Manifestation Destiny: The School to Prison Pipeline

by Attorney Isabel Raskin

Studies have repeatedly shown that children with disabilities, whose needs are unmet or inappropriately addressed by schools, are at risk of falling further behind their peers in class, becoming frustrated, and acting out in inappropriate but entirely foreseeable ways. Current special education law recognizes that schools that do not provide required services for special needs children, cannot expel these students from school for misbehaving, as that would constitute unlawful discrimination against a child for manifesting disability related behaviors. Under this same law, however, schools can arrest these same students, regardless of whether or not their behaviors are a manifestation of the student’s disability. The capacity of schools to use the juvenile justice system to bring charges against students whom they cannot otherwise expel, subverts the purpose of special education laws by allowing schools to avoid accountability for their failure to provide mandated services, and pushes children with disabilities into a criminal justice system that puts their entire future in jeopardy.

In Massachusetts students can be permanently expelled from school for a variety of misbehaviors. While these laws apply to all children in Massachusetts, under the Federal Individuals with Disabilities Education Act (IDEA), students with disabilities are entitled to certain additional protections prior to being expelled from school. These additional protections reflect the history and purpose behind the IDEA, to end the appalling discrimination that many special needs children historically experienced, including being barred from attending school, being warehoused with minimal services, and being unilaterally excluded from school for behaviors arising out of their disabilities.

Under the IDEA, prior to special needs students being excluded from school for a disciplinary infraction, a school must hold a TEAM meeting to determine whether the child’s behavior is a manifestation of the child’s disability. Known as a “Manifestation Determination Meeting”, the focus of the meeting is to determine whether the behavior is a result of the child’s handicapping condition. If the TEAM concludes that the behavior is a manifestation of the child’s disability, then the student cannot be expelled for the behavior and the school is required to provide appropriate assessments, supports and services to the child.

When considering whether behavior is a manifestation of the student’s disability for purposes of expulsion, the determination requires a consideration not only of the student’s ability to conform his behaviors, but just as importantly, a review of whether

1 Massachusetts General Laws c. 71 secs. 37H and 37H ½.
2 2. 20 United States Code (U.S.C.) sec. 1400 et. seq.
3 A “TEAM” is composed of a child’s parent/s, at least one of the child’s general education teachers, at least of the child’s special education teachers, a school representative who is knowledgeable about the general curriculum, and school system resources, and is qualified to provide or supervise specially designed instruction to meet the needs of children with disabilities, an individual who is qualified to interpret evaluation results, other individuals who have knowledge or expertise about the child and when appropriate, the child. 34 C.F.R. sec. 300.344; 20 U.S.C. sec. 1415 (k)(4)(B).
the school developed an appropriate Individualized Education Plan (IEP) and whether the school has implemented all the services within the IEP to which they agreed. Implicit in this aspect of the review is the recognition that students’ behaviors would not occur if these students had received the educational services that schools are mandated to provide. Schools that have not met their obligation to educate special needs students as required are precluded from expelling these same students for the schools’ own failures. These protections are particularly crucial to protecting the rights of disabled students in light of a 1999 U.S. Department of Education report finding that since 1991, Massachusetts has not been in compliance with certain IDEA requirements resulting in both delays and non-delivery of services to children with disabilities.5

While schools must consider their own compliance with special education laws when determining whether a child’s misbehavior is a manifestation of the child’s disability for expulsion purposes, unfortunately, no such manifestation review is required before a school can have a student arrested for these same behaviors and charged in juvenile courts. A new section added to the IDEA in 1997 permits schools to arrest students for “crimes” committed by a child with a disability.6 While presumably this section was meant to be used for truly criminal acts or to safeguard schools in emergency situations, the reality is that many schools are arresting special needs students for minor school infractions such as talking back to teachers and refusing to leave classrooms. A recent New York Times front page article reported that school based arrests for minor offenses are clogging court dockets and acknowledged that many of these school based arrests involve special education students whose behavior is often related to their disabilities.7

In Massachusetts, both the administrative Special Education Appeals Bureau (BSEA) which reviews special education matters and the juvenile courts have ruled that they don’t have the jurisdiction over or the authority to dismiss these cases. This has created anomalous situations such as: A special needs student acts out in school by refusing to leave a classroom, yelling and cursing at a teacher. A school based police officer arrests the student and the student is charged in juvenile court with disorderly conduct and disturbing a school assembly. In addition to the criminal proceeding, the school moves to expel the student for the behavior. The TEAM convenes, determines that the student’s IEP has not been properly implemented—the school has not provided necessary services to which it agreed in the IEP. The student’s behavior is deemed to be a manifestation of the student’s disability by the TEAM and the student cannot be expelled from school. The juvenile court however, cannot dismiss the case, and the BSEA does not have the legal

---

4 The IDEA sets forth extensive procedures for schools to follow in identifying and determining the special education and related services to which eligible students are entitled. This includes detailed procedures for developing Individual Education Plans (IEPs). The Supreme Court has ruled that school compliance with these procedures is an essential part of providing a free appropriate public education for special needs students. (See, Center for Law and Education, Quality Education for Children with Disabilities: Topic Briefs for Parents and Their Advocates #6).
6 20 U.S.C. secs. 1415(k)(9)(A) and (9)(B).
authority to see that the case is dismissed. The student is adjudicated delinquent and committed to the Department of Youth Services (DYS). The student is locked up and cannot return to school.

In a final ironic blow, the commitment of special needs children to the Massachusetts Department of Youth Services almost guarantees that they will continue to be denied the very services which could make the greatest difference in their lives and to which they are entitled under the law. In a March 2002 report issued by DYS on education services, DYS admitted that while more than 40% of committed youth had received special education services at some time prior to commitment, DYS has no effective communication with local school districts and little capacity to monitor the delivery of special education services.\(^8\)

The inability of courts and administrative agencies to dismiss criminal charges brought by schools against disabled children whose needs the school has failed to adequately serve in violation of special education laws and regulations, rewards schools for ignoring or purposely disregarding children’s needs and their mandate to meet those needs. Schools need to be held accountable and should not be allowed to use juvenile courts to unilaterally exclude and punish children for precisely those foreseeable behaviors caused by their own failures. Inviting courts to step in effectively provides an incentive to schools to abrogate their responsibility, criminalize disabled children, and continues to insure that disabled children will be denied the services they require to have a successful future.

Isabel Raskin is the educational attorney for Suffolk University Law School’s Juvenile Justice Center. Prior to working at the Juvenile Justice Center, Isabel was senior staff attorney at the Children’s Law Center of Massachusetts, where she represented children in care and protection, CHINS, delinquency and education matters. She is a graduate of the University of Michigan and Northeastern University Law School.

\(^8\) Delivering Effective Education to Youth: A Report on Education Services in the Massachusetts Department of Youth Services; A Report to the Massachusetts House and Senate Ways and Means. March 19, 2002.