic reform models.

As for addressing deficiencies within the typical educational and correctional settings, advocates have consistently called for increasing federal funding under IDEA. This approach makes use of the existing legislation, and helps address the funding disparity between differently situated communities. The Biden Administration has secured some increased funding for IDEA and Title I schools, but it is still far less than Congress has promised and less than the administration initially asked for.⁹² Congress pledged to cover forty percent of the excess cost of educating a child with a disability when it passed IDEA (then, EHA) in 1975.⁹³ After the recent increase in funding under the Biden administration, IDEA still only funds about thirteen percent of that cost.⁹⁴

Some studies also indicate that, not only does funding need to be increased, but the scheme under which it is allocated also needs to be adjusted. Different states receive different amounts of federal funding based on complex calculations aimed at identifying student needs.⁹⁵ A study from the University of Chicago analyzed how the increased funding secured by the Biden administration would be allocated under this current scheme and what impact it could have on equalizing opportunities for children with disabilities.⁹⁶ The study ultimately found that “[s]tates with more school-aged children, children living in poverty, and special education students receive on average fewer federal dollars per pupil and per special education student than their counterparts. A byproduct of these circumstances is that states with larger shares of non-White and Black students receive, on average, fewer federal dollars per pupil and per special education student.”⁹⁷ Nearly fifty

⁹² See Libby Stanford, *How Schools Fare in Biden's Proposed Budget*, EDUC. WK. (Mar. 9, 2023), <https://www.edweek.org/policy-politics/biden-proposes-universal-pre-k-more-money-for-high-need-schools-and-special-ed-in-budget/2023/03> (title I schools are schools that receive federal funding through the Every Student Succeeds Act because they have a high percentage of students coming from low-income households); see *Explained: What is Title I and How Is It Used to Fund Our Schools?*, ED POST (Aug. 12, 2021), <https://www.edpost.com/explainer/explained-what-is-title-i-and-how-is-it-used-to-fund-our-schools>.

⁹³ Libby Stanford, *supra* note 93.

⁹⁴ *Id.*

⁹⁵ Tammy Kolbe et al., *More Money Is Not Enough: (Re)Considering Policy Proposals to Increase Federal Funding for Special Education*, 129 AM. J. OF EDUC. 79, 82 (2022).

⁹⁶ See generally *id.*

⁹⁷ *Id.* at 90-91.

years after its passing, it is time for legislators to take another look at IDEA's application and ask how it can better, and more equitably, serve students.

Funding, while crucial, is not the whole picture. Money goes toward causes that people deem worthy, and educating disadvantaged students has not met that mark. Changing public perception of students who are atypical learners is a crucial step toward closing the gap in access to resources. This is even more true for children who become incarcerated. These children are so often seen as lost causes, when in reality, they are at an age when they have so much capacity for change. Children adapt to their environment; if their environment is a concrete cell, they too will harden with time. Students with disabilities so often struggle within this system because it was not built for them, but that doesn't make them unworthy of support.

The current state of special education for students with disabilities demands urgent attention and reform. The persistence of inequities, both within public schools and juvenile detention centers, highlights the need for a more inclusive, comprehensive, and responsive approach. Addressing implicit biases, allocating sufficient resources, and tailoring educational programs to the unique needs of each child are crucial steps toward dismantling the barriers that impede the educational progress and overall well-being of students with disabilities. Only through concerted effort, collaboration, and policy reforms can we aspire to provide a genuinely equitable and empowering educational experience for all students, regardless of their abilities or circumstances.

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