

The Right to Education in the Juvenile and Criminal Justice Systems in the United States

**Submission to Vernor Muñoz
Special Rapporteur on the Right to Education
Human Rights Council, United Nations
December 31, 2008**

Contributors:

Marsha Weissman, Center for Community Alternatives, New York

Matthew Cregor, Southern Poverty Law Center, Alabama

Jenni Gainsborough, Penal Reform International

Juvenile Justice Project of Louisiana

Nicole Kief, Racial Justice Program, American Civil Liberties Union

Peter E. Leone, Department of Special Education, University of Maryland

Elizabeth Sullivan, National Economic and Social Rights Initiative



Prepared by the Dignity in Schools Campaign (DSC)
www.dignityinschools.org

The Dignity in Schools Campaign is a national coalition of advocates, community-based organizations, educators, lawyers and policymakers working together to seek human rights-based solutions to the systemic problem of pushout in U.S. schools.

TABLE OF CONTENTS

I. Introduction	1
II. School to Prison Pipeline	2
A. School Suspensions and Expulsions Linked to Dropout and Incarceration.....	2
B. School Arrests.....	3
C. Disciplinary Alternative Schools.....	4
III. Population in Correctional Facilities	4
A. Educational Characteristics of Incarcerated Adults and Youth.....	6
IV. Right to Education in Prisons	6
V. Right to Education in Juvenile Facilities	8
A. Lack of Quality Education for Youth with Disabilities in Detention and Prison.....	8
B. Lack of Quality Education for Girls in Juvenile Detention in Texas and New York....	8
C. Lack of Quality Education for Youth in Immigration Detention.....	10
D. Case Study: Youth Study Center, New Orleans, Louisiana.....	11
VI. Educational Barriers in Transition from Custody to Community	12

I. INTRODUCTION

1. Education is a fundamental human right. The United States has made numerous domestic and international commitments to ensuring the human right to education, and while there is no federal constitutional right, nearly every State Constitution in the United States recognizes the right to an education. Federal laws also protect against discrimination in education on the basis of race, national origin, sex and disability.¹ Moreover, it is a basic public expectation that all children have the right to attend public school and be treated with dignity and social equality.

2. Internationally, the U.S. government has signed but not ratified both the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights—the two main international treaties recognizing the human right to education.² The U.S. has also ratified, and is therefore legally bound, to the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which prohibit discrimination in education.³

3. Despite this commitment, the U.S. public education system is plagued by inequities, large gaps in achievement, high rates of suspension, expulsion, and criminal sanctions, and low graduation rates for poor youth, youth of color, youth with disabilities and youth for whom English is a second language. This failure of the U.S. government to ensure the right to education has created a human rights crisis in our schools and has contributed to a growing population of youth and adults who are pushed into prison. This is compounded by the lack of access to and quality in educational programs in juvenile and adult correctional facilities.

4. The United States' commitment to providing education to incarcerated persons has varied throughout history depending on whether prison reform trends have prioritized punishment or rehabilitation.⁴ During the 1960s, education and training programs in prisons increased as support for rehabilitation grew. In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act requiring that states receiving federal funding focus on prevention, intervention, and accountability. But since the 1980s, an increasingly punitive, get-tough approach to prison reform, combined with cuts in state and federal budgets, have led to decreases in spending on prison education programs. For example, in 1994 the U.S. Congress passed a law that prohibits inmates from receiving Pell Grants, thereby cutting funds for post-secondary education in prisons.

5. Furthermore, comprehensive and accurate data at the national, state and local level is not available on the accessibility and quality of educational programs in prisons or juvenile facilities.

6. Under human rights law, the United States government has made commitments to ensure the right to education for incarcerated populations. In 1992, the United States ratified the ICCPR, which includes several provisions relevant to the education of incarcerated persons. Article 10 of the ICCPR recognizes that “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.” In General Comment No. 21 on Article 10, the Human Rights Committee “requests specific information concerning the measures taken to provide teaching, education and re-

education, vocational guidance and training and also concerning work programmes for prisoners inside the penitentiary establishment as well as outside.”⁵

7. In 1995, the United States signed the Convention on the Rights of the Child (CRC). Although the United States has not yet ratified the CRC, the Supreme Court has acknowledged its authority as an expression of “the overwhelming weight of international opinion” in interpreting domestic legal standards, specifically stating that the “express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.”⁶ Articles 28 and 29 of the CRC recognize the right to education, and Article 37 recognizes that “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.”

8. We urge the Special Rapporteur on the Right to Education to call on the United States government to live up to its commitment under human rights law to provide adequate access to and funding for quality educational programs in juvenile and adult correctional facilities.

II. SCHOOL TO PRISON PIPELINE

9. The inequities and failures of the public education system in the United States impact the growing juvenile and criminal justice system in multiple ways. The school system has become a key entry point into the juvenile justice system through disciplinary policies that mandate school suspension, expulsion, and arrest for an increasing array of student behaviors and rule infractions. Following the passage of the federal Gun-Free Schools Act in 1994, the receipt of federal funding to schools was predicated on school districts’ creation of “zero tolerance” policies resulting in mandatory expulsion policies. These policies were initially directed at the possession of a weapon, but have since been used to expel or suspend students for a variety of behaviors, the majority of which involve no violence whatsoever.

10. Suspensions and expulsions are shown to increase the likelihood of school dropout and incarceration, and police presence in schools has criminalized an array of juvenile behavior resulting in the arrest of children for behaviors that would have previously been handled by school administrators. This process of pushing students out of school and into the criminal justice system is increasingly referred to as the “school to prison pipeline.”

A. School Suspensions and Expulsions Linked to Dropout and Incarceration

11. In 2004, there were 3,279,745 students suspended and 106,222 expelled from elementary and secondary schools in the United States - a 9% increase in suspensions and a 7% increase in expulsions since 2000.⁷ The U.S. Department of Education Office of Civil Rights data shows that while youth of color (African American, Latino, Asian American, and Native American) comprised 42% of the U.S. student population in 2004, they comprised 58% of students suspended or expelled from school. The greatest disparities were found among African American students who made up 17% of the U.S. student population but comprised 37% of students subjected to suspensions and 35% of students subjected to expulsions.

12. School suspensions and expulsions are linked to referral to the juvenile justice system, dropout and incarceration as an adult. For example, 56% of African American youth in the juvenile justice system report prior school suspension.⁸ The National Center for Educational Statistics found that 31% of students who had been suspended three or more times before the spring of their sophomore year dropped out of school compared to 6% of students who had never been suspended.⁹ Dropouts, in turn, are 3.5 times more likely than high school graduates to be incarcerated in their lifetime.¹⁰ Data at the state and local level reveal that the majority of suspensions and expulsions are not for drug use, weapons or violent behavior but for “disruptive behavior” or “insubordination.” These minor offenses can be interpreted in subjective and biased ways and would more effectively be remedied through non-exclusionary measures that are less likely to lead to incarceration or dropout. In Indiana, for example, in 2003, less than 5% of suspensions were for drugs or weapons, while 51% were for “Disruptive Behavior” and 44% were in the category of “Other” infractions. Less than 30% of expulsions were for drugs or weapons, while 35% were for “Disruptive Behavior” and 35% were in the category of “Other” infractions.¹¹

13. Just as youth of color are disproportionately suspended and expelled, the consequences of dropping out and subsequent incarceration are not race neutral either. It is estimated, for example, that only 10% of young (age 22-30) white high school dropouts are incarcerated by their early thirties, compared to 52% of African American male high school dropouts.¹²

B. School Arrests

14. The arrest and direct referral of students from school to the juvenile justice system has also increased. The number of police officers patrolling school hallways and intervening in disciplinary matters has increased over the past decade. Between 1999 and 2005, the number of students nationally reporting the presence of police or security in their schools increased from 54% to 68%.¹³ Qualitative studies have shown that this heavy police presence criminalizes student behavior, and for many students, it makes schools feel more like prisons.¹⁴

15. While national data is not available, information from individual cities show an increasing number of arrests of children while in school. For example, in 2003 in Chicago, Illinois, 8,539 students were arrested in public schools.¹⁵ Almost 10% were children age 12 or younger. Approximately 13% of school arrests were for disruptive behavior and 40% were for fights or threats involving no serious injuries and no weapons. Half of the students arrested in Chicago schools are sent to juvenile or criminal court. African American students made up 77% of the arrests, but only 50% of the school population in Chicago. In New York City approximately 5,000 police officers work in public schools everyday, representing a larger police presence than exists in many cities in the U.S.¹⁶ While accurate data is not available on the number of arrests made in New York City schools, a study by the NYCLU shows that increased law enforcement and school security measures are concentrated in the schools whose student bodies are disproportionately made up of students of color. For example, 82% of children attending schools with metal detectors were African American and Latino, surpassing their representation in the citywide school population by 11%.¹⁷ In 2005 in these same schools with permanent metal detectors, 77% of police-involved incidents were for “non-criminal” incidents.

16. The racial disparity in school arrests is not limited to large urban centers. In Des Moines,

Iowa, for example, in 2003 African American students comprised 15% of the high school student population, but 33% of the 556 high school arrests.¹⁸

17. The UN Committee on the Elimination of Racial Discrimination, in its Concluding Observations on consideration of periodic reports submitted by the United States in February 2008, stated, “The Committee also notes with concern that alleged racial disparities in suspension, expulsion and arrest rates in schools continue to exacerbate the high dropout rate and the referral to the justice system of students belonging to racial, ethnic or national minorities (art.5 (e) (v)).” Furthermore, “The Committee also calls upon the State party to encourage school districts to review their “zero tolerance” school discipline policies, with a view to limiting the imposition of suspension or expulsion to the most serious cases of school misconduct, and to provide training opportunities for police officers deployed to patrol school hallways.”¹⁹

C. Disciplinary Alternative Schools

18. In addition to U.S. school systems suspending, expelling or referring children to the juvenile justice system, schools across the US are funneling at-risk children—particularly students of color and those with disabilities—into sub-standard “disciplinary alternative schools” (also see Section VI. of this report). These shadow systems—sometimes run by private, for-profit companies—are frequently immune from educational accountability standards (such as minimum classroom hours and curriculum requirements) and often fail to provide adequate educational services to the students who need them the most.

19. These schools often take on detention-like environments by requiring students to undergo extensive searches upon entry, maintaining a variety of police and school resource officers to patrol hallways, and regulating students’ and parents’ abilities to move freely within the school. One such alternative school in Atlanta, Georgia is currently the subject of an ACLU lawsuit for its violation of students’ rights to an adequate public education, to be free from unreasonable searches, and to due process in referrals to and disciplinary hearings at the school.²⁰ In such a punitive environment—where discipline and security are prioritized at the expense of education—students are treated more like criminals than like youth in need of specialized and individualized instruction. This results in poor educational opportunities and outcomes, and a greater likelihood that students will be funneled into the justice system.

III. POPULATION IN CORRECTIONAL FACILITIES

20. At the end of 2007, there were 2,293,157 prisoners in federal or state prisons or in local jails. Approximately 1.5 million were in state and federal prisons and the remaining people were incarcerated in local jails.²¹ The rate of prisoners in state and federal prisons in the United States was 506 sentenced prisoners per 100,000 U.S. residents.²² In 2005, almost 90% of federal prisoners and 47% of state prisoners were incarcerated for non-violent offenses.²³

21. Incarceration rates differ significantly by race and ethnicity. The rate by race/ethnicity was 3,138 African American male sentenced prisoners per 100,000 African American males in the United States, compared to 1,259 Latino male sentenced prisoners per 100,000 Latino males and 481 white male sentenced prisoners per 100,000 white males.²⁴ African American males

comprised 39% of the sentenced male population, compared to white males at 31% and Latinos at 20%.²⁵

22. Women made up 7% of prisoners sentenced to state or federal prison. White women were 48% of the female prison population, African American women were 29% and Latinas were 17%. The female rate of incarceration per 100,000 was 150 for African American women, 79 for Latinas and 50 for white women.²⁶

23. There were 96,655 juveniles in custody in 2003, representing 307 juveniles in custody for every 100,000 juveniles in the U.S. population.²⁷ Thirty four percent (34%) of juveniles were incarcerated for crimes against persons compared to 66% incarcerated for non violent offenses, including drug law violations, property offenses, public disorder, technical violations and status offenses.

24. A similar pattern held true for youth in [pre trial] detention. Of the 25,019 juveniles detained, only 32% were for crimes against persons.²⁸

25. There are more than 7,000 youth younger than 18 held in adult jails,²⁹ most of whom were charged as adults either through transfer to criminal court or because they are in a state that considers all 16 and/or 17-year-olds as adults for purposes of criminal prosecution.

26. An estimated 4,100 new court commitments to state adult prison systems in 2002 involved youth younger than age 18 at the time of admission (National Corrections Reporting Program).³⁰

27. Racial disparities in school suspensions and school and community arrests are reiterated throughout the juvenile justice system. For example, in 2004 African American youth were:³¹

- 16% of the youth population in the United States
- 28% of youth arrested
- 37% of youth detained following arrest
- 35% of youth petitioned into family [juvenile] court
- 32% of youth adjudicated [convicted] of a delinquent act [crime]
- 36% of youth placed [incarcerated] in a juvenile residential institution
- 42% of youth transferred to the adult criminal justice system
- 58% of youth placed in an adult prison (2002).

28. For every 100,000 African American juveniles living in the U.S., 754 were in custody in a juvenile facility on October 22, 2003—the custody rate was 348 for Latinos and 190 for whites. Nationally, the ratio of the custody rate for minorities to that for whites was 2.6 to 1.³²

29. The UN Committee on the Elimination of Racial Discrimination, in its Concluding Observations on consideration of periodic reports submitted by the United States in February 2008 stated, “The Committee reiterates its concern with regard to the persistent racial disparities in the criminal justice system of the State party, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population.” The Committee further stated, “the Committee recommends that the State party take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs

administering justice, including further studies to determine the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.”

A. Educational Characteristics of Incarcerated Adults and Youth

30. Findings from the National Adult Literacy Survey (NALS) suggest that incarcerated people are more likely to have literacy difficulties than the general population. Survey results indicate 39% of prisoners had below basic quantitative literacy compared with 21% of the general population, 16% of prisoners had below basic prose literacy compared to 14% of the general population, and 15% had below basic document literacy compared to 12% of the general population. Only 2% to 3% had a “proficient” level of prose, document, and quantitative literacy compared with 13% to 14% of the general population of adults.³³

31. People in state prison have significant educational needs: 68% of State prison inmates dropped out of high school and 40% had a disabling condition that interfered with learning.³⁴

32. Inmates are more likely to possess an alternative certificate for education, rather than a high school diploma, such as the General Education Development (GED) credential, than those in the general population. GEDs are not considered equivalent to a high school diploma by many post-secondary education programs and employers. Just over one-fifth (23%) of federal and one-quarter (29%) of state inmates held a GED credential in 1997 compared with an estimated 4% of the general population.

33. High school completion rates of prisoners differ by race and ethnicity: 53% of Latino prisoners, 44% of African American prisoners and 27% of white prisoners had neither a high school diploma nor a GED.³⁵

34. Youth in juvenile facilities have significant educational needs. They are typically below grade level in test scores and commonly have a history of school failure, with an estimated 75% of youth in juvenile facilities failing one or more courses and 40-50% who have been retained in at least one grade.³⁶

35. Thirty-five percent (35%) of state prisoners younger than 18 did not have a high school diploma or a GED and 16% did not have an 8th grade education. Fifty two percent (52%) of inmates age 24 or younger do not have a high school diploma or GED.³⁷

IV. RIGHT TO EDUCATION IN PRISONS

36. In 1997, there were 550,000 prisoners who participated in a prison education program including basic education, GED, vocational and college programs.³⁸ The percentage of State prison inmates who reported taking education courses while confined fell from 57% in 1991 to 52% in 1997.³⁹

37. Changes in prison education programs varied by type of program. Between 1995 and 2000, the number of state prisons offering adult basic education programs grew by 4% from 86% to

90%; the number of facilities with secondary education programs also increased by 4% from 80% to 84%.

38. However, the number of prisons with college programs decreased by 4% in that time period from 31% of institutions offering college programs to 27%.⁴⁰ The decrease in college programs is due in large part to federal legislation enacted in 1994 that made inmates ineligible for Pell grants, which paid the tuition costs for prison-based college courses. Between 1991 and 1997, the number of state prison inmates participating in college coursework declined from 14% to 10%.⁴¹

39. U.S. Senator Ted Kennedy and U.S. Representative Danny Davis are committed to the reintroduction of PELL grants for prisoners, but there is no current legislation. There are hopes that a bill will be introduced in the new Congress. A study of post secondary correctional education was mandated in the new Higher Education Opportunities Act. This study could lay the ground work for a significant expansion of college opportunities for prisoners -- either through the return of Pell grants or expansion of other types of post secondary program support.

40. In addition the reauthorized Higher Education Opportunity Act extended the age limits for workplace and community transition training for incarcerated youth offenders from 25 years to 35 years thus expanding considerably the proportion of prisoners within state prison populations eligible for federal grants. The states will also be allowed to spend more per prisoner. It remains to be seen though whether sufficient funds will be appropriated to make this a reality.

41. There are no accurate data that describe the standards or curricula used in prison education programs or how often educational programs are offered. The number of educational programs are not sufficient to meet prisoner's educational needs and there are often long waiting lists to enroll in a program.⁴²

Benefits of Education in Prison

Education in prison is associated with reduced recidivism. A study by the Office of Correctional Education, U.S. Department of Education found that inmates who participated in correctional education programs had lower recidivism and were one third less likely to be re-incarcerated as non-participants.⁴³

North Carolina provides one example of the possibilities for post-secondary education in the adult prison system. North Carolina (NC) has a high rate of inmate participation in junior college programs. A unique partnership between the NC junior college system and the NC Department of Corrections provides fiscal support to both the junior colleges that enables them to offer coursework, and to incarcerated students that enables them to attend classes.⁴⁴

V. RIGHT TO EDUCATION IN JUVENILE FACILITIES

42. There is little information about the quality of education provided in juvenile justice facilities. National-level information does not yet include information about educational services in these facilities, although a Survey of Youth in Residential Placement that includes information about the educational needs of juveniles in custody is scheduled for release at the end of 2008.⁴⁵ State governments which are responsible for oversight of juvenile facilities often do not monitor the quality of educational programs in these facilities.⁴⁶

43. The U.S. Government Accountability Office (GAO) notes that U.S. Department of Justice investigations of juvenile facilities found a “pattern or practice of civil rights violations,” including inadequate education in some facilities. The GAO also noted a lack of coordination with state education agencies has resulted in facilities continuing to operate even though education quality is poor and youth are unable to transfer education credits to schools within their communities when they are released from custody.⁴⁷

A. Lack of Quality Education for Youth with Disabilities in Detention and Prison

44. Youth with disabilities are particularly over-represented in the juvenile delinquency system. Statistically students in a correctional facility are more than three times more likely to have a learning disability than their counterparts in general education. Over 33% of incarcerated juveniles have been identified to have a disability that qualifies them for special education and related services under the Individuals with Disabilities Education Act (IDEA), compared to roughly 10% of the general education population. This 33% only includes students identified as eligible, while many more may have cognitive and other disabilities that are undiagnosed.⁴⁸

45. During the past 25 years, the US Department of Justice and non-governmental organizations have initiated class action litigation in more than 22 states, the District of Columbia, and Puerto Rico claiming that inadequate education practices for youth with disabilities in juvenile facilities violate youth’s statutory rights to education services. In several jurisdictions, several cases have been filed and litigation has been on-going for more than a decade.⁴⁹ The inability of states and local governments to provide appropriate education services to youth is associated with the lack of administrative infrastructure, support and enabling legislation in many states.

B. Lack of Quality Education for Girls in Juvenile Detention in Texas and New York

46. Rates of incarceration in the U.S. have grown exponentially in recent years; accompanying this expansion has been the increasing incarceration of women and girls. Too often, these girls receive inadequate educational services while incarcerated that fail to prepare them to return to mainstream schools upon their release. These problems are compounded by the fact that many youth who find themselves in juvenile detention already face numerous obstacles to opportunity in their home lives, and were likely already receiving sub-par educational services in their communities prior to incarceration.

47. In 2006, the American Civil Liberties Union (ACLU) and Human Rights Watch issued *Custody and Control: Conditions of Confinement in New York’s Juvenile Prisons for Girls*. The

report, the result of an extensive investigation into the confinement of girls in New York State, revealed the failure of the state's Office of Children and Family Services (OCFS) to serve and protect girls confined in its juvenile facilities, a disproportionate number of whom are African American. A 2007 report by the ACLU, *A Blueprint for Meeting the Needs of Girls in TYC Custody: Report and Recommendations to the Texas Youth Commission*,⁵⁰ revealed similar shortcomings in Texas.

48. Both reports cite, among other problems, the failure of juvenile facilities to provide for the education of the girls detained there. In both states, educational staff was lacking in number and experience, and the quality of instruction was poor. Girls were often placed in classrooms with students of varying ages and abilities, making individualized attention impossible, and were sometimes asked to study independently without oversight or guidance from instructors.⁵¹

49. In New York, girls received no schooling at all during the first two weeks of confinement. Thereafter, they sometimes received no homework and were often prohibited from taking work outside of their classrooms. They also reported a variety of other obstacles to education, including not being woken up for classes, a lack of books, teacher absences and vacancies, the placement of students in the wrong groupings for their ages or abilities, and more.⁵²

50. Vocational programs in both states were found to be quite limited; when available, they were of questionable educational value, too often geared towards boys, and, in New York, hidden behind a variety of administrative requirements.⁵³ In Texas, girls received no routine sexual health education, no pregnancy or parenting education, and no life skills training, despite the clear necessity of such educational programming.⁵⁴

51. In New York, girls often perceived that educational services in detention sought not to prepare them for reintegration into their home schools, but for the GED (the U.S.'s high school diploma equivalency test),⁵⁵ a perception that is borne out by a variety of other administrative factors that make a return to mainstream schooling difficult. Besides the poor quality of instruction, which inhibits a student's ability to keep pace with her non-incarcerated peers, the lack of coordination between OCFS and the city education departments, and lack of reentry assistance, made reintegration especially difficult. Credits often would not transfer from juvenile facilities to mainstream schools, in part because OCFS high schools are not registered with the State of New York, leaving the transfer of credits to the discretion of individual principals.⁵⁶ One particularly troubling statistic—that more than two-thirds of high school-age youth in the juvenile justice system do not return to school when they are released from custody (according to the New York City Department of Education)⁵⁷—demonstrates the insidious way in which poor educational policies and practices haunt young people beyond their incarceration.

52. In 2008, a report by the Office of the Independent Ombudsman in Texas found continued shortcomings in the educational services provided to youth under the custody of the Texas Youth Commission. The report notes that students were often placed in classrooms based on correctional rather than educational needs, and that disciplinary policies often negatively impacted the quality of education available to students. Notably, the report also cites a variety of problems with the educational services available to special education students, ultimately

concluding that “substantial evidence [exists] that the TYC did not provide a free and appropriate public education (FAPE) in compliance with the Individuals with Disabilities Education Act.”⁵⁸

C. Lack of Quality Education for Youth in Immigration Detention

53. The United States’ increasingly punitive immigration policies and practices have led to expanded reliance on detention of both adults and children as an immigration enforcement strategy. Immigrants of varying legal statuses are detained for prolonged periods without any finding that they are either a danger to society or a flight risk. Moreover, they are held in prison-like conditions, without access to adequate medical and mental health care or lawyers.

54. This expanded use of detention has been accompanied by an increased detention of families, largely enabled by the opening of the T. Don Hutto detention center in Taylor, Texas in 2006. Detained youth are a particularly vulnerable population whose needs – for education and other services – ought to receive particular attention. Unfortunately – though conditions at Hutto have improved as a result of litigation brought by the ACLU and others (discussed below) – the facility remains a penal environment that is inappropriate for children.⁵⁹

55. The 1997 settlement in *Flores v. Meese* establishes minimum standards and conditions for all minors in federal immigration custody. Among other provisions, the *Flores* settlement requires U.S. Immigration and Customs Enforcement (ICE) to provide youth in immigrant detention with adequate educational opportunities. The Settlement states:

Educational services [shall be] appropriate to the minor’s level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with appropriate reading materials in languages other than English for use during the minor’s leisure time.⁶⁰

56. Despite the *Flores* settlement, education at Hutto was – until conditions improved as a result of a 2007 settlement agreement between ICE and the American Civil Liberties Union (ACLU) – wholly inadequate. Children at Hutto reported receiving only one hour of instruction per day in a class of 70 students, who ranged in ages 12-17, making age- and ability-appropriate instruction impossible. The children rarely received homework, and when they did, it was in English, so their parents could not assist them. Because of restricted access to writing implements, children were forced to request pencils from guards, complete their homework in common areas, and return the pencils immediately. One child reported aggressive and hostile teachers who told students that, because they were not in their home countries, they did not have the right to talk, have fun or laugh.⁶¹

57. Access to the library was restricted, the availability of language-appropriate reading materials was poor, and parents lacked the opportunity to speak with their children’s teachers. The parents of two three-year old plaintiffs were told their children were too young to receive instruction at

Hutto, and no other educational services were offered these youth. During at least one period of time, children at Hutto received no instruction at all.⁶²

58. The settlement agreement with the ACLU requires Hutto to improve, among other things, educational programming at the facility. The facility is now required to provide: five hours of class time per day; computer labs with ESL and other computer classes available; telephonic translating services in the classrooms; educational assessments for each child; adult education classes, including ESL, parenting, development and computers; a curriculum based on Texas Educational Knowledge and Skills standards; teachers certified in Texas or enrolled in a Texas Education Agency certification program.⁶³

59. Conditions at Hutto have gradually and significantly improved as a result of the litigation, and educational programming has indeed expanded. Nonetheless, the over-reliance on detention as an immigration enforcement strategy continues to harm children's education, denying them access to regular schools and other services necessary for their full development.

D. Case Study: Youth Study Center, New Orleans, Louisiana

*Summary/Anecdotes from Morgan v. Nagin, No. 07-9755 (E.D. La. Filed Dec. 21, 2007)
Provided by the Juvenile Justice Project of Louisiana*

The City of New Orleans is being sued for its operation of the Youth Study Center, a juvenile detention facility where youth are placed in isolation for 22-23 hours per day for days, and sometimes weeks, at a time. Prior to Hurricane Katrina, detained youth reported unsanitary and dangerous conditions at the Youth Study Center (YSC). After the hurricane, the Federal Emergency Management Agency (FEMA) declared the YSC irreparably damaged, yet the YSC re-opened in 2006. Children detained at YSC live among vermin, spiders, and rodents and have been required to share personal hygiene items, endangering their health. There is a strong emphasis on punishment – commonly, isolation or restraints - instead of treatment, even for medical needs.

In such an environment, it is of no surprise that the children are deprived of adequate educational services and instruction. The limited education that is offered is sporadic and is neither age nor grade level appropriate. The teacher has no access to prior education records of the children. The learning environment is inadequate and overcrowded, and it does not meet the standard for the minimum minutes of daily instruction. There are no policies and procedures to assure that all youth up to twenty-one years of age have access to a free and appropriate public education, including related and transition services. The children are not provided assessments of special needs to determine how to meet their educational needs. For children with disabilities this is particularly problematic. The YSC discriminates against qualified disabled children by denying them adequate education, special education and related services, and transition services, thereby punishing them solely by reason of their disabilities.

In their depositions, several children testified to not receiving any schooling during their detention at YSC. Plaintiff L.M. received no education during his month-long detention: "I wanted to. That's something that could occupy my mind since I was in there." Plaintiff D.B. did

not receive any school, see teachers, or hear of other youth attending school at all during his detention at YSC. Plaintiff R.A., a thirteen-year-old, did not receive schooling while on lockdown for approximately three weeks. He was already overage for his grade level, enrolling in the 2nd grade at the age of 10.

When the detained children did receive schooling, it was irregular and grossly inadequate. Plaintiff R.M. only received school once during his month-and-a-half long detention in the spring of 2008. The day R.M. did receive school, he worked on a Sudoku puzzle with only eight other youth for approximately one hour. Plaintiff T.B. did not receive regular schooling while detained at YSC: “We ain’t going to school half the time. We stay in our room. Like we probably come out two hours, a hour, a hour of church and that be a wrap...Sometimes we don’t even go to school. Like when they don’t have no staff, the staff, they’ll like and say they don’t have no staff, you know, and they’ll keep us in our room.” Youth received schooling, at best, twice a week for two-hour sessions. Even if youth tried to attend additional sessions, they were prohibited. Plaintiff J.D. tried to attend additional sessions by standing in his window to get the entering teacher’s attention: “They’ll tell you during school don’t be in your window. I’ll still get in the window to try to tell the teacher to pick me, you know, pick me.”

The students’ instruction was neither grade nor age level appropriate. Plaintiff R.J., who was receiving gifted classes before and after his detention at YSC was talked to “like we was dumb, like we didn’t know nothing.” During the 21 days R.J. was at YSC, he went to school “maybe a maximum of three to four times, and when we was there, there wasn’t no teaching. ...And then the assignments was middle school stuff. At the time I was in 11th grade... so it was easy stuff for me...”

Children who were entitled to special education services were denied them – even when they told the teacher they were receiving such services prior to being detained. According to Plaintiff J.D., “[s]ome of them who told the teacher that they were receiving special education and stuff, they might ask us to help them with things. Don’t give them the answer, but just show them and stuff and they probably still wouldn’t understand.” Plaintiff T.B., who was receiving special education services prior to detention, noted “[The teacher] would give us something to do and I’d ask her how you do it, how you-you know, how you go around to how you figure it out. She’s like it’s there in your face. Figure it out yourself. I ain’t going to give you no answer...She will give us something way past our level.”

VI. EDUCATIONAL BARRIERS IN TRANSITION FROM CUSTODY TO COMMUNITY

60. Annually approximately 100,000 juveniles nationwide age 17 and under are released back to the community after a period of incarceration.⁶⁴ An additional 100,000 youth a year between the ages of 18 and 24 also return to the community following prison.⁶⁵

61. More than two-thirds of youth who return home from residential placement do not return to school upon release. There are multiple barriers to educational reentry: schools often don’t want these children back; children are often released from custody at mid-semester; custodial records

and records of credits earned are not transferred to the home school; home schools refuse to accept custodial credit.⁶⁶

62. After experiencing arrest, detention or incarceration, many juveniles are excluded from returning to a mainstream school, and are instead referred to a disciplinary alternative school with inferior educational services.⁶⁷ According to a report from the National Center for Education Statistics, “38% of [school] districts reported arrest or involvement with the juvenile justice system as a sufficient reason for transfer to an alternative school.”⁶⁸ In Texas, for example, the Texas Safe Schools Act mandates students be removed from mainstream schools to disciplinary alternative education programs (DAEPs) for criminal violations or for any violation of the local school code of conduct.⁶⁹ Mississippi state law similarly permits youth court judges to place youth in alternative schools. As a result, youth who struggle to access educational services while in detention often face continued barriers to quality education when they are forced into sub-par alternative schools, rather than mainstreamed back in to regular schools, following their incarceration.

63. A growing number of universities and colleges (including community colleges) have added questions about criminal convictions to their college application forms. This information may be used to bar individuals with records from college, increase scrutiny (including review by campus police) or require references from prison officials in order to be considered for admission.⁷⁰

ENDNOTES

¹ Roni Reed, “Education and the State Constitution: Alternatives for Suspended and Expelled Students,” *Cornell Law Review*, Vol. 81, p. 582; Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race or national origin in federally funded education programs, and Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex; Title II of the Americans with Disabilities Act of 1990 prohibits discrimination based on disability and the Individuals with Disabilities Education Improvement Act of 2004 ensures educational services for students with disabilities. See Office of Civil Rights, U.S. Department of Education. <http://www.ed.gov/about/offices/list/ocr/know.html>.

² As a signatory to a human rights treaty, the U.S. is obligated to refrain from violating the “object and purpose” of the treaty (see Vienna Convention on the Law of Treaties, Article 18, entry into force January 27, 1980). The U.S. signed the International Covenant on Economic, Social and Cultural Rights in 1977. The U.S. signed the Convention on the Rights of the Child in 1995.

³ To ratify a treaty, first the U.S. President signs the treaty, and then the U.S. Senate passes a resolution consenting to making the treaty part of U.S. law. The U.S. ratified the International Covenant on Civil and Political Rights in 1992 which entered into force March 23, 1976 and is ratified by 156 countries. Articles 2 and 24 protect against discrimination in education. The U.S. ratified the Convention on the Elimination of All Forms of Racial Discrimination in 1994 which entered into force January 4, 1969 and is ratified by 173 countries. Article 5 protects against racial discrimination in education.

⁴ Richard J. Coley and Paul E. Barton, “Locked Up and Locked Out: An Educational Perspective on the U.S. Prison Population,” Educational Testing Service, 2006.

⁵ General Comment No. 17: Rights of the child (Art. 24), International Covenant on Civil and Political Rights 07/04/89. “The Committee notes in this regard that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural...In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression.”

-
- ⁶ American Civil Liberties Union (ACLU) and Human Rights Watch, “Custody and Control: Conditions of Confinement in New York’s Juvenile Prisons for Girls Custody and Control,” 2006.
- ⁷ National Center for Education Statistics, Digest of Education Statistics, U.S. Department of Education, 2007, Table 152 http://nces.ed.gov/programs/digest/d07/tables/dt07_152.asp, and Table 153 http://nces.ed.gov/programs/digest/d07/tables/dt07_153.asp.
- ⁸ Office of Juvenile Justice and Delinquency Prevention, “Juvenile Offenders and Victims 2006 National Report,” U.S. Department of Justice, Office of Justice Programs, 2006, <http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/chapter7.pdf>.
- ⁹ National Center for Education Statistics, The Conditions of Education 2006, U.S. Department of Education, Table 27-2. http://nces.ed.gov/programs/coe/2006/pdf/27_2006.pdf
- ¹⁰ N. Martin and S. Halperin, “Whatever it takes: How twelve communities are reconnecting out-of-school youth,” American Youth Policy Forum, 2006.
- ¹¹ M. K Rausch and R. Skiba, “Unplanned Outcomes: Suspensions and Expulsions in Indiana,” Education Policy Briefs, Vol 2 (2), 2004.
- ¹² B. Western, B. Pettit and J. Guetzkow, “Black Economic Progress in the Era of Mass Imprisonment,” in M. Mauer and M. Chesney-Lind, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, New Press, New York, 2002, pp. 165-180.
- ¹³ National Center for Education Statistics, “Indicators of School Crime and Safety: 2007,” U.S. Department of Education. http://nces.ed.gov/programs/crimeindicators/crimeindicators2007/ind_21.asp.
- ¹⁴ NESRI, 2007.
- ¹⁵ Judith A. Browne, “Education on Lockdown: The Schoolhouse to Jailhouse Track,” Advancement Project, 2005. <http://www.advancementproject.org/reports/FINALEOLrep.pdf>.
- ¹⁶ New York Civil Liberties Union and American Civil Liberties Union (NYCLU and ACLU), “Criminalizing the Classroom: The Over-policing of New York City Schools,” 2007.
- ¹⁷ NYCLU and ACLU, 2007.
- ¹⁸ Tara Deering, Tom Alex and Brianna Blake, “1 in 3 school arrests involved blacks,” *Des Moines Register*, June 17, 2003, <http://www.uiowa.edu/~nrcfcp/dmrcr/pdf/DM%20Register%206-17-03.pdf>.
- ¹⁹ Concluding Observations of the Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, United States of America, CERD/C/USA/CO/6, 8 May 2008. <http://daccessdds.un.org/doc/UNDOC/GEN/G08/419/82/PDF/G0841982.pdf?OpenElement>
- ²⁰ For more information about Harris et al. v. Atlanta Independent School System, see <http://www.aclu.org/crimjustice/juv/34437res20080311.html>.
- ²¹ Heather C. West and William J. Sabol, “Prisoners in 2007,” U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2008. <http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf>.
- ²² West and Sabol, 2008.
- ²³ West and Sabol, 2008.
- ²⁴ West and Sabol, 2008.
- ²⁵ West and Sabol, 2008.
- ²⁶ West and Sabol, 2008.
- ²⁷ Office of Juvenile Justice and Delinquency Prevention, 2006
- ²⁸ Office of Juvenile Justice and Delinquency Prevention, 2006
- ²⁹ Office of Juvenile Justice and Delinquency Prevention, 2006, p. 236.
- ³⁰ Office of Juvenile Justice and Delinquency Prevention, 2006, p. 237.
- ³¹ For Population see: C. Puzanchera, T. Finnegan and W. Kang, “Easy Access to Juvenile Populations,” 2006, <http://www.ojjdp.ncjrs.gov/ojstatbb/ezapop/>; for Arrest and Prison see: National Council on Crime and Delinquency, “And justice for some,” 2007; for Detained, Petitioned, Adjudicated, Transferred, Placed see: A. Stahl, T. Finnegan and W. Kang, “Easy Access to Juvenile Court Statistics: 1985-2004,” 2007, <http://ojjdp.ncjrs.gov/ojstatbb/ezajcs/>.
- ³² Office of Juvenile Justice and Delinquency Prevention, 2006
- ³³ E. Greenberg, E. Dunleavy, and M. Kutner, “Literacy Behind Bars: Results From the 2003 National Assessment of Adult Literacy Prison Survey” (NCES 2007-473), National Center for Education Statistics, U.S. Department of Education, 2007.
- ³⁴ Caroline Wolf Harlow, “Education and Correctional Populations,” U.S. Department of Justice, Bureau of Justice Statistics Special Report, January 2003. http://www.policymalmanac.org/crime/archive/education_prisons.pdf
- ³⁵ Harlow, 2003.

-
- ³⁶ R. M. Foley, “Academic characteristics of incarcerated youth and correctional educational programs,” *Journal of Emotional and Behavioral Disorders*, Vol. 9, 2001, pp. 248-259.
- ³⁷ Harlow, 2003.
- ³⁸ Harlow, 2003.
- ³⁹ Greenberg, 2007.
- ⁴⁰ James J. Stephan and Jennifer C. Karberg, “Census of State and Federal Adult Correctional Facilities 2000,” U.S. Department of Justice, Bureau of Justice Statistics, 2003.
- ⁴¹ Steven Klein, Michelle Tolbert, Rosio Bugarin, Emily Forrest Cataldi, and Gina Tauschek, “Correctional Education: Assessing the Status of Prison Programs and Information Needs, U.S. Department of Education, Office of Safe and Drug-free Schools, 2004. http://www.mprinc.com/products_and_publications/pdf/corred_report.pdf
- ⁴² Klein, 2004.
- ⁴³ Correctional Education Association, “Three State Recidivism Study,” Submitted to Office of Correctional Education and United State Department of Education, 2001. <http://www.ceanational.org/PDFs/3StateFinal.pdf>
- ⁴⁴ J. B. Contardo, “Against the grain: A study of North Carolina’s plan to provide college to its prison inmates” (doctoral dissertation), University of Maryland, 2008; and M. Tolbert and J.B. Contardo, “Models and Challenges for Bridging Learning from Incarceration to the Community,” Presentation at Re-entry Roundtable Conference, John Jay College of Criminal Justice, 2008.
- ⁴⁵ A description of what has been included in this survey is available in Andrea J. Sedlak, “Introduction to the Survey of Youth in Residential Placement,” OJJDP Bulletin, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 2008. <http://www.ncjrs.gov/pdffiles1/ojjdp/218390.pdf>
- ⁴⁶ Government Accountability Office, “Residential Facilities: Improved Data and Enhanced Oversight Would Help afeeguard the Well-Being of Youth with Behavioral and Emotional Challenges” (GAO-08-146T), 2007. <http://www.gao.gov/new.items/d08346.pdf>
- ⁴⁷ Government Accountability Office, 2007.
- ⁴⁸ M. M. Quinn, R. B. Rutherford, P.E. Leone, D. M. Osher and J. M. Poirier, “Youth with disabilities in juvenile corrections: A national survey,” *Exceptional Children*, Vol. 71, 2005, pp. 339-345.
- ⁴⁹ P.E. Leone and S. Meisel, “Improving education services for students in detention and confinement facilities,” *Children's Legal Rights Journal*, Vol. 17 (1), 1997, pp. 2-12.
- ⁵⁰ American Civil Liberties Union (ACLU) and ACLU of Texas, “A Blueprint for Meeting the Needs of Girls in TYC Custody: Report and Recommendations to the Texas Youth Commission,” May 2007, <http://www.aclu.org/womensrights/crimjustice/29876prs20070524.html>.
- ⁵¹ ACLU and ACLU of Texas, 2007, pp. 8-9; and American Civil Liberties Union (ACLU) and Human Rights Watch, “Custody and Control: Conditions of Confinement in New York’s Juvenile Prisons for Girls Custody and Control,” 2006, pp. 81-82.
- ⁵² ACLU and Human Rights Watch, 2006, pp. 80-83.
- ⁵³ ACLU and Human Rights Watch, 2006, pp. 86-87; and ACLU and ACLU of Texas, 2007, p. 9.
- ⁵⁴ ACLU and ACLU of Texas, 2007, p. 9.
- ⁵⁵ ACLU and Human Rights Watch, 2006, p. 82.
- ⁵⁶ ACLU and Human Rights Watch, 2006, pp. 83-84.
- ⁵⁷ Cora Roy-Stevens, “Fact Sheet: Overcoming Barriers to School Reentry,” U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, October 2004, p. 1.
- ⁵⁸ “A Review of Education Programs for Students in the Texas Youth Commission State Schools,” A Report of the Office of Independent Ombudsman, July, 2008, http://www.tyc.state.tx.us/ombudsman/rept_education/index.html.
- ⁵⁹ Women’s Commission for Refugee Women and Children and Lutheran Immigration and Refugee Services, “Locking Up Family Values: The Detention of Immigrant Families,” February 2007. See also individual complaints in the ACLU’s Challenge to the Hutto Detention Center—*Blanco v. Chertoff*, *Sanchez v. Chertoff*, *Antony Nartatez v. Chertoff*, *Jonathan Nartatez v. Chertoff*, *Brisuela v. Chertoff*, *Altamirano v. Chertoff*, *Razmias v. Chertoff*, *Bunikyte v. Chertoff*, and *Baubonyte v. Chertoff*—available at <http://www.aclu.org/immigrants/detention/28856res20070306.html>.
- ⁶⁰ *Flores v. Meese* Stipulated Settlement Agreement, Ex. 1 at ¶ A(4).
- ⁶¹ See individual complaints in the ACLU’s Challenge to the Hutto Detention Center.
- ⁶² See individual complaints in the ACLU’s Challenge to the Hutto Detention Center.
- ⁶³ *In re Hutto Family Detention Center* Settlement Agreement, Exhibit C, available at <http://www.aclu.org/immigrants/detention/31504gl20070826.html>.
- ⁶⁴ Howard Snyder, “An Empirical Portrait of the Youth Reentry Population,” *Youth Violence and Juvenile Justice*,

Vol. 2 (1), 2004, pp. 39-55.

⁶⁵Daniel P. Mears and Jeremy Travis, "The Dimensions, Pathways, and Consequences of Youth Reentry," Urban Institute, 2004, <http://www.urban.org/url.cfm?ID=410927>.

⁶⁶Daniel P. Mears and Laudan Y. Aron, "Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current State of Knowledge," Urban Institute, 2003, <http://www.urban.org/url.cfm?ID=410885>.

⁶⁷ See Section II.C of this report above.

⁶⁸ National Center for Education Statistics, "Public Alternative Schools and Programs for Students at Risk of Education Failure: 2000-01," September 2002, p. 17.

⁶⁹ The Act is codified in the Texas Education Code, Chapter 37 ("Chapter 37") TEX. EDUC. CODE §37.001 et. seq.

⁷⁰ Marsha Weissman, Alan Rosenthal, Patricia Warth, Roberta Meyers-Peebles and April Frazier, "Closing the Doors to Higher Education: Another Collateral Consequence of a Criminal Conviction," Center for Community Alternatives, <http://www.communityalternatives.org/pdfs/Higher%20Ed%20Paper%20Final.pdf>.

In 1968, the Kerner Commission called on the country to make "massive and sustained" investments in jobs and education to reverse the "segregation and poverty [that] have created in the racial ghetto a destructive environment totally unknown to most white Americans."¹² Report of the National Advisory Commission on Civil Disorders: Summary of Report (1967).¹³ The racial disparities in the adult and juvenile justice systems stem in part from the policing and pretrial factors described earlier, and are compounded by discretionary decisions and sentencing policies that disadvantage people of color because of their race or higher rates of socioeconomic disadvantage.³⁷ Ghandnoosh, N. (2014). Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System. 6 Racial disparity in the juvenile justice system. 7 Immigration and crime. 8 Race and sentencing length.¹⁴ Race has been a factor in the United States criminal justice system since the system's beginnings, as the nation was founded on Native American soil.¹⁵ It continues to be a factor throughout United States history through the present. Legal background (1763-1829).¹⁶ In the construction of the United States Constitution in 1789, slavery and white supremacy were made part of the justice system, as citizens were defined as free white men.¹⁷ Antebellum (1830-1860). Lynch law was renewed with the anti-slavery movement, as several acts of violence towards people of color took place in the early 1830s.¹⁸ In August 1831, Nat Turner led the slave insurrection in Virginia. Juvenile justice: detention systems With dedicated juvenile justice systems absent in many developing countries, young people caught breaking the law often end up in places of detention that are inappropriate for their age and development, and, as such, will not increase the likelihood of their reintegration into society.¹⁹ The "Manual for the measurement of juvenile justice indicators" of the United Nations Office on Drugs and Crime and the United Nations Children's Fund (UNODC & UNICEF, 2006) is a resource for Governments on the collection of indicators for measuring information about the situation of children and youth in conflict with the law.²⁰ The manual addresses several stages of the judicial.