

# **Incarcerated or Detained Students: Wyoming COPs, LRE, & Transition**

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**Presenter:**

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# Today's Speaker

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Thomas N. Shorter is a shareholder in Godfrey & Kahn, S.C.'s Madison office. Tom represents public and private schools, research institutions and health care related organizations, as well as other businesses, providing counsel in education, health care, corporate, labor and employment and regulatory matters such as Individuals with Disabilities Education Act (IDEA), Section 504, and Americans with Disabilities Act (ADA) issues. Tom is the former President of the Wisconsin School Attorneys Association and has been listed as one of the *Best Lawyers in America* in the area of Education Law since 2007. Tom has been a presenter at the Wyoming Department of Education Leadership Symposium since its inception.

# Overview

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- Focus on children with disabilities who are convicted or otherwise detained as a result of criminal activity.
- Review the rules regarding the delivery of FAPE to children with disabilities who have not yet graduated at the time of incarceration or detention.
- Address a school district's obligation under IDEA and Wyoming State Rules with respect to FAPE and transition planning for the incarcerated or detained student.

# Blending of Laws

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- Wyoming Juvenile Justice Act
- Wyoming Education Code of 1969
- Individuals with Disabilities Education Act of 2004 (IDEA)
- Wyoming Department of Education (WDE) Chapter 7, Services for Children with Disabilities
- WDE Chapter 14, Education Program Approval of Public and Private Institutions Receiving State Funds for the Education Costs of Students Placed by a Court Order

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# **Wyoming Juvenile Justice Act**

## **Key Concepts**

# Wyoming's Juvenile Justice Act

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- To promote the concept of punishment for criminal acts while recognizing and distinguishing the behavior of children who have been victimized or have disabilities, such as serious mental illness that requires treatment or children with cognitive impairment that requires services.
  - Wyoming Statute § 14-6-201(c)(ii)(A) (emphasis added).

# Wyoming's Juvenile Justice Act

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- To provide for the care, the protection and the wholesome moral, mental and physical development of children within the community whenever possible using the least restrictive and most appropriate interventions;
  - Wyoming Statute § 14-6-201(c)(iii) (emphasis added).

# Juvenile Justice in Wyoming

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- In Wyoming, municipal, circuit and juvenile courts have concurrent jurisdiction over most children, and prosecutors have the discretion to route children into adult or juvenile courts.
- All but 15% of the juveniles are sent to adult municipal and circuit courts.
  - Juvenile Justice in Wyoming, Wyoming Lawyer (December, 2011).



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# **Individuals with Disabilities Education Act**

## **Key Concepts**

# IDEA Mandate - FAPE

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- FAPE must be available to all children residing in Wyoming between the ages and 3 and 21, inclusive of those suspended or expelled.
  - 34 CFR § 300.101.
  - Wyoming Statute § 21-2-501
  - Wyoming Rule, Chapter 7, Section 1(b).

# FAPE – Incarcerated Students

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- IDEA provides limited exception to requirement to provide FAPE for children age 18-21 that are incarcerated as an adult, IF the state law explicitly does not require FAPE when no prior identification or IEP prior to conviction.
  - 34 CFR 300.102(a)(2).
    - Note: Prior Chapter 7 Rules (2007) excepted children 18 and over from FAPE requirements when no prior identification or IEP. Current Chapter 7 rules (2010) do not appear to provide for this exception.

# IDEA Mandate - FAPE

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- FAPE is special education and related services that –
  - (a) Are provided at public expense, under public supervision and direction, and without charge;
  - (b) Meet the standards of the Wyoming DoE;
  - (c) Include an appropriate preschool, elementary school, or secondary school education in Wyoming; and
  - (d) Are provided in conformity with an IEP.
    - 34 CFR § 300.17.

# Special Education

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- The IDEA defines special education as “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.
  - 34 CFR § 300.39(a)(emphasis added).

# Least Restrictive Environment

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- Each public agency must ensure that:
  - (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled ...
  - 34 CFR § 300.114(a)(2)(emphasis added).

# Transition

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- Transition services are a coordinated set of activities for a child with a disability that ...
  - (1) designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities...
    - 34 CFR § 300.43.

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# **Wyoming Court Ordered Placements**

## **Key Concepts**



# Court Ordered Placements(COP)

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- COP Options – Two Paths
  - Treat child as a juvenile (**must** be under 18)
    - Juvenile detention facilities
    - Private residential treatment facilities
    - Day treatment facilities
    - Group home placements
  - Treat child as an adult (**may** be under 18)
    - State Prison
    - Federal Prison

# COP – Treatment as Juvenile

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- District of residency to be declared by court.
  - In the placement order the court shall declare the child's school district or school districts of residency in any district or districts which it deems proper in the best interests of the child.
- The declaration by the court shall be binding upon the school districts.
  - Wyoming Statute § 21-13-315(h).

# COP – Treatment as Juvenile

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- Facility Location Controls FAPE Obligation
  - If a student is confined to juvenile detention by the court, the school district in which the facility is located, or the accredited facility in which the child is placed, has responsibility for the provision of FAPE.
    - See Attorney General Opinion to Blankenship, 2004.
  - Equally applies to treatment facilities and group home placements.

# COP – Treatment as Juvenile

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- Resident district must monitor FAPE
  - Resident school district is responsible for monitoring the student's educational progress in order to ensure the provision of FAPE and to ensure a successful transition back into the resident district when appropriate.
    - See Superintendent's Memo, 2010-173
  - Case manager to be assigned or contracted case management arrangement utilized.
    - See Superintendent's Memo, 2010-055

# COP – Treatment as Juvenile

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- Programs providing education services shall bill the Wyoming DoE directly for educational costs of court ordered placements.
  - Wyoming Statute § 21-13-315(a).
  - Wyoming Rule, Chapter 7, Section 5(ii).
- Wyoming Department of Family Services (DFS) shall pay residential and treatment costs, “excluding educational and medical costs”
  - Wyoming Statute § 21-13-315(a).
  - Wyoming Rule, Chapter 7, Section 5(i).

# COP – Treatment as Juvenile

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- Costs of all services provided pursuant to a student's IEP incurred as a result of court order prior to any placement shall be billed directly to the Wyoming DoE.
  - Wyoming Statute § 21-13-315(a).
  - Wyoming Rule, Chapter 7, Section 5(i).
- Wyoming statute on costs of court ordered placement only applies to children between 6 and 18 years of age.
  - Wyoming Statute § 21-13-315(k); but see Wyoming DoE Chapter 7, Section 5(i)(iii) and Chapter 14, Section 1 & 5 (“school aged” to 21)

# COP – Treatment as Juvenile

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- Wyoming DoE Chapter 14 rule sets forth the department's process for approval of education programs of public and private institutions receiving state funds for court-ordered placement.
  - Licensed or accredited as treatment facility
  - Local & state building safety code compliance
  - Statement on types of services and students
  - Description of pupil population
  - Description of education program

# COP – Treatment as Juvenile

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- Maintain accurate records
- Employ properly certified teachers
- Provide all required related services
- Comply with IDEA and Wyoming DoE Chapter 7
- Provide equal access to children with disabilities
- Guarantee nondiscriminatory opportunities



# COP – Treatment as Juvenile

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- Additional In-State Program Requirements
  - External education program
    - Collaboration with district of residence
    - Licensed providers
    - Written contract with external provider
  - On-grounds education program
    - Collaboration with district of residence

# COP – Treatment as Juvenile

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- Additional Out-of-State Program Requirements
  - Health and fire safety code compliance of state
  - Education program approved by state agency
  - Provide annual report to Wyoming DoE

# COP – Treatment as Juvenile

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- IDEA rights/requirements continue to apply:
  - Child Find, Evaluation & Identification
    - Chapter 7, Section 4 & 8; Letter to Yudian, 39 IDELR 270 (OSEP 2003)
  - IEP Development
    - Chapter 7, Section 5(d & h)
  - Least Restrictive Environment
    - Chapter 7, Section 5(b)
  - FAPE
    - Chapter 7, Section 8

# COP – Treatment as Juvenile

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- IDEA provisions continues to apply:
  - Transition
    - What does the transition plan from incarceration look like?
    - Best practices might include:
      - Identify possible hazards for relapse and include recommended responses in the transition plan.
      - Help the juvenile practice new behaviors in increasingly difficult situations.
      - Continue with family and service providers.

# COP – Treatment as Adult

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- Children with disabilities in adult prisons and convicted as adult are still entitled to FAPE, with exceptions.
  - 34 CFR § 300.324(d)
- “Convicted as adult” undefined in IDEA.
  - Letter to Anderson, 54 IDELR 200 (OSEP 2009)
- Federal Prisoners are responsibility of Federal Bureau of Prisons
  - Letter to Mahaley, 58 IDELR 20 (OSEP 2011)

# COP – Treatment as Adult

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- IDEA provisions that no longer apply:
  - Participation in general assessments
  - Transition planning, IF student will be in prison beyond age 21
  - IEP development of placement and least restrictive environment, IF the State has demonstrated bona fide security or compelling penological interest that cannot otherwise be accommodated.
    - 34 CFR § 300.324(d)

# Discussion & Questions

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