

Viewpoints, Outlook

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Decriminalize misbehavior

State must not write off students

Katy district's response to girl's graffiti is latest example of how system is excessively punitive

By MARC A. LEVIN

"The words of a prophet are written on the subway wall," Simon and Garfunkel once sang. Perhaps "I love Alex" could be a hit record, but in Katy, these words written on a gymnasium wall instantly made a 12-year-old a potential felon.

As the Houston Chronicle reported, Shelby Sendelbach, a sixth-grader in the Katy Independent School District, was originally going to be banished to an alternative school for four months and could have been charged with a state jail felony for this incident, although prosecutors reportedly weren't going to seek a felony-level indictment. At last report last week, the district's superintendent and the school board decided to reconsider the girl's punishment in a closed-door session on July 18.

Sendelbach is hardly the first Texas student to be zapped by zero-tolerance policies. In 2003, another Katy ISD student, 13-year-old Christina Lough, was suspended and removed as student council president for bringing a pencil sharpener with a two-inch blade to school.

Last year, Casey Harmeier, a Tomball ISD 11-year-old, was arrested for allegedly pulling a fire alarm and was initially charged as a felon. The charge was reduced to a misdemeanor and ultimately dropped.

Texas students have been suspended or expelled for incidents such as a pocket knife left in a car parked on school property or an asthma inhaler not registered with school authorities. In 2005, the Legislature passed HB 603, which provided that districts may consider a student's intent and prior disciplinary history, if any, in suspension or expulsion decisions. During the 2007 session, the House voted to make such consideration mandatory, but the Senate failed to act.

However, policies must be fundamentally changed to be more restorative than punitive, and ensure that interventions take place within the school, particularly for nonviolent infractions.

Sendelbach should have been required to clean up her graffiti and perhaps other graffiti as well, perform school and community service, and meet with a local business or homeowner who has been victimized by graffiti to discuss its impact on a community's quality of life. All of this can be accomplished through programs such as victim-offender mediation, peer mediation and teen courts that should operate within schools.

Through these restorative processes, students learn how their misconduct affects others and often reach a written agreement to make amends, which they must perform to avoid traditional sanctions. Unlike prosecutions that typically take many months, these interventions can occur within days, and numerous studies show that the proximity of the sanction is the most important factor in changing juvenile behavior.

State law already provides a framework for this, but Harris County is not utilizing it. Chapter 52 of the Family Code describes police informal disposition programs that allow juveniles — particularly first time offenders like Sendelbach — to avoid prosecution by agreeing to make restitution and perform community service. While Harris County utilizes deferred prosecution, such cases still must go to court. The juvenile board has failed to adopt guidelines for diversion of youth by law enforcement, including school police. However, Section 52.03 states that each county's juvenile board "shall, in cooperation with each law enforcement agency in the county, adopt guidelines" for informal disposition.

In 2006, Dallas diverted 800 juveniles under this law. More than 80 percent of them successfully performed their agreement; the rest were sent to court. If the required guidelines were in place, Katy ISD police would have had a clear procedure for informally disposing of Sendelbach's case instead of

giving her a summons to appear in court, and she could have already fulfilled her agreement.

A law passed this session should encourage schools to move in this direction for Class C misdemeanors. Schools will no longer be able to issue criminal citations to students for conduct that is not a criminal offense under state or local law. Texas schools had been citing kids for routine misbehavior, including an 8-year-old in Houston for chewing gum. Instead of handing out citations like lollipops and passing the paddle to municipal courts, schools will now have an incentive to implement restorative processes.

Decades ago, such incidents were handled within the school. Our current system has become excessively punitive, and protracted adversarial legal proceedings have displaced less formal means of accepting responsibility. It's time to write a new chapter in Texas discipline and return to old-fashioned common sense.

Levin is director of the Center for Effective Justice at the Texas Public Policy Foundation, a nonprofit, free-market research institute based in Austin.

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