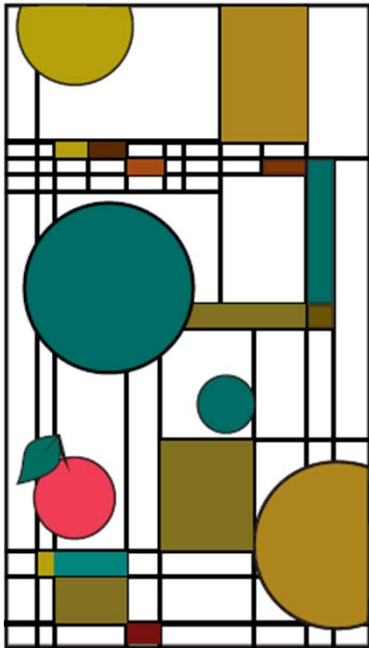


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# The School to Prison Pipeline: Special Education Law Meets Juvenile Justice

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4<sup>th</sup> Annual Wyoming  
Special Education  
Leadership Symposium

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# SCHOOL LAW CENTER

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# Stop the Train While we Repair the Tracks



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# Who is Most Affected?



- Children with ineffective or costly programs
- Children with disabilities impairing behavior
- Children of color
- Low income children



- Disproportionality studies, *see* “Overrepresentation of African American Students in Exclusionary Discipline: The role of School Policy” in *42 Urban Education* No. 6, pp. 536-538 (Safe Publications 2007)

- <http://uex.sagepub.com/cgi/reprint/42/6/536.pdf>



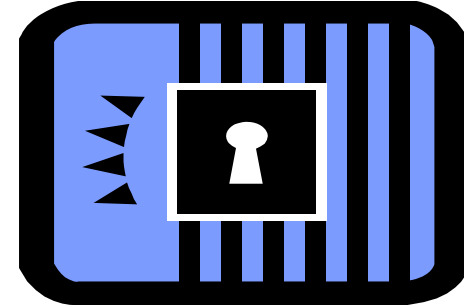
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# Agenda



- I.           Disproportionate Incarceration
- II.          Detours and Exits
- III.         Early Warning Signs
- IV.         Critical Research
- V.   Points of Impact and Options

## Perry's Story



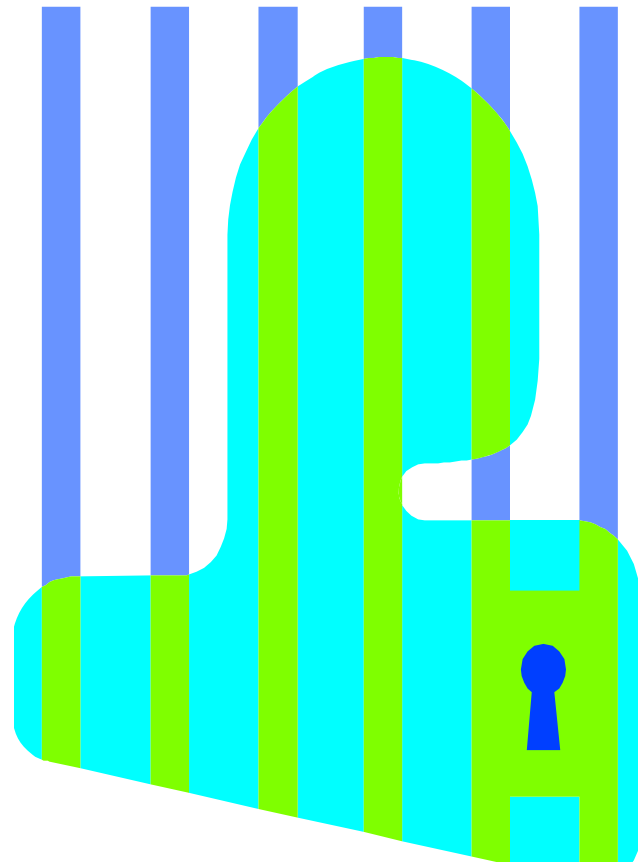
- 14 year old African-American male
- Special education for 4-5 years
- Eligible as E/BD with ADHD diagnosis
- Evaluations and IEP focused on behaviors
- Segregated specialty school for students with severe behaviors
- The largest school district in Minnesota

- 
- **No progress on academic, social or behavioral skills**
  - **12 referrals from school for assault and disorderly conduct**
  - **No referrals from the community**
  - **No functional behavior assessment**
  - **No positive behavior intervention plan**
  - **Reading at a second grade level**
  - **Writing at a kindergarten level**



# I. Disproportionate Incarceration of Students with Disabilities

- In general population 10% of youth have disabilities
- Of incarcerated youth:
  - ❑ 30-50% with disabilities
  - ❑ 20-50% with ADHD
  - ❑ 50% with mental health
  - ❑ 25% with fetal alcohol effects



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# Cook County Study

**79.9% of youth in juvenile detention fit *at least one* set of diagnostic criteria in the DSM-IV**

- 41 % with conduct disorder**
- 45% with obsessive compulsive disorder**
- 18% with oppositional defiant disorder**

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## Canadian Study

- 23% of youth in corrections had an alcohol-related diagnosis, e.g., fetal alcohol syndrome, fetal alcohol effects, or other alcohol related birth defects

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## Other Research

- Placing high-risk youth together may increase delinquency (O'Donnell, et al., 1987)
- 40% of youth released from two large state-run treatment programs in Minnesota in 1998 were re-adjudicated within three years (Farrell, 2006)

- 
- **Minority youth are three times as likely as white youth to end up in secure detention (Farrell, 2006)**
  - **African American boys with disabilities are in corrections four times greater than are white boys and girls (U.S. DOE, OSEP, 2006)**

- 
- 66% of juvenile detention facilities report they merely *warehouse youth* who wait for mental health treatment not available in their community (Committee on Government Reform, 2004)

- 
- In 2004 more than 3 million students were suspended and 106,000 were expelled (U.S. DOE, 2004)
  - African American boys with disabilities are more than 3 times as likely as white boys to be suspended (U.S. DOE 2006)

- 
- The majority of suspensions are not for drugs or violence, but “disruptive behavior” or “insubordination” (Rausch, 2004)
  - Suspension and expulsion highly correlate with dropout (Tobin, 1996)
  - Dropout correlates strongly with incarceration (Lochner, 2004)



- 
- **42-80% of incarcerated youth are special education eligible**
  - **Surprisingly little data available about how school resource officers interact with school officials or students**
  - **Very little data about the numbers, types and reasons for arrests by SROs while deployed in schools**

- 
- **Rapid increase in numbers of police officers placed in schools nationally**
  - **From estimated 9,446 in 1997 to 17,000 in 2010 (National Association of School Resource Officers)**

- 
- Arrests of pre-teens and teens increased almost 20% from 1980 to 2006 (*Arresting Children: Examining Recent Trends in Preteen Crime*, Chapin Hall Center for Children, University of Chicago, 2008)

---

# Two Schools of Response

- Increased police presence needed to squelch violence and crimes and keep schools safe and orderly
- Distress and concern about the growing criminalization of student behaviors that in the past would have been addressed through a call to parents or detention

- 
- Some argue that stated concerns about safety actually mask the true purpose: to exclude youth who do not conform to behavioral, attitudinal or educational demands, or who may bring test scores down
  - *First, Do No Harm: How Educators and Police Can Work Together More Effectively to Preserve School Safety and Protect Vulnerable Students*, Charles Hamilton Houston Institute for Race and Justice (Harvard University, 2010)

---

# Theriot Study (2009)

- Compared arrest rates at 13 schools with an SRO to those at 15 schools without an SRO
- Having an SRO in the building predicted a *decrease* in arrests for most serious offenses like assault and weapons
- Having an SRO in the building predicted an *increase* in arrests for most minor, subjective offenses like disorderly conduct

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# Teacher Views

- Important to use preventive and supportive approaches to discipline and safety
- Teach positive behavior and conflict resolution
- Concern over lack of positive alternatives or clear guidelines from administrators as the *primary cause* for excessive, inconsistent and haphazard use of suspensions and security measures

- 
- **Suspensions and security measures can be potentially constructive in narrow and specific circumstances**
  - **Abusive and unjustifiably broad use**
    - ❑ **severely undermines professional identities and aspirations**
    - ❑ **discourages turning disciplinary interventions into educational opportunities**



- 
- **Excessive discipline unfairly ignores students' underlying problems**
  - **Leads to conflict and alienation, increasing likelihood of future problems**
  - **Punishment does not change the behavior**

- 
- **Resort to police due to lack of adequate supportive services (counselors, social workers and psychologists), and lack of quality mediation, mentoring and conflict resolution**

- 
- Teachers realize the presence of police in schools is not preventing conflict or improving the school environment, but instead creates new tensions and conflicts
  - Teachers reported that students are almost always traumatized when arrested, and police often engage in abusive treatment and language during arrests

- 
- **What do you believe is the largest threat to safety in your school?**

- 
- **Most common response (17%): lack of a cohesive culture and positive relationships between staff and students**
  - ***Teachers Talk: School Culture, Safety and Human Rights, National Economic & Social Rights Initiative (Fall 2008)***

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■ **Other responses:**

- ❑ **Gangs (16%)**
- ❑ **Fights and conflict among students (16%)**
- ❑ **Lack of discipline system, clear rules and consistent consequences (14%)**
- ❑ **Lack of leadership and support from administrators (11%)**
- ❑ **Disrespectful treatment and criminalization of students (8%)**
- ❑ **Overcrowding and large class size (7%)**

- 
- **What are your answers for creating positive school climates and constructive discipline?**

- 
- **Building school culture through collaboration and communication**
  - **Strengthening teaching and learning**
  - **Counseling and support services**
  - **Proactive strategies to prevent and resolve conflict**
  - **Student leadership in discipline practices**



- 
- For further reports and studies on the role and impact of police in schools see
    - *Education on Lockdown: The Schoolhouse to Jailhouse Track* (March 2005) available at  
<http://www.advancementproject.org/reports/FINALEOLrep.pdf>
  - For action kits on adopting less punitive approaches to school discipline see
    - <http://www.stopschoolstojails.org>
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# Possible Explanations



- *Susceptibility theory:* youth with disabilities are more impulsive or more suggestible making delinquent acts more likely

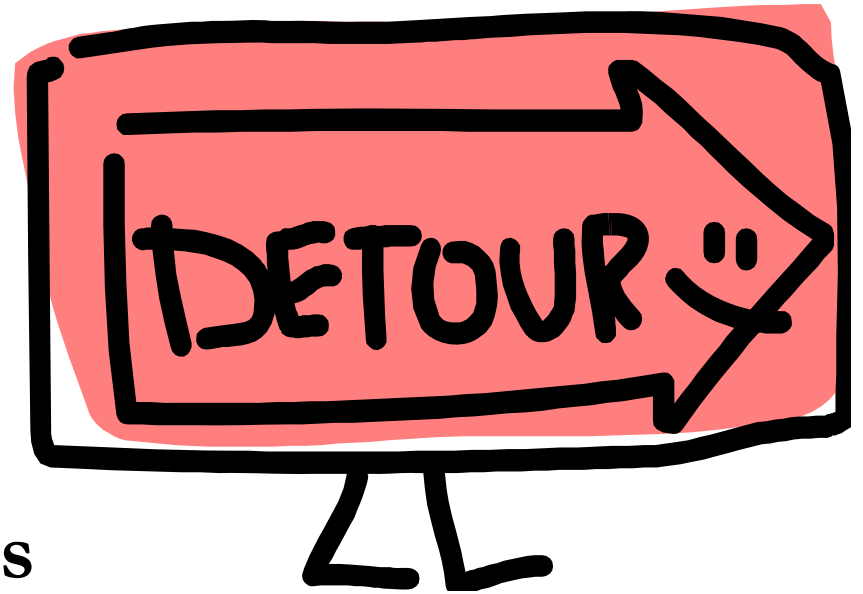
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- ***School failure theory:*** ineffective educational responses lead to frustration, failure and disciplinary exclusions leading to criminal behavior

- 
- ***Differential processing theory:*** youth with disabilities are treated differently at arrest, processing and dispositional stages

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## II. Special Education Advocacy Provides Detours and Exits

- Early Intervention and Prevention
- Positive Behavioral Interventions & Support
- Special Education Rights



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# Early Intervention and Prevention

- IDEA grants focus on infants and toddlers
- Positive Behavioral Interventions & Supports
- Crisis response training
- Crisis team support
- Robust related services



- 
- **Team approach to disciplinary responses**
  - **Violence prevention services**
  - **Safe schools initiatives**
  - **Restorative Justice**
  - **Clear agreements on appropriate role of law enforcement in schools**

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# Positive Behavioral Interventions and Supports

- School-wide, classroom-wide and individual systems of behavior support
- Proactive, research-based and data-based strategies to define, teach and support appropriate student behavior





- 
- **Results in academic and social gains**
  - **Creates positive school culture**

Source: Minnesota School-wide Positive Behavioral Interventions and Supports Newsletter, MDE Website

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# PBIS Training and Information

- [pbis.org/presentations/default.aspx](http://pbis.org/presentations/default.aspx)
- [pacer.org/pbis/trainingmods/index.asp](http://pacer.org/pbis/trainingmods/index.asp)
- [pbismn.org/gettingStarted.html](http://pbismn.org/gettingStarted.html)
- [apbs.org/new\\_apbs/pbsInfo.aspx](http://apbs.org/new_apbs/pbsInfo.aspx)

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# Minnesota Initiative

- **The Minnesota Department of Education began a School-Wide Positive Behavioral Interventions and Supports project in 2005-2006 school year, now 238 schools**
- **Provides districts and schools with training and technical support to promote improvement in behavior across entire school especially for students with challenging social behavior**

- 
- ❑ Supports social competence and academic achievement in effective environments
  - ❑ Supports decision-making based on data
  - ❑ Supports student behavior using evidence based practices for learning
  - ❑ Supports staff behavior in teaching

- 
- Data from one participating school district over *one year* showed:
    - ❑ 45% decrease in failing grades
    - ❑ 25% decrease in office referrals
    - ❑ 30% decrease in bus referrals
    - ❑ 50% decrease in suspensions

- 
- **Other likely important impacts include:**
    - ❑ **Decrease in expulsions**
    - ❑ **Decrease in drop outs**
    - ❑ **Decrease in referrals to law enforcement**
    - ❑ **Decrease in use of restraint and seclusion**
    - ❑ **Decrease in bullying and harassment**
    - ❑ **Decrease in injuries to students and staff**
    - ❑ **Decrease in truancy**

- 
- **One participating school reported a *50%* decrease in office referrals over one year**

# Special Education Entitlements: Sources of Authority for Safe Harbor

- The Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, et. seq.
- Regulations, 34 C.F.R. Part 300





- 
- **Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794**
    - **Regulations, 34 C.F.R. Part 104**
  
  - **Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.***
    - **Regulations, 28 C.F.R. Part 35**

- 
- Wyoming Statutes § 21-2-501:
    - Every child of school age in the state of Wyoming having a mental, physical or psychological disability which impairs learning, shall be entitled to and shall receive a free and appropriate education *in accordance with his capabilities*

---

# Advocacy Objectives

- **Enforce schools' obligation to address behavioral issues as educational needs**
- **Reduce the risk of future school-initiated criminal referrals**

- 
- **Avoid criminal records that can impair employment, licensing and housing opportunities**
  - **Restore students to a school community in which they feel they belong and will be supported and successful**

---

# Approaches to Challenge Referrals

- **View the criminal referral in the context of the school system's overall response to the student's behavioral manifestations and needs, challenging treatment of behavior manifestations as a crime in the context of violation of substantive obligation to provide a FAPE**

- 
- **Use the IDEA as the source of an obligation to make an individualized determination that particular behavior is a “crime” before making referrals**

- 
- **Characterize the resort to police and juvenile court as an impermissible circumvention of IDEA provisions regarding students deemed “dangerous”**

- 
- **Examine referrals in the context of disability discrimination under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, targeting the manner in which schools exercise judgment in characterizing behavior as a “crime”**



- 
- Limited to after the fact challenges as distinguished from calls to the police for immediate assistance in a bona fide safety emergency, where child's behavior presents an immediate, substantial physical danger to self or others that cannot be abated through the individualized crisis prevention and intervention services required under the law

- 
- ❑ Source: *When Schools Criminalize Disability: Education Law Strategies for Legal Advocates*, Center for Law and Education, April 2002

# Special Education Rights



- Free and appropriate public education
- Timely and appropriate identification and evaluation
- Individualized education program

- 
- **Least restrictive environment, including general curriculum**
  - **Parent and student participation in decision-making**
  - **Procedural protections**

# Free Appropriate Public Education

- Special education *and related services like counseling*
- Meaningful educational benefit or effective results
  - May be higher standard in Wyoming



- 
- **Includes students suspended or expelled**
  - **Regardless of grades or grade promotions**

- 
- Includes rights to:
    - ❑ Residential educational placements
    - ❑ Assistive technology devices and services
    - ❑ Extended school year services
    - ❑ Nonacademic & extracurricular activities
    - ❑ Related Services
    - ❑ Access to general education curriculum

- 
- **Individualized analysis**
  - **Greatest source of controversy**



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# Identification and Evaluation

- **Child-find:** identify and evaluate all students suspected of disability from age 3 (in Wyoming) to age 21
- **Non-discriminatory assessment**



- 
- **Reflect abilities, achievement and needs**
  - **Consideration of parental information**
  - **Consideration of outside evaluations**
  - **Parental consent**

---

■ **Re-evaluations:**

- ❑ **If LEA determines child's need warrant**
- ❑ **If parents or teachers request**
- ❑ **No more frequently than once a year unless agreement**
- ❑ **At least every three years unless agreement**

---

# Independent Educational Evaluations

**“IDEA thus ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.”**

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**“These protections ensure that the school bears no unique informational advantage.”**

***Schaffer v. Weast* (2005)**

- 
- ***Parent provided:*** obtained and paid for by the parent
    - must be considered by the IEP team
    - may be presented as evidence at a hearing

- 
- ***District provided:*** obtained by the parent and paid for by the District
    - Requested by parents if inappropriate school evaluation
    - District must provide agency criteria
    - Parent may choose qualified examiner
    - District can provide or defend its evaluation at hearing

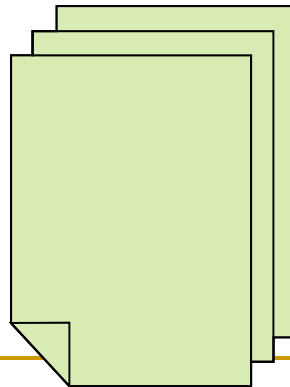
- 
- *Hearing Officer ordered:* hearing officers have authority to “request” an IEE “as part of a hearing”
    - Must be at public expense



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# Individualized Education Program

- IEP Team develops based on child's needs, determines program and placement
- IEP Team reviews periodically, at least annually
  - To determine whether goals are being met



- 
- IEP Team revises as appropriate when
    - ❑ Lack of expected progress
    - ❑ Reevaluation conducted
    - ❑ New information
    - ❑ Child's anticipated needs
    - ❑ Other matters need to be addressed

---

## *Honig v. Doe* (1988)

- The IDEA prohibits schools from unilaterally removing students with disabilities from their educational placements even for disruptive or dangerous behavior

- 
- School-based “criminal” referrals achieve the same result
  - Characterize in-school, disability-related behavior as “crimes”

- 
- **Often behavior is related not only to disability, but to the consequences of the school system's own failure to provide effective education and related services**

---

# Special Education Definitions

- ***Special Education:*** Specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including instruction in the classroom, home, hospitals, institutions and other settings

- 
- ***Related Services:*** such developmental, corrective or other supportive services, including psychological, social work and counseling services as may be required to assist in providing benefit from special education, including early identification and assessment of disabling conditions and transportation

---

## *Cedar Rapids Sch. v. Garret F. (1999)*

- **Related services are required that enable school attendance because they provide access guaranteed by the IDEA**
- **Medical services are excluded as a related service only if they must be performed by a physician**
- **Lack of resources is no defense**



# Psychological Services



- Administering and interpreting tests
- Obtaining, integrating and interpreting information about child behavior and conditions related to learning

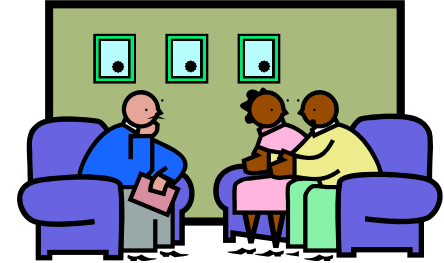
- 
- Consulting and planning needed programs
  - Planning and managing a program of psychological services, including counseling for children and parents
  - Assisting to develop positive behavioral intervention strategies

# Counseling Services



- **Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel**

# Social Work Services



- **Preparing social or developmental history**
- **Group and individual counseling with the child and family**

- 
- **Working as partners with parents and others on problems at home that affect the child in school**
  - **Mobilizing school and community resources to help the child to learn as effectively as possible**
  - **Developing positive behavioral intervention strategies**

---

# Functional Behavioral Assessments

- To identify the functions of, or purposes for, behavior
- To “maximize the efficiency of behavioral supports”



- 
- Includes description of problem behaviors
  - Identifies events, times and situations that predict behavior

- 
- **Identifies antecedents, consequences and reinforcement that maintain the behavior**
  - **To identify positive alternative behaviors**

Source: Minn. R. 3525.0210, subp. 22



- 
- **Required when cumulative disciplinary exclusions reach ten days in a school year if no FBA and behavioral intervention plan has been implemented**
  - **Review and revision of any existing behavioral intervention plan required**

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# Positive Behavior Supports

- In developing an IEP the team must consider positive behavioral interventions, strategies and supports to address any behavior that impedes the learning of the child or others

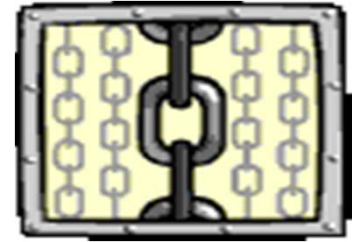


- 
- In addition, school districts should take prompt steps to address misconduct when it first appears. Such steps could, in many instances, eliminate the need to take more drastic measures. . . .

- 
- For example, when misconduct appears, a functional behavioral assessment could be conducted, and determinations could be made as to whether the student's current program is appropriate and whether the student could benefit from the provision of more specialized instruction and/or related services, such as counseling, psychological services, or social-work services in schools.

- 
- In addition, training of the teacher in effective use of conflict management and/or behavior management strategies also could be extremely effective.
  - *OSEP Memorandum 97-7 (OSEP 1997)*

# Manifestation Determination



- To determine the relationship between disability and behavior subject to discipline
- Required when disciplinary exclusions total ten cumulative days in a year

- 
- **Related if the conduct was: 1) caused by, or had a direct and substantial relationship to the child's disability; or 2) the direct result of the failure to implement the IEP**
  - **If not related, standard disciplinary procedures apply**

- 
- **Why is the manifestation determination required?**
  - **What is its purpose?**
  - **When are medical or other behavioral experts necessary to the determination?**
  - **What information should be considered?**



- 
- “The spirit of the law is clear – we do not discipline students in this country because of behaviors that are caused by their disability.”  
*In re: Student with a Disability* (W.Va. SEA 2003)

---

## *I.S.D. # 283 v. A.C. (8<sup>th</sup> Cir. 2001)*

- Residential placement is required if necessary to learning
- Needed if the behavioral and emotional problems must be addressed in order for school success

- 
- **No stark distinction exists between unwillingness and inability to learn**
  - **Disruptive conduct that is related to disability is exempted from normal discipline to a degree**

- 
- **Address behavior first and use discipline only if it is appropriate in the context of the child's IEP**
  - **What looks like simple misbehavior may actually be a more complicated problem with a remedy integrated into the IEP**

- 
- **Truancy and defiance can result from a genuine emotional disturbance rather than a purely moral failing**

---

# Behavior Interventions

- **Minnesota policy: to encourage positive approaches to behavioral interventions**
- **The objective must be to acquire appropriate behavior and skills**

- 
- **Focus on skills acquisition rather than merely behavior reduction and elimination**
  - **Enable students to benefit from their educational program and to function as independently as possible**

---

# Restraint and Seclusion

- Federal law is silent on the issue and does not permit or prohibit use
- Minnesota law requires rules to govern the use of aversive and deprivation procedures (e.g. restraint and seclusion)
- Rules must not encourage use



- 
- **Requires planned application in the IEP**
  - **Requires revocable informed parental consent**
  - **Requires parental notification of emergency use**

- 
- **Must meet health and safety standards**
  - **Requires FBA and rule out of any treatable cause before use**
  - **Minnesota statutes revised for 2011 to increase training before use and to limit use to emergencies**

---

# Wyoming Protections

- At this time, Wyoming has no state statutes, regulations, policies or guidance
- WDE has proposed an approach for developing state definitions for and guidance on seclusion and restraints

- 
- **Action plan to be developed including other state agencies and local stakeholders**
  - **WDE welcomes technical assistance from OSEP and the NWRCC**

---

# National Concerns

- Inherent risk of injuries
- Can compound difficulties
- Does not teach new behavior but is crisis reaction
- Students have died
- Students and staff suffer injuries

---

# National Reports

- *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers, United States*  
Government Accountability Office (May 2009)
- *Physical Restraint & Seclusion Procedures in School Settings, The Council for Children with Behavioral Disorders* (May 2009)

- 
- *Unsafe in the Schoolhouse: Abuse of Children with Disabilities*, The Council of Parent Attorneys and Advocates, Inc. (May 2009)
  - *School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools*, National Disability Rights Network (January 2009)

# Interagency Coordination



- States must ensure:
  - interagency coordination among public agencies
  - timely and appropriate delivery of services
  - procedures to determine financial responsibility and resolve interagency disputes



- 
- **Schools are providers of first resort and payers of last resort**

---

# Least Restrictive Environment

- To the maximum extent appropriate children with disabilities are educated with children without disabilities

- 
- Special classes, separate schooling or other removal of children with disabilities from the regular education environment can occur only when adequately supported regular education is not feasible
  - Continuum of placements include regular classes, resource room, special classes, separate schools, home instruction, residential placements

# Team Approach to Problem Solving

- Parents are half the Team
- *Teams* plan any evaluation
- *Teams* determine eligibility



- 
- ***Teams* develop the IEP**
  - ***Teams* decide what students need**
  - ***Teams* review and revise the IEP**

- 
- *Teams* determine placement
  - *Teams* determine whether progress is adequate
  - *Teams* make any significant change to the program or placement

---

# Procedural Due Process

- **Right to consent or object to any proposal for evaluation, program or placement**
- **Right to challenge any proposal or refusal to provide appropriate evaluation, program, placement or benefit**

- 
- **Right to prior written notice of all proposals or refusals**
  - **Right to “stay put” automatically preserves status quo**



- 
- **Dispute resolution systems: mediation, state complaint, administrative hearing**
  - **One year statute of limitations on state complaints**
  - **Two year statute of limitations from point of discovery on claims in hearings**

---

## Section 504 Basics

- **Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in schools**

- 
- **Section 504 requires accommodations, modifications, special education and supplementary aids and services for students whose disability significantly impairs their learning or other major life function**
  - **Section 504 requires manifestation determinations and evaluations before any placement changes**

# School to Prison Traffic

## The *Chris L.* Case

- *Morgan v. Chris L. by Mike L.* (6<sup>th</sup> Cir. 1997): school initiated juvenile court petition sought change of placement. But, educational placement decisions are Team decisions that require process.



- 
- **As such, the student was entitled to an IEP Team meeting before any consideration of a change in placement, and the district's failure to do so violated the IDEA. Juvenile court petition dismissed.**

# Legislative Response



**(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.**

- 
- **(B)(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.**

- 
- (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.
  - 20 U.S.C. § 1415(k)(9) as amended (1997)



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## Post-*Chris L.* Cases

- *C.B. v. Sonora Sch.*, (E.D. Cal. 2010): police handcuffing and removing student with ASD from school violated 14<sup>th</sup> Amendment where no longer out of control or disruptive and no threat of danger or flight; false arrest, false imprisonment, and excessive force claims survived without immunity; intentional infliction of emotional distress claim survived

- 
- *J.K. by H.M. v. Fayette County Bd. of Educ.* (E.D. Ky. 2006): on campus arrest for disruptive conduct was not evidence of district's failure to offer student a FAPE; although district agreed to use law enforcement as a last resort there was no evidence that staff involved in development or implementation of BIP called police

- 
- *R.J. v. McKinney Ind. Sch. Dist.* (E.D. Tex. 2005): claims survived motion to dismiss on IDEA and 14<sup>th</sup> Amendment claims for questioning, detaining, dictating confession and forcing a signature, and having Section 504 student arrested without notifying parents for setting paper on fire in bathroom

- 
- *Valentino C. v. School Dist. of Philadelphia*, (E.D. Pa. 2004): no violation of stay-put where student arrested for threatening teacher with a desk; calling police was not a change in placement and district was not obligated to conduct an administrative hearing before report to police; failure to forward records to police was not prejudicial because no discipline or placement changes were planned for student's release

- 
- *Joseph M. v. Southeast Delco Sch. Dist.* (E.D. Pa. 2001): appears that *Chris L.* was effectively overruled by the 1997 changes to the IDEA in 1415(k)(9); there is no requirement to conduct manifestation determination before referral for crime

- 
- ***In the Matter of P.E.C.* (Tex. Ct. App. 2006):**  
IDEA does not govern a state's ability to change the placement of a student on probation who engages in criminal behavior

- 
- ***In Re F.T.* (Cal. Ct. App. 2006):** intent of a special education student to damage a wall at school was irrelevant outside of mental diminished capacity defense

- 
- *In the Matter of C.F.* (Tex. Ct. App. 2005):  
special education student was found delinquent  
for shoving his teacher where previous  
intervention attempts failed and rehabilitation  
was possible at the state facility



- 
- ***Commonwealth v. Nathaniel N.*** (Mass. App. Ct. 2002): police, not school, filed delinquency petition; IDEA does not prohibit law enforcement officials from applying law to crimes committed by eligible students; no evidence that school called police to avoid IDEA responsibilities; records could be provided to court at any stage of prosecution and no harm from lack of provision

- 
- ***In re Beau II* (N.Y. S.Ct. 1999):** The IDEA 1997 amendments allowing for reporting and prosecuting of student crimes did not allow a school to pursue a neglect and dependency action; the district had not exhausted administrative remedies, and sought to change the student's IEP outside of the procedural safeguards of the IDEA

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- *State of Connecticut v. David F.* (Conn. Sup. Ct. 1998): IDEA expressly allows schools to report crimes committed by students with disabilities to proper authorities; juvenile court had jurisdiction over state juvenile proceedings, but IDEA claims were not properly before the court

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- ***State of Wisconsin v. Trent* (Wis. Ct. App. 1997):** The IDEA does not prevent a juvenile court from exercising jurisdiction over a student who is the subject of a juvenile petition and IDEA proceedings, although the state and district must still comply with the provisions of the IDEA; concurrent jurisdiction exists

- 
- ***Wilson County Bd. of Educ.*** (Tenn. SEA 2009): state law does not impose any special duties on law enforcement officers in dealing with special education students; IDEA permits police to be summoned without providing procedural safeguards; arrest at school after all attempts made to comply with BIP justified

- 
- ***Dekalb County Sch. Dist.*** (Ga. SEA 2005):  
vandalizing school bus was destruction of  
public property for which IDEA explicitly  
allows report as a crime

- 
- *Talladega City Bd. of Educ.* (Ala. SEA 2005):  
no retaliation for filing hearing request by  
principal calling police for second grade  
student who slapped music teacher because  
principal was not aware of hearing request at  
time of call to police

- 
- *Ind. Sch. Dist. #270, et al.* (Minn. SEA 2005): claim for prehearing injunction prohibiting referral to criminal justice system and law enforcement for disability-related behaviors dismissed; IDEA provision permitting referrals does not replace district's duty to provide a FAPE, and if district practice of referrals was harmful and denied a FAPE final order would halt or restrict practice



- 
- ***Juneau Sch. Dist.* (Ak. 2005):** calling police on severely cognitively impaired student did not violate BIP where BIP did not limit such calls; did not violate IDEA where BIP and IEP did not impose restrictions on police and IDEA does not control local police

- 
- *In re: Student with a Disability* (Ky. SEA 2004): regardless of cause of behavior, a school district is responsible to report perceived criminal conduct to judicial authorities; not the responsibility of complaining witness or police officer to determine whether disability should absolve an individual of the consequences of his behavior

- 
- ***Dripping Springs Ind. Sch. Dist.*** (Tex. SEA 2004): where store merchant accused student of shoplifting on band trip and called police, IDEA not implicated because action of private citizen is not governed by IDEA; IDEA does not create basis for parents or school staff to interfere with police

- 
- *Mobile County Bd. of Educ. (Ala. SEA 2004):* eleven year old student's arrest for aggression toward aide did not violate IDEA although it was not appropriate under circumstances where child with serious disabilities had no plan to address known propensity for aggression

- 
- ***Putnam Bd. of Educ.* (Conn. SEA 2003):**  
behavior plan was inappropriate, including provision to summon police for any physical aggression by a student with serious mental illness; savings provision of IDEA does not allow schools to inappropriately use the criminal justice system to craft an ill-suited behavior plan

- 
- ***Robinson (TX) Ind. Sch. Dist. (OCR 2005):***  
principal call to police when student was uncooperative, rude and disruptive, with verbal abuse and profanity was justified after first trying BIP strategies given concern for danger to other students

- 
- ***Orange County (FL) Sch. Dist. (OCR 2000):*** no denial of a FAPE for criminal prosecution of SED students for behaviors that are manifestation of disability where teachers attempted every intervention available until behavior becomes dangerous, threatening or completely out of hand

- 
- ***Letter to Holt* (OSEP 1999):** nothing in the IDEA prohibits school officials from reporting crimes of disabled children to the same extent that crimes of non-disabled children are reported



- 
- ***In Re Student* (Minn. SEA 1999):** School district repeatedly invoking law enforcement in response to the student's in-school, disability-related behaviors, sought to exclude her through punitive and disciplinary measures in juvenile court; such a course of action was at odds with district's obligations to afford her the protections mandated by the IDEA

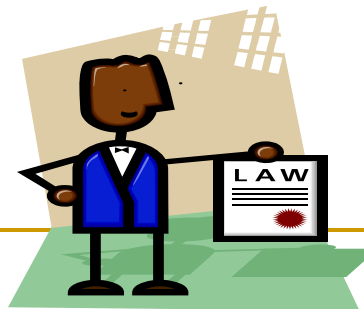
- 
- ***Cabot School District*, 29 IDELR 300 (SEA AR 1998):** Despite being authorized by the IDEA to report crimes to the authorities, districts must still comply with the IDEA, and cannot use the juvenile system to avoid complying with the IDEA; concurrent jurisdiction exists

- 
- ***Northside Indep. Sch. Dist.*, 28 IDELR 1118 (SEA TX 1998): District violated IDEA by failing to timely provide (within ten days) appropriate authorities with copies of the education and disciplinary records of a disabled student referred as delinquent; submission of records does not violate FERPA**

- 
- ***Cabot School District*, 29 IDELR 300 (SEA AR 1998): Reporting of child to juvenile authorities is not a breach of confidentiality as IDEA requires submission of education records to juvenile authorities**

# The IDEA Applies to State and Local Juvenile and Adult Correction Facilities

- All provisions of the IDEA apply to any state agency and any political subdivision of the state involved in the education of children with disabilities including specifically juvenile and adult correction facilities. 34 C.F.R. § 300.2



### III. Early Warning Signs of Need for Educational Intervention



- Academic struggles or failure



- Pattern of discipline problems



- Trouble with peers, including bullying

- School refusal or truancy



## IV. Critical Research



- Participation in activity settings with high-risk and delinquent peers is one of the best predictors of delinquency (Arnold, et al.)

- 
- **Youth with serious academic problems or truancy are more likely to have contact with other youth with the same problems (Dishion)**



- 
- **Programs that increase practical social functioning, academic, and problem-solving skills of at-risk youth, improve child management skills of parents of younger children, and improve family relations are most effective delinquency interventions (Henggeler)**

- 
- **Individual psychotherapy, intensive casework, and guided group interaction were found to be ineffective (Id.)**

- 
- **Simply reducing disruptive behavior is insufficient to reduce delinquency. Promoting academic success is critical (Hinshaw, Fergusson, Rapport)**

- 
- **Youth with disabilities in correctional facilities receive few disability-related services, experience many delays in the process, may be unidentified without access to a referral system, receive more disciplinary actions and spend more time in confinement than those without disabilities (Leone)**

- 
- **Common problems** for youth with disabilities in correctional settings are inadequate assessment, lack of cooperation with schools, and frequent failure to develop IEPs (Ransom, et al.)

- 
- **Coordination** between education and juvenile justice agencies is necessary in order to implement the most effective education programs for youth with disabilities at-risk for involvement or in the juvenile justice system (O'Donnell)

# The Link Study – Phase I



- **The National Institute of Juvenile Justice and Delinquency Prevention study in 1977:**
  - 18.9% of non-delinquent boys with a learning disability, compared to 36% of adjudicated delinquent boys with a learning disability

- 
- ❑ Statistically reliable evidence that a child with a learning disability has a significantly increased risk of developing maladaptive behavior patterns, which in turn are more likely to result in antisocial activity culminating in an adjudication of delinquency



- 
- ❑ Children with learning disabilities, due to emotional makeup and specific impairments, are more susceptible to getting into trouble with the law
  - ❑ Children with learning disabilities are less able to extricate themselves from the legal process

- 
- ❑ **Children with learning disabilities who fail in the school system are then thrown in with peers who have also failed in the school system**
  - ❑ **Children with learning disabilities more frequently commit delinquent acts and are adjudicated for committing them irrespective of their socio-economic, cultural and ethnical backgrounds**

# The Link Study – Phase II



- Examined the effects of specific remedial educational interventions on the youth's subsequent academic achievement, delinquent activity, and school attitude and found:

- 
- ❑ A range of 40 to 50 hours of individual remediation by a specifically trained special education remedial teacher was “significantly effective in preventing or controlling future delinquency”

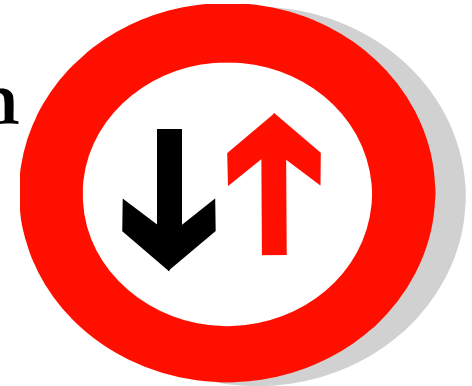
- 
- ❑ A minimal or threshold level of remedial effort was necessary to produce noticeable, stable improvement in academic achievement
  - ❑ Remediation may have facilitated “socialization and attachment, e.g., in which motivation was aroused, concern demonstrated, traits and values modeled, etc.”

- 
- ❑ The major factor determining the success of the program in preventing delinquency was not academic skills improvement, per se
  - ❑ The most plausible beneficial effects of remediation were due to the nature of the relationship between the adolescents and the special education teacher

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## V. Points of Impact and Options

- Increase system-wide supports in schools
- Improve academic, social, emotional and behavioral interventions for children with disabilities

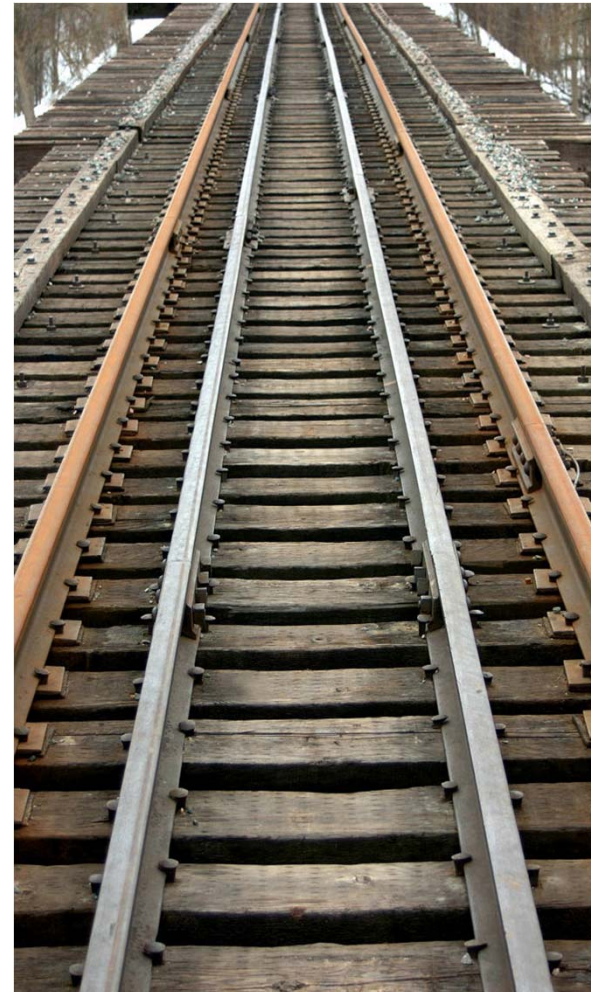


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- **Create alternatives to referrals to court**
  - **Scrutinize school referrals to ensure against “dumping”**
  - **Make meaningful manifestation determinations**



- 
- **Ensure educational records are sent to court**
  - **Obtain special education advocacy**
  - **Educate the bench and bar on special education rights**
  - **Motions to dismiss in the interests of justice**
  - **Rule 20 competency inquiries**

- **Ensure compliance with educational rights**
- **Dispositional planning**
- **Screen for educational and behavioral needs**



- 
- **Discharge planning**
  - **Open the pipeline to return traffic**

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# Perry's Excellent Outcome



- Administrative hearing requested
- Motion to continue juvenile delinquency charges granted to get to the source of the problem at the source of the solution

- 
- Independent Educational Evaluation revealed -
    - the primary disability: a severe developmental language disorder
    - the functions of behavior: escape/avoidance and attention
  
  - New IEP, new program, new placement designed

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■ **FBA concluded:**

- ❑ **The history of school failure causes a behavioral reaction to school itself**
- ❑ **Mistaken identification impeded or impaired performance at school**
- ❑ **Recommended discontinuing the use of police interventions to address behavior**

- 
- Neuropsychology evaluation concluded:
    - ❑ School program mistakenly focused exclusively on behavior and ignored significant learning disability
    - ❑ As the gaps between his skills his peers' widened, behavior problems increased
    - ❑ Recommended educational services to avoid the need for continued reliance on the juvenile justice system
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- **Juvenile Court concluded:**

- **The IEE demonstrated that contact with the juvenile justice system was the result of chronically failed special education programming**
- **Court records confirmed that all contact with police occurred in the school setting**



- 
- ❑ Since the school had been working to provide appropriate special education services, there were no further allegations of delinquent behavior
  - ❑ To determine public safety, the Court must restore the child to law-abiding behavior

- **“In the present case, public safety is ensured by the school district’s providing the appropriate special education services. The forum most competent to address these issues is the administrative process under IDEA, and not juvenile court. Therefore, the court finds that a dismissal of all charges in the interests of justice is appropriate to serve both the interests of the child and the protection of public safety.”**

