

Podcast: The collateral consequences of school discipline records in Illinois (with Eve Rips)

Speakers: Kristen Chandler (host), Eve Rips (assistant professor at University of Illinois Chicago College of Law)

Kristen Chandler

Hello everyone, and welcome to the Illinois Policy Unpacked podcast, where we inform the policy conversation in Illinois and beyond. I'm your host, Kristen Chandler. Today, I'm joined by Eve Rips, an assistant professor of law at the University of Illinois Chicago. Her research focuses on legislation impacting children and young adults, with an emphasis on school discipline and juvenile justice. Rips' latest publication explores the impact of K through 12 discipline records on Illinois college admissions, along with potential policy solutions to alleviate these unequal outcomes. She's here today to break down her analysis for listeners. Rips, welcome to the podcast.

Eve Rips

Thank you so much for having me on Kristen.

Kristen Chandler

Yes, thanks for being here. To start, you're a law professor. What initially drew you to study school discipline?

Eve Rips

Well, I grew up in a family where love of learning was really a core value, and so I think because of that, it's always seemed really counterintuitive to me that our response to childhood misbehavior is denying kids access to schooling. In my very first job out of law school, I represented students who were facing expulsion from public schools in Chicago and the surrounding suburbs, and so really got to see firsthand early on, the ways in which bias creeps into the system at every level. I think a lot, for example, about a client that I represented who was facing expulsion from a charter school for instances of chronic disrespect. He would occasionally roll his eyes at his teachers, push back on things that they said. And it really was somebody reminded me very much myself. I did a lot of those same things in school, and for me, it was often really rewarded. I was told I was showing critical thinking skills or told to go to law school. So, it's really stuck with me, the different ways that people are treated when it comes to misbehavior in school.

Kristen Chandler

Yes, absolutely. Thanks for highlighting that bias, which we'll get into a little bit later as we as we talk, but thank you for sharing that. In your policy spotlight, you note that Illinois has been a national leader in K through 12 discipline reforms, yet some schools still require students to disclose disciplinary records. Who is most affected by these requirements in college applications?

Eve Rips

So questions about school discipline and college admissions remain incredibly common. For my report with IGPA, I looked at 48 schools in Illinois that use the Common Application for admission to four-year undergraduate programs. About 40% of them are continuing to ask about K-12 school discipline in the admissions process. Now, schools vary tremendously in how they ask these questions. Some schools ask about discipline from an applicant's educational history going all the way back to preschool. Some schools limit it to high school level discipline. Some colleges and universities ask about discipline only for more serious types of infractions. Other people at other schools ask about all forms of discipline, discipline for any kind of infraction whatsoever. A number of questions are really ambiguous in terms of wording. It's often not clear, for example, whether if you faced a detention. That's something that you would need to disclose in the admissions process and should be deeply troubling to us, because it is very clear that discipline is enforced in inequitable ways. So, in Illinois, for example, Black children represent about 40% of school expulsions, despite representing 16.5% of the school population overall. That starts really young. We know that black preschoolers are disciplined at much higher rates than white preschoolers are.

Research is also very clear that it's not that Black kids are offending more, it's about bias in the system. So we actually see that rates of inequity and discipline are much higher for very subjective offenses, like the example of chronic disrespect that I started with, than they are for offenses that are at least a little bit more effective in nature, like getting caught smoking in school. We also see higher rates of discipline for Indigenous students and for students with disabilities. So, with students who qualify for services under the Individuals with Disabilities Education Act, we see that rates of out of school suspension are about twice as high as you would expect given that population share of the school age demographic.

We should also be concerned about the prevalent use of school disciplinary information, because school disciplinary procedures can be extremely informal, even for more serious disciplinary consequences, and because ultimately, the majority of infractions that students are disciplined for are really minor.

Kristen Chandler

Thank you for sharing that. Yeah, it sounds like schools kind of can decide on their own how they choose to discipline, so that subjectiveness that you talked about creeps in a little bit. So, it may vary from school to school.

Eve Rips

Yeah, there are constitutional procedural requirements, and there's state laws and a free state governing school discipline, but schools still have an incredible amount of discretion over what they do.

Kristen Chandler

Absolutely. Thanks for highlighting that. You mentioned the college application a little bit earlier, but just to emphasize to listeners, the common application is a widely used online platform that allows students to apply to multiple colleges and universities with a single application. A lot of college students use that today. They removed the criminal background and school discipline questions in 2019 and 2021 respectively. The organization cited equity concerns, but some institutions, particularly private colleges, still include them. How do these schools justify continuing this practice?

Eve Rips

There are two major concerns come up repeatedly from colleges and universities, perhaps unsurprising ones. Schools are concerned about safety risk and schools are concerned about liability, both very understandable things. The concern on my end is that research doesn't back off the idea that asking about school discipline does anything to keep campuses safer or to reduce the odds of being sued. So with respect to safety, most of the research in this space is about questions about criminal or juvenile justice records rather than about school discipline. But in that space, studies have found that asking about criminal or juvenile justice records doesn't cause a reduction in campus crime rates. The Department of Education actually put out a report in 2003 that found that there has not been a documented study this found a connection between asking about crime on campus or asking about criminal records, I should say, and reduction on campus. The research about school discipline questions and admission is more limited, but what research is out there suggests that the same holds true with respect to questions about school discipline.

To the extent that we have research in this space, it's found that asking about school discipline in admissions doesn't do anything to reduce campus crime rates. That's unsurprising given the research on asking about criminal history. Kind of expect that if asking about criminal history doesn't do anything to keep campuses safer, then probably asking about school discipline records won't either. The other concern that schools mentioned is about liability. So my sense is here that schools are concerned about potentially being sued for negligence and including

somebody who had a disciplinary record who goes on to do something serious. But thing with this is that there doesn't actually seem to be an example of a school being successfully sued for this sort of negligence and admissions. And indeed, some colleges and universities take the exact opposite approach, and are concerned that asking about discipline might actually expose them to additional liability, presumably under a theory that they might be sued for some form of discrimination because of that information.

Kristen Chandler

Absolutely, and I remember in your report that one of the serious offenses you talk about is firearms. And you go on to mention that firearm discipline makes up .02% of all disclosed discipline records, and so there isn't a ton of data on admitting those students and a relation to asking them about firearm usage.

Eve Rips

That's right, if you ask an open-ended question about school discipline, the vast majority of things that you're going to get when students respond is going to be information about comparative minor offenses like the disrespect or chronic disruption, relatively small things.

Kristen Chandler

Absolutely. Thank you. What are the potential long-term consequences of requiring applicants to disclose disciplinary history for both college admissions and professional licensure?

Eve Rips

Asking questions about a student's K 12 disciplinary history can impact what happens for that student in two ways. One is that it can have a direct impact in that colleges and universities that ask for this information do indeed use the information and at least unlimited ways. Universities do actually deny students admission because of disciplinary information. It's revealed in the admissions process at least some of the time. But then beyond that, there's some research that shows that these questions can have a chilling effect for applicants, so for applicants who might have more minor disciplinary infractions on their records, seeing these questions about disciplinary history, and perhaps having to disclose more information about themselves if they check the box that says they do have history, can make it harder to apply. That can mean that there are actually applicant attrition rates where students start an application but decide not to go forward with it, in part because of disciplinary questions. And we know that for students who have disciplinary history, this information can come up, not just in college admissions, but also in admissions for graduate education and even sometimes on applications for professional licensure. I teach in a law school. My law students have had to disclose disciplinary information, not just in college admissions, but in admissions for law school, and they'll have to disclose that information again for K-12 discipline when they apply for the Bar as well. I teach education law

and talk to students in that class about school discipline. And I actually have to warn students occasionally, if it seems like they're going to share a story about personal experience, to be careful in doing so, because I serve as a reference for many of my students on the character and fitness portion of the bar. And if my students have as a reference, I have to fill out for them whether they know they have disciplinary history from any point their educational experience. And so if I know that a student faced suspension in high school, I have to report that for that student.

Kristen Chandler

That's very interesting. I didn't know that you had to disclose that for the bar even, and that you were, you're, what a character disclosure?

Eve Rips

this is for the character and fitness portion of the bar. So, if I'm a character reference for one of my students who's applying to take the bar and has to fill out character and fitness portion when I do their reference check, that's information I have to share.

Kristen Chandler

Okay, interesting. I learned something new today. I wonder at one point, I know we talk about this in the digital, in the digital world of the "right to be forgotten." I wonder at what point your discipline has the right to be forgotten? You know, if you're applying for the Bar, you've been through college, you've been through grad school, and you're now going to be a working professional, at what point is that forgiven?

Eve Rips

I think that's such an important question, right? You see that exact language around right to be forgotten coming up a lot in conversations about expungement and criminal context. There's a certain point at which you should be able to have something that you've done forgotten from your record.

Kristen Chandler

Yeah, absolutely. So, this is important research for people moving forward. Given the limited evidence that these questions improve safety or reduce liability, along with concerns about equity and lasting penalties, which you mentioned, you outlined two possible legislative responses. What are those policy recommendations?

Eve Rips

So the two policy recommendations that I make this report are directly analogous to responses seen in the criminal justice context. I have one recommendation that's analogous to "Ban the

Box” laws in the criminal justice context, and one that's more analogous to expungement laws, starting first with the policy focused on banning the box so in the criminal justice context. Ban the Box laws are laws that respect the ability of employers or landlords or licensing boards to ask location forms about someone's criminal record. You would no longer, in a state that's banned the box, or jurisdiction that's banned the box, have to check the box that says that you have a criminal record. These laws have become very popular. They've been tremendously successful, and we've started to see these laws used as well in the higher education admissions context. So a significant number of states these days pass laws that restrict the ability of colleges and universities to ask about a student's criminal or juvenile justice record in admissions, and you can do the same thing with respect to records of school discipline.

In fact, there is one state that's done this. Colorado banned not only questions about criminal and juvenile records and admissions, but also some forms of questions about school disciplinary history. College admissions should really be considering you could do this at a broader level by restricting the ability of all post-secondary institutions to inquire into all forms of K 12 disciplinary records, or you could take a smaller step in that direction by restricting the ability to ask about at least some forms of school discipline, or by carving out an exception for particularly serious forms of infractions, but restricting the ability to ask about most forms of school discipline.

Then the other recommendation that I make is analogous to expungement laws. So in the criminal and juvenile justice context, expungement laws involve removing information from an individual's criminal or juvenile record, and that's often paired with the ability to legally deny that the record ever existed. And similarly, you could bring that to the context of K-12 disciplinary records, allowing for records to be deleted either after a fixed period of time has passed or at the request of the student or their family, and then again, pairing that with legal protections for students, so that they can deny that the record ever existed, if asked about a school disciplinary record and an admissions process or on an application for professional licensure.

Kristen Chandler

Absolutely, so your students that you mentioned who will be taking the Bar, they would be able to not include that if they were able to get that expunged, those questions about discipline records.

Eve Rips

That's right. So if you were able to get your school discipline record expunged, and that was paired with a prohibition on having to disclose the information when asked about it, students

would then be able to deny that the record existed, not only in undergraduate admissions, but in graduate admissions and on applications for professional licensure going forward.

Kristen Chandler

Absolutely. Thanks for the analogy and highlighting that. All right, last question I have for you, Eve. Where can listeners learn more about your work?

Eve Rips

There's more information about my work up on my faculty page at the UIC School of Law website. My writing is available on SSRN.com and includes information about this exact issue we've been talking through, the use of K 12 disciplinary information, as well as my research on use of juvenile justice records and publish admissions.

Kristen Chandler

We hope today's conversation shed light on Illinois school discipline policy, its equity implications and the lasting impact of disclosure requirements. Thanks to our guest, Eve Rips, for sharing insights on who is most affected and potential policy solutions. Stay tuned for more episodes that helped shape the policy conversation in Illinois and beyond until next time. Thanks for listening.