

# THE DISENFRANCHISED STUDENT: ABSENT, TRUANT, & TUNED OUT

Amy Goetz  
and  
Selene  
Almazan

# WHO ARE WE?

**Amy J. Goetz  
Attorney at Law**

**School Law Center  
452 Selby Avenue  
Second Floor East  
St. Paul, MN 55102**

**651.222.6288  
agoetz@schoollawcenter.com**

**Selene Almazan  
Attorney at Law**

**Maryland Coalition for  
Inclusive Education, Inc.  
Co-Executive Director  
7484 Candlewood Road, Suite R  
Hanover, Maryland 21706**

**410.859.5400  
Selene@mcie.org**

# WHO ARE YOU?

- **Parents**
- **Students**
- **Teachers**
- **School administrators**
- **Other school personnel**
- **Service providers**
- **Attorneys and advocates**

# INTRODUCTION

- **Who is the Disenfranchised Student?**
  - A child who is repeatedly absent, truant, or disengaged from the learning environment
- **What are the reasons for school avoidance?**

- How do judges and hearing officers address the Disenfranchised Student?
- What are the district's duties in meeting his or her needs?
- What are the solutions and strategies?

# CAUSES OF DISENFRANCHISEMENT

- Symptoms of disabilities in the identified or pre-identified student
  - Including learning, behavioral, social, emotional challenges, and unmet mental health needs
- School phobia
- Failing grades

- **Bullying and harassment**
- **Seclusion and restraint**
- **Disciplinary exclusions**
- **Ineffective educational methods, programs and support**



- **Factors outside of the classroom**
- **Drug and alcohol use**
- **Law enforcement referrals**
- **Zero-tolerance policies**

# EFFECTS OF DISENFRANCHISEMENT

- School avoidance
- School phobia
- Juvenile court referrals
- Failing grades
- Disciplinary exclusions
- Drug and alcohol use

# WHY DOES THIS MATTER?

- **Can affect:**
  - Engagement
  - Motivation
  - Participation in the community
  - Graduation or drop out
  - Juvenile court referrals
  - Reinforcement of challenging behaviors
  - Long-term dependency
  - Lack of self-sufficiency

# IDEA AND CHILD FIND

- “...IDEA’s ‘child find’ requirement, pursuant to which States are obligated to ‘identif[y], locat[e], and evaluat[e] [a]ll children with disabilities residing in the State’ to ensure that they receive needed special-education services”

# IDEA PROVISIONS FOR CHILD FIND

- **WHO**
  - All children residing in the State, including:
    - Homeless children
    - Wards of the State
    - Private school students

## ■ WHAT

- Locate

- Identify

- Evaluate

  - 20 U.S.C. § 1412(a)(3)(A)

# CHILD FIND TIMELINE

- Private schools - Shall be completed in a time period comparable to that for other students attending public schools in the local education agency
  - 20 U.S.C. § 1412(a)(10)(A)(ii)



# EVALUATIONS UNDER IDEA

- In order to determine eligibility and educational needs, the IEP Team and other qualified professionals review existing evaluation data including:
  - evaluations and information provided by the parents
  - classroom-based, local, or State assessments
  - classroom-based observations
  - observations by teachers and related services providers; and
  - input from the parents



- **And conduct a full and individual evaluation with parental consent and before services may be provided**
- **Evaluations must follow prescribed procedures including notice to parents, multiple measures, technically sound instruments that are not discriminatory, are valid and reliable and are administered properly by trained personnel**

# REEVALUATIONS UNDER IDEA

- Determine whether child continues to have a disability
- Look at academic achievement levels and education needs to determine whether there is a continuing need for special education and related services



- **Determine if special education and related services need modifications or additions to enable the child to meet the goals of their IEP**
  - **20 U.S.C.A. § 1414(c)(1) (West)**

# WYOMING STATE TRUANCY AND ATTENDANCE LAWS

- “Unexcused absence” is defined by Wyoming state law
- Absence of a child required to attend school when not excused *to the satisfaction of the board* by a parent, guardian or person with control
- “Absence” is defined in local policy
  - Wyo. Stat. Ann. § 21-4-101 (West)

- **“Habitual truant” is defined by Wyoming state law**
- **A “child with five (5) or more unexcused absences in any one (1) school year”**
  - **Wyo. Stat. Ann. § 21-4-101 (West)**

- Compulsory attendance can be excused if “the board believes compulsory attendance in school would be detrimental to the *mental or physical health* of such child or the other children in the school”
  - Wyo. Stat. Ann. § 21-4-102 (West)

# I. PRE-IDENTIFIED STUDENTS

Child Find  
Standards

# STATE OF WYOMING RULES

- **School districts must:**
  - Provide parents with public notice of its child find activities
  - Implement procedures to ensure protection of the confidentiality in child find activities
    - Section 4. Identification, Evaluation, and Eligibility Determinations (a)(i) and (ii)



# WYOMING RULES AND REGULATIONS

- Each school district is obligated to ensure that children are located, evaluated, and identified, even if the children are advancing from grade to grade, regardless of the severity of their disability
  - WY Rules and Regulations – Department of Education – Ch. 7 – Section 4(a)

# *CUDJOE V. INDEP. SCH. DIST. NO. 12* (10TH CIR. 2002)

- A student never before evaluated for special education eligibility must exhaust IDEA remedies before disability and race discrimination claims can be heard in a civil suit



- No FERPA private right of action
- No constitutional privacy invasion where former teacher made comments in a neighborhood meeting about student's social, behavioral and academic skills
- Disability discrimination claims dismissed for lack of exhaustion of administrative remedies

- Family with ninth grader moved into condo above former first grade teacher
- Family feuds erupted
- Former teacher made comments about child's social skills, behavior and academic progress at neighborhood meeting

- Child was placed on homebound due to Epstein-Barr virus in fifth grade
- Mother chose homebound instructor from seventh through tenth grade years
- Last teacher had prior felony conviction and District would not continue employment

- **Parent and District could not agree on a new teacher for eleventh grade**
- **Student went without instruction**
- **Parent claimed disability and race discrimination**

- “As part of the bargain of providing children with educational rights and parents with procedural safeguards to protect those rights, Congress required that parents turn first to the statute’s administrative framework to resolve any conflicts they had with the school’s educational services”

- No connection shown between teacher selection, provision of materials and meeting attendees with race
- No evidence that District's actions motivated by race



# ***FOWLER V. UNIFIED SCH. DIST. NO. 259 (10TH CIR. 1997)***

- Court held that under IDEA and state law, the school district had to partially pay for an on-site language interpreter for a deaf child voluntarily attending a private school
- Child find requirements apply to disabled children in the State who are enrolled in private, including parochial, schools

# ***SPRINGER V. FAIRFAX COUNTY SCH. (4TH CIR. 1998)***

- **Child progressed successfully from grade to grade in regular educational programs and received consistently average or above average grades**

- **The student then developed significant behavioral problems in his eleventh grade year:**
  - **high rate of absenteeism**
  - **broke school rules**
  - **fought with others**
  - **stayed out late with friends**

- He presented a persistent pattern of violating societal norms with lots of truancy, substance abuse, perpetual struggles with authority, and was easily frustrated, impulsive, and manipulative

- Despite behavior problems, the court found that the student was “only socially maladjusted”
- Conduct disorders or social maladjustment do not equate with serious emotional disturbance
- The student’s academic troubles were primarily caused by delinquent behavior and adolescent social maladjustment

***DALE M. V. BOARD OF EDUC. OF  
BRADLEY-BOURBONNAIS HIGH SCH.  
DIST. NO. 307 (7TH CIR. 2001)***

- **Student had significant behavioral challenges, disrupted classes, and was frequently truant**
- **Court did not find him eligible for special education services**

- Student's substance abuse interfered with his schooling more than anything else, and he was “an incorrigible truant and lawbreaker”
- Student has intelligence to perform well, but problem is lack of proper socialization

# *INDEP. SCH. DIST. NO. 284 V. A.C. (8TH CIR. 2001)*

- A child whose school-related problems included:
  - classroom disruption
  - profanity
  - insubordination
  - truancy



- **Outside of school:**
  - she used alcohol and illegal drugs
  - was sexually promiscuous
  - repeatedly ran away from home
  - was thought to have forged checks
  - was hospitalized three times for threatening or attempting suicide

- **The student is of average intelligence, with no symptoms of ADD or ADHD**
- **Court said the problems and risks to which [the student] is exposed, are *social and emotional in nature***

- A manifestation of A.C.'s emotional behavioral disorder is her *unwillingness* to attend school or comply with the requirements of the IEP
- No evidence to support a conclusion that there is anything about A.C.'s disorder which renders her *unable* to attend school or *unable* to comply with the IEP

- However, the court acknowledges the gray area between normal voluntary conduct and involuntary physiological responses
- IDEA clearly includes ‘emotional disturbance[s]’ as disabilities
  - 20 U.S.C. § 1401(3)(A)

- “Sometimes with certain children, what looks like simple misbehavior is actually a more complicated problem whose remedy should be integrated into the child's overall program of special education”
- “A.C.’s behavioral and emotional problems must be addressed if she is to succeed academically”

# COMPTON UNIFIED SCH. DIST. V. ADDISON (9TH CIR. 2010)

- Ignoring academic struggles, especially when combined with behavioral or emotional difficulties is problematic
- 9<sup>th</sup> grade student had very poor grades and scored at a 4<sup>th</sup> grade level
- Student failed every subject in the 10<sup>th</sup> grade
- Counselor considered this to be a “red flag”



- Teachers said her work was “gibberish and incomprehensible”
- Refused to enter class, colored with crayons at her desk, and urinated on herself in class
- No district action

- **Parents submitted written request for evaluation**
- **IEP team determined she was eligible for special education services**
- **Court upheld district court's award of attorney's fees**



# ***DEPT. OF EDUC. V. CARI RAE S.*** **(D. HAWAII 2001)**

- **State failed to identify the student's impairment based on her low class ranking, repeated absences, and behavioral issues**
- **Plaintiff's 79 absences from school during her ninth grade year should have raised suspicion that she may have had a disability**

- Court affirmed the theory that the “threshold for ‘suspicion’ is relatively low, and that the inquiry was not whether or not she actually *qualified* for services, but rather, was whether she should be *referred* for an evaluation”

# **FALMOUTH SCHOOL DEPARTMENT, (SEA ME 1999)**

- A student with “agoraphobia [school phobia] would likely have ‘a tendency to develop physical symptoms or fears associated with personal or school problems,’ and also perhaps a ‘general pervasive mood of unhappiness or depression’ which are two of the criteria for an emotional disturbance
  - 34 CFR 300.8(c)

# ***IN RE: STUDENT WITH A DISABILITY, NEW MEXICO STATE EDUCATIONAL AGENCY (2012)***

- Child had poor interactions with peers, injured himself by scratching, and missed more than 200 hours of classroom instruction
- Child also failed to complete school work, cried in class, and had “feelings of hopelessness and self-mutilation”
- All indicators that the school should have evaluated him for an emotional disturbance

- Court held that missing assignments impacts the student's grade and work
- The student's prolonged depression, inability to act with peers, and tendency to develop physical symptoms, showed that the student had an emotional disturbance that adversely affected his education

# II. IDENTIFIED STUDENTS

Review and  
Revision  
Standards

# IDEA PROVISIONS

- School districts must ensure that each IEP Team reviews the IEP at least annually
- To determine whether annual goals are being achieved

- **School districts must ensure that the IEP Team revises the IEP to address**
  - **Lack of expected progress toward goals and in general education curriculum**
  - **Results of any reevaluation**
  - **Information about the child's disabilities and needs**



# ***GARCIA V. BOARD OF EDUC. OF ALBUQUERQUE PUB. SCHS. (10<sup>TH</sup> CIR. 2008)***

- **The student had 136 unexcused class absences in one semester**
- **A short term IEP was implemented to address the non-attendance, but the difficulties continued**

- The child “frequently skipped class,” “did not do well when she did attend class,” and also engaged in “significant drug and alcohol use,” before finally being arrested for “apparently attacking her mother and brother”

- The student suffered an actual injury (deprivation of a FAPE)
- The court said this is a kind of injury that Congress has authorized the federal courts to remedy, stating that a district court shall “grant such relief as the court determines is appropriate”
  - 20 U.S.C. § 1415(i)(2)(C)(iii).

- A “lack of enthusiasm” for school may “in some cases...be related to his or her disability”
- Such students are perhaps most in need of vigilant attention from their schools

- **Had the school district reassessed the student's needs and implemented a new IEP at the start of the fall 2003 semester, the school might have been successful in helping her to overcome her behavioral tendencies and increase her commitment to school**

# *IN RE: STUDENT WITH A DISABILITY (W.Y. S.E.A. 2010)*

- The Wyoming Department of Education (WDE) received a complaint alleging violations of special education law



## ■ Relevant Issues:

- Whether the student's IEP was reasonably calculated to meet the educational needs of the Student, including a FBA and/or BIP
- Whether removing the student from school for disciplinary reasons resulted in a change of placement

- **WDE found the following:**
  - **Student has a Cognitive Disability**
  - **The Student was frequently sent home due to his behavior**
  - **Student's behavior was impeding his learning and the learning of others**



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  - **Student has a Cognitive Disability**
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  - **Student's behavior was impeding his learning and the learning of others**

- **WDE came to the following conclusions:**
  - **(1) It was incumbent upon the District to address all educational needs resulting from the Student's disability, including his aggressive behavior**
  - **(2) Despite the fact that the evaluation report documented that the triggers for the Student's behavior were unknown, no further assessment was undertaken to help appropriately plan for the Student**

- (3) There was no evidence in the file that the behavior intervention plan was implemented
- (4) Without a comprehensive evaluation of the student's needs, the resulting IEPs were not sufficient to address all of his educational needs
- (5) the District is required to accurately monitor the number and duration of disciplinary removals for the Student

- (6) the cumulative total of removals resulted in a pattern of removals constituting a change in placement
- (7) The disciplinary change in placement triggered additional duties on behalf of the District and safeguards on behalf of the Student

- **WDE came to the following decisions:**
  - **(1) The IEPs were not reasonably calculated to meet the educational needs of the Student**
  - **(2) The district failed to provide special education and related services to the Student in conformity with his IEPs due primarily to the repeated practice of sending the Student home as a behavioral consequence**
  - **(3) There was a de facto change of placement**

# **LAMOINE SCH. COMMITTEE V. MS. Z. (D. ME. 2005)**

- **School failed to provide appropriate program to a 16-year-old student with a history of poor school attendance and mediocre performance**
- **He was highly intelligent but had behavioral problems, feelings of anxiety, and frustration mainly around school performance**

- **School attendance plummeted when he stopped taking his medication**
- **Absence was linked to his disability, school should have been doing more to address the student's non-attendance**

# WYOMING SECLUSION AND RESTRAINT LAWS

- Students have a right to be free from seclusion or restraint used as a means of coercion, punishment, convenience, or retaliation
- Seclusion and restraint are not instructional tools for the development of pro-social behavior



- Proactive and preventive behavior interventions should be initiated and ongoing to diffuse disruptive and volatile situations
  - Wyoming Department of Education – Chapter 42 – Section 3



# ***COUTURE V. BD. OF EDUC. OF THE ALBUQUERQUE PUB. SCHS. (10TH CIR. 2008)***

- Six year old M.C. suffered from severe emotional and mental health problems that manifested themselves in repeated outbursts including threats and assaults
- IEP included a “behavior management system” designed to teach self control

- IEP permitted teachers to place M.C. in supervised timeouts when disruptive
- Was placed in “closet” room for not following directions, giving angry looks, mimicking his peers, continuously talking, and even for remaining silent
- Kept in timeout room until he kept quiet for at least five minutes up to one hour and forty-two minutes

- Teachers often had to force M.C. into the locked timeout room if he became violent or aggressive
- Court found seizures justified even for not following directions to begin work on an assignment

- **The IEP suggests that seclusion can be used “as a technique to obtain cooperation and participation”**
- **“If corporal punishment is a constitutionally acceptable form of discipline for a student’s defiance, it is implausible that timeouts are not”**

- Court found the seizure was not “unreasonable” even for lengthy periods
- Court was not troubled by the continued use of time outs even when M.C.’s conduct deteriorated
- Court found that M.C.’s agitation in time out further justified its reasonableness

- Court found facts that M.C. repeatedly begged to be released from the room to go the bathroom, urinated on himself and threw up or appeared to throw up in the room to be disturbing
- But because he constantly tried to escape, it was not unreasonable to think these were just attempts at release

- Not a question whether timeouts were a good or effective teaching method, but only whether the seizure was unreasonable under the circumstances
- Pedagogical misjudgments do not, without more, expose teachers to liability under the Fourth Amendment



- “It is safe to assume that specially-trained and experienced teachers will know far more than we do about techniques best designed to improve a child’s behavior”
- No 4<sup>th</sup> or 14<sup>th</sup> Amendment violations

- “Teachers have a challenging job as is. We need not make it harder by imposing personal liability when their attempts do not succeed”
- No 14<sup>th</sup> Amendment violation for removal from instruction because timeouts were *part of M.C.’s* education

# *EBONIE S. V. PUEBLO SCH. DIST.* *60 (10TH CIR. 2012)*

- Kindergarten student with multiple developmental and intellectual disabilities, including Down syndrome, as well as numerous physical ailments, was placed in a restraining desk



- The desk in question wraps around the student on the front and the sides and have a securing bar that runs behind the student's chair
- A student can only remove herself by sliding under or crawling over the desk's surface when the bar is in place

- Ebonie was sent home with a broken arm that could have been caused by an injury related to the desk
- Her parent removed her from the school
- Hearing officer found denial of a FAPE and the use of the desk violated state restraint prohibitions

- Under the *Couture* standard, use of the desk did not "significantly exceed that inherent in every-day, compulsory attendance"
- The position that it forced her to assume—seated in a chair faced forward—is the standard pose required of countless schoolchildren across the nation

- The restrictions did not remove her from the classroom environment
- Court said that Ebonie had the ability to remove herself from the restraints imposed on her, although awkwardly
- Court found significant that the restraining mechanisms were not attached to Ebonie's body

- Prisons and schools are both areas where the government may impose restrictions that would otherwise violate constitutional rights
- No intent to harm so no liberty interest implicated
- No 4<sup>th</sup> or 14th Amendment violations
- Section 504 and ADA claims survived



# ***T.W. V. UNIFIED SCHOOL DIST. NO. 259 (10TH CIR. 2005)***

- Student with Down Syndrome sued school district challenging a hearing officer's determination that the proposed IEP for the Student complied with IDEA
- Circuit Judge held that the proposed placement of a student in a self-contained classroom did not violate the IDEA's least restrictive (LRE) provisions

- **Student was not denied FAPE during a nine-week trial placement**
- **District established that it did not prejudice the placement of the student**

# ***MUSKRAT V. DEER CREEK PUB. SCHS (10TH CIR. 2013)***

- **Developmentally disabled child placed in a timeout room**
- **Duration of timeouts was not always documented – four minutes longest data**
- **Also not clear whether teacher was in room or child was secluded**

- Parents concerned that J.M. did not have mental maturity to understand purpose and was frightened
- IEP changed to prohibit use of room
- Principal instructed staff to use it anyway
- J.M. showed increasing signs of stress, including sleeplessness, vomiting, frequent urination, declining cognitive and physical functions, but not shown to be tied to timeouts

- Next year Team agreed to no use of timeout room and no placement in room with timeout
- J.M. placed in such a room anyway
- Placement caused anxiety
- J.M. slapped on face, on arm and held in chair by two adults

- All alleged batteries appeared to have been due to frustration, rather than a disciplinary goal
- Court ruled that exhaustion of remedies was not required for assault claims
- Parents need not request a “no random violence” clause in the IEP

- Fourteenth Amendment due process “abuse of power” claim failed as it did not “shock the conscience”
- Must cause severe injury, use so disproportionate to the need, and so inspired by malice or sadism that it amounts to a brutal and inhumane abuse of power

# ***ASHFORD V. EDMOND PUB. SCH. DIST. (W.D. OKLA. 2011)***

- **Claims involving an inappropriate use of a timeout room could have been addressed by the IDEA's administrative procedures and required exhaustion**
  - **U.S.C. § 1415**



# U.S. DEPARTMENT OF EDUCATION ON ZERO-TOLERANCE POLICIES

- **Attorney General Eric Holder: Remarks on School Discipline Guidance Rollout January 8, 2014**
  - **“As it stands, far too many students across the country are diverted from the path to success by unnecessarily harsh discipline policies and practices that exclude them from school for minor infractions”**

- **“Too often, so-called “zero-tolerance” policies – however well-intentioned – make students feel unwelcome in their own schools. They disrupt the learning process. And they can have significant and lasting negative effects on the long-term well-being of our young people – increasing their likelihood of future contact with juvenile and criminal justice systems”**

- “We’ve seen time and again that school districts with high out-of-school suspension rates also tend to have lower-than-average graduation rates”



# GUIDANCE

- “Truant youths are often absent from school for such a period of time that it is difficult if not impossible for them to catch up. This leads to further disengagement from school, from teachers and ultimately can lead to serious anti-social behavior like juvenile delinquency”
  - Lorenzo A. Trujillo, *School Truancy: A Case Study of a Successful Truancy Reduction Model in the Public Schools*

- **“The ‘push-out’ method sends a message to struggling students that they are not wanted, ultimately forcing a student’s situation from bad to worse”**

# COMMENTS OR QUESTIONS?

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