



Education for Students with Disabilities in the Juvenile Justice System

- Diane Smith Howard, Managing Attorney for Criminal and Juvenile Justice, N.D.R.N.

Introduction

Just like adults, children and youth may be detained or restricted before they are “found guilty” or enter a plea

- ▶ Adults: Bail or Jail/Other forms of confinement vs. incarceration
- ▶ Children/Youth: “Pending adjudication” vs. “adjudicated”*

* States may use different names/terms for these stages.

Introduction

- ▶ Students with disabilities do not lose their right to public education at either stage, including:
 - ▶ All rights to special education* (IDEA and Section 504)
 - ▶ All rights to general education

* NDRN does not support use of the term/phrase “Special Education” except in reference to legal terminology where it is required, for example, statutes and regulations.

Introduction

Once in the juvenile justice system, young people with disabilities may be placed in variety of settings, for example:

- ▶ Home confinement
- ▶ Family based foster care
- ▶ Therapeutic foster care
- ▶ Group residential settings
- ▶ Psychiatric facilities
- ▶ Secure detention
- ▶ Solitary confinement

3 General Buckets

Advocacy for Children and Youth with Disabilities in the Juvenile Justice System

- ▶ Diversion: Preventing referral: redirection of children and youth with disabilities from the JJ system as soon as possible
- ▶ Conditions: Children and youth with disabilities in placement by the JJ system
- ▶ Re- entry: Preparation for return to the community: residence, adult guidance/supervision, medical and mental health services, schooling

Introduction

- ▶ In a secure setting, the way in which some services are provided may be altered, but they cannot be denied
- ▶ Services must be individualized, even when there are administrative needs/limitations
- ▶ IDEA behavior services including FBA/BIPS are required

Issues

Initial Placement

- ▶ General lack of knowledge
- ▶ A belief that JJ is exempt from IDEA, Section 504, and state requirements
- ▶ Child find/ eligibility determination
- ▶ Records transfer delays -- in and out
- ▶ IEP “stripping”

Issues

Conditions

- ▶ Role and duty of contractors/SEA
- ▶ Youth and parent input in the IEP
- ▶ Lack of related service providers
- ▶ Lack of technology, curricular materials, other basic resources

Issues

Conditions

- ▶ Eligible students in adult forensic settings
- ▶ Juvenile psychiatric placements
- ▶ Solitary confinement
- ▶ Certified/trained staff
- ▶ Section 504/ADA accommodations and modifications
- ▶ “Side of the house” issues– lockdowns, etc.

Issues

Re-entry

- ▶ Lack of transition services/vocational planning
- ▶ Re-entry planning needs/case management
- ▶ Lack of transferrable credit
- ▶ Medicaid eligibility and other service referrals
- ▶ Placement in Least Restrictive Setting (LRE)

Legal Protections

- ▶ U.S. Constitution provides protections for youth in detention and in confinement. E.g.
 - ▶ Fourteenth Amendment
 - ▶ Fourth Amendment
 - ▶ First Amendment
- ▶ Section 504/ADA
- ▶ IDEA
- ▶ State law

Examples

- ▶ The State Department of Education (DOE) failed to provide a Free Appropriate Public Education (FAPE) for a class of pre-trial detainees with disabilities
- ▶ The P&A filed a state complaint for a class of pre-trial detainees. A positive finding resulted in systemic reform, including training for all staff and a review of all affected students' IEPs

Example

- ▶ Three detention students were removed from school and confined in concrete isolation cells for up to 23 hours per day for months at a time, with one resident being isolated for at least a year
- ▶ The students were not receiving any direct instruction (educational services) as required by the IDEA while confined
- ▶ All of the residents at the Iowa Juvenile Home (IJH) had inadequate and inappropriate individual education plans, behavior intervention plans, and transition plans, and significant inadequacies in the comprehensiveness and quality of transition plans

Example

Action:

- ▶ P&A filed a complaint with the state Department of Education (DE) in August 2013 against the school, the juvenile home, and the local education agency
- ▶ This triggered an investigation into the entire school population. The DE ordered the juvenile home to provide compensatory education to all of the residents who had been in isolation cells from August 2011 to October 2013
- ▶ The P&A's investigation also motivated the Governor to create a task force to make recommendations on educational and other services at IJH

Examples

- ▶ Benjamin spent the first half of 2014 in a restrictive isolation unit in a Department of Juvenile Justice (DJJ) facility
- ▶ He only received educational services for one (1) hour or less per day. His guardian contacted P&A because she was concerned that he was receiving inadequate educational services, as well as inadequate mental health treatment

Action:

The P&A intervened and successfully advocated for Benjamin's transfer to a general integrated unit, and for him to receive regular education and mental health services

What Can Advocates Do?

- ▶ Learn as much as possible
- ▶ Teach parents their rights
- ▶ Attend IEP meetings and review documents.
- ▶ Request records and facilitate school re-enrollment
- ▶ Refer to P&A and PTI
- ▶ Consider filing complaints
- ▶ Media
- ▶ State policy advocacy

Presenter Contact Information

Diane Smith Howard, NDRN

(207) 522-2871

diane.smithhoward@ndrn.org:

NDRNYOUTHRIGHTS

@dianesmithhoward

NDRN.org

National Disability Rights Network

820 First Street NE, Suite 740

Washington, DC 20002

Tel. 202-408-9514 ♦ TTY: 202-408-9521

www.ndrn.org

