



Legal Issues Related to Education of Students with Mental Health Diagnoses

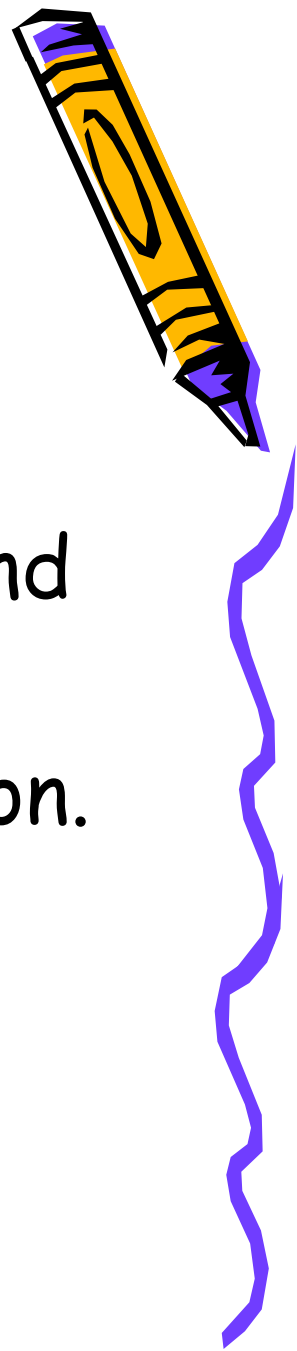
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With grateful appreciation for assistance in preparation of this PowerPoint to Gail Stewart, Attorney with Steven Granberg, PA 1400 Central SE #3300, Albuquerque, New Mexico 87106



Beliefs About Students

- All children can and do learn.
- Children want to feel successful and valued.
- Behavior is a form of communication.
- Children positively respond to respect.



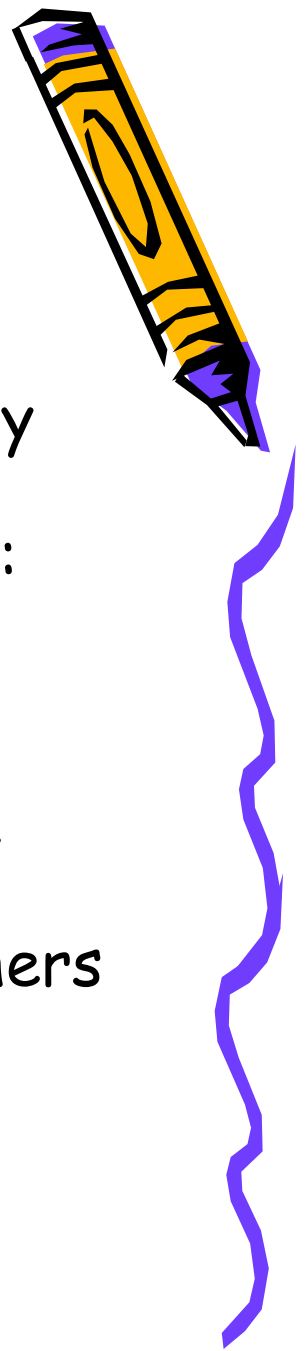
Beliefs about the Role of Educators



- Educators are professionals.
- Educators can create learning environments that work for students.
- If a student is not succeeding, educators need to brainstorm new approaches and supports for the student.
- Professionals seek assistance when necessary.



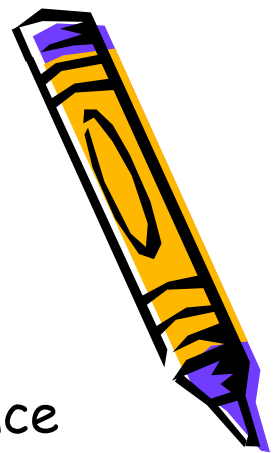
Beliefs about Administration



- Strong leadership and vision is key to a healthy school environment.
- It is predictable that administrators will have:
 - Teachers with different needs and abilities
 - Students with different needs and abilities
 - Parents with different needs and abilities
- Administrators identify resource needs in the school.
- Administrators ensure that student and teachers have the resources they need.
- Administrators meaningfully engage parents.



STELLA



Stella, 9, has been receiving special education services since she was 4. She has been identified as a student with emotional disturbance. She has been placed in an "ED" classroom. Stella frequently gets in verbal fights with other students. When she gets frustrated, she has been known to throw objects. She is restrained at school at least once a week, often more frequently. The school staff has tried to get District experts to give them ideas, and the experts have had some good suggestions but they can't come to the classroom very often.

Friday Stella really lost control and hit another student. The principal was at his wits end and brought in the campus School Resource Officer to help. Stella was taken to the detention center but she was not held. A juvenile justice referral was made.



STELLA



What does it mean to you that Stella is eligible as a student with ED?

Is the frequency of restraining Stella appropriate?

What information do you need to develop an educational program that provides FAPE to Stella?

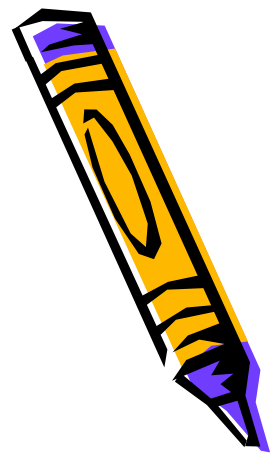
What is the role of the SRO?

Does the school have to do anything if it refers Stella to juvenile justice?

What are the possible consequences of the juvenile justice referral to the child, family and school personnel?



IDEA ELIGIBILITY



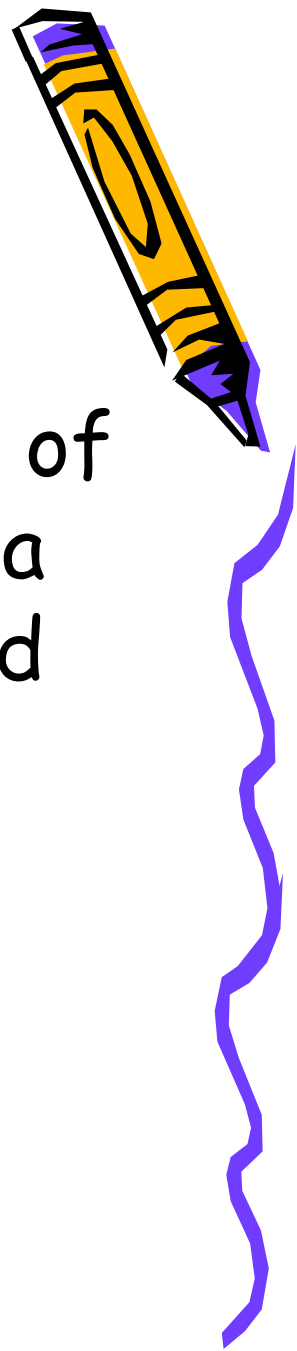
- CHILD WITH A DISABILITY MEANS:
- a child with, mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities;
- and who, by reason thereof, needs special education and related services.



Emotional Disturbance

34 C.F.R. 300.8(c)(4)

- A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:



Emotional Disturbance

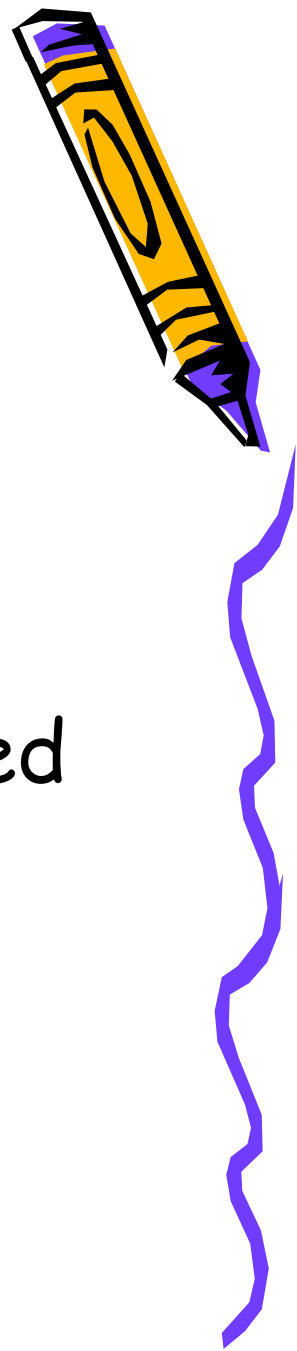


- A) An inability to learn that cannot be explained by intellectual, sensory, or other health factors.
- B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- C) Inappropriate types of behavior or feelings under normal circumstances.
- D) A general pervasive mood of unhappiness or depression.
- E) A tendency to develop physical symptoms or fears associated with personal or school problems.



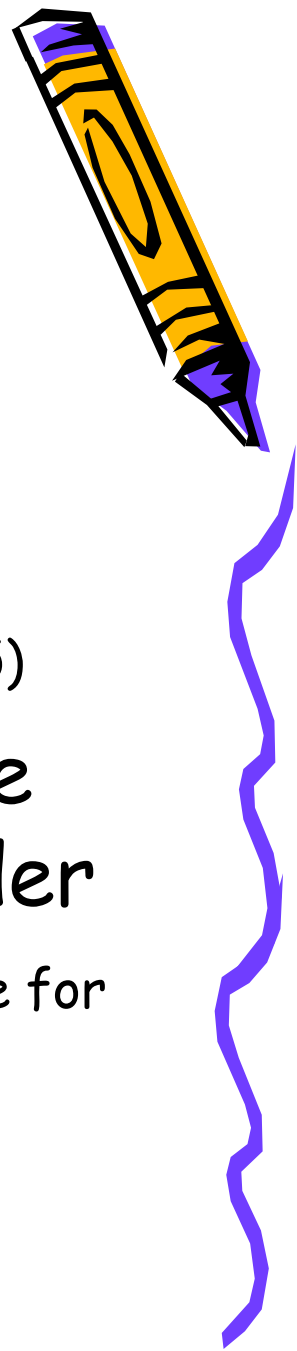
Emotional Disturbance

- Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.



Mental Health Facts

- One half of all lifetime cases of mental disorders have onset at or before the age of 14. (Kessler et al 2005)
- Forty percent of young people have had at least one psychiatric disorder by the time they are 16. (2009 Institute for Medicine)



DSM IV



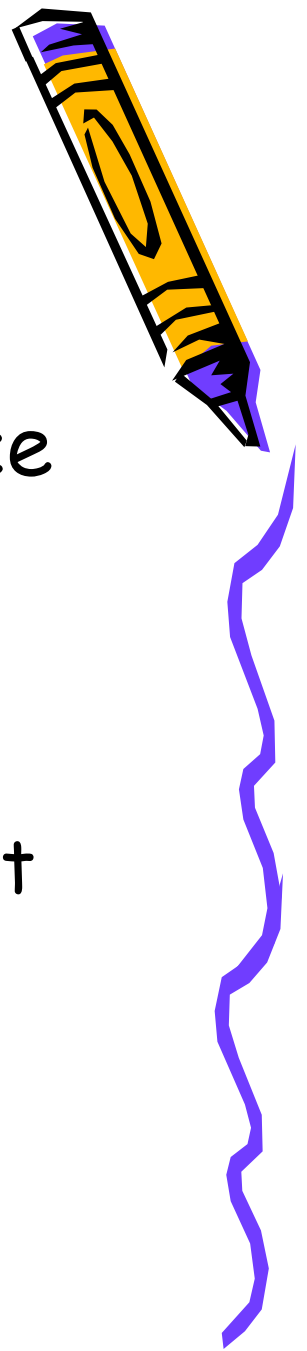
There are 5 domains or "axes" of information used in the diagnosis process:

- 1) clinical disorders and other conditions that may be a focus of clinical attention;
- 2) personality disorders and mental retardation;
- 3) general medical conditions;
- 4) psychosocial and environmental problems;
- 5) global assessment of functioning.



DSM-IV

- DSM-IV diagnoses require evidence that the symptoms are causing impairment in social, academic, or occupational functioning.
 - Concise Guide to Child and Adolescent Psychiatry



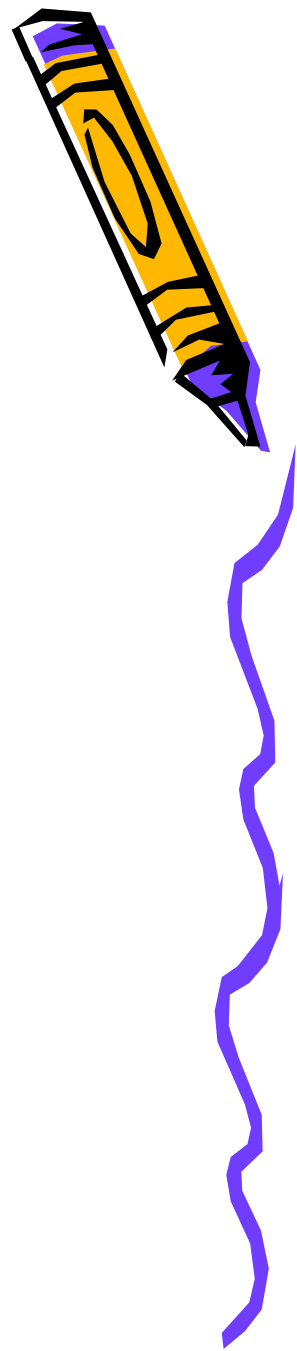
DSM IV



- Multiaxial Diagnosis
- Classification Scheme - 16 core diagnostic categories
- Disorder-Specific Information -- requires consideration of nine categories of attributes (e.g. diagnostic features, specific culture, age and gender features, familial pattern).
- *See Mental Disability Law, Evidence and Testimony (2007)*



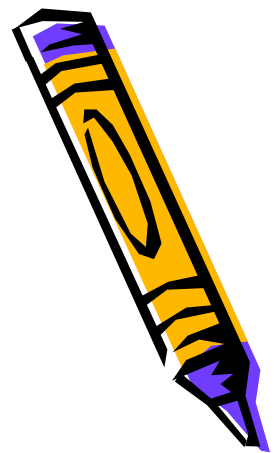
Why Labels Matter?



Research Based Practice!



Outcomes



- Only 24% of students classified as “emotionally disturbed” who exited special education earned a regular diploma.
- Black students are twice as likely as white students to be labeled emotionally disturbed.
 - “How Idea Fails Families Without Means; Causes and Corrections from the Frontlines of Special Education Lawyering,” Elisa Hyman, Dean Hill Rivkin, and Stephen A. Rosenbaum.



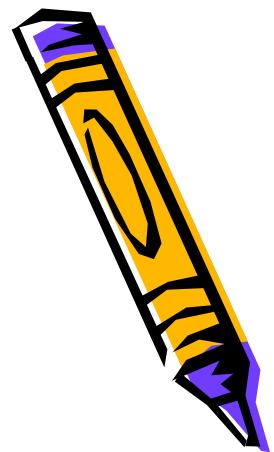
Juvenile Justice Facts

According to the Children's Defense Fund:
Students who are suspended or expelled are more likely than their peers to drop out of school altogether.

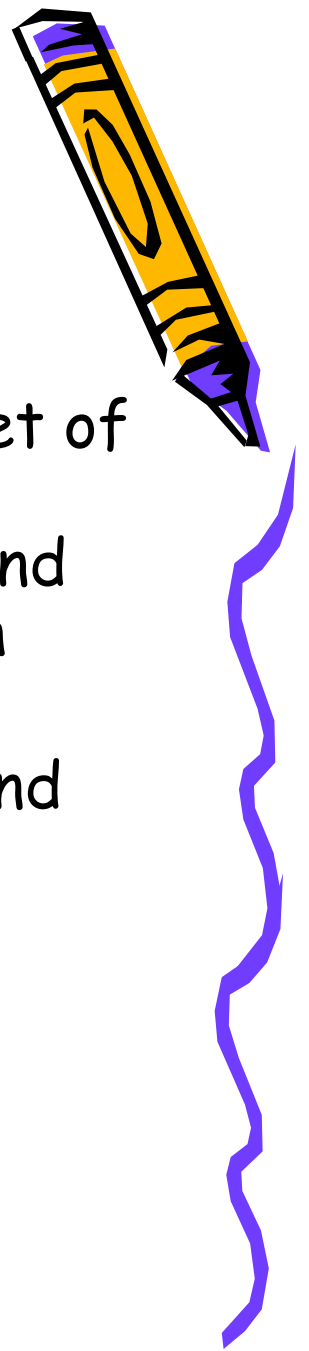
In Wyoming 7.4 percent of youths ages 16 to 19 were neither enrolled in high school nor high school graduates

Wyoming spends 4.3 times as much per prisoner as per public school student.

<http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cradle-to-prison-pipeline/cradle-prison-pipeline-wyoming-2009-fact-sheet.pdf>



School to Prison Pipeline



- “The School to Prison Pipeline refers to the set of policies and practices that make the criminalization and incarceration of children and youth more likely and the attainment of a high quality education less likely.”

From “Federal Policy, ESEA Reauthorization and the School-to Prison Pipeline”

Systemic emphasis on punishment, exclusion, justice-system involvement.



School to Prison Pipeline



- Zero Tolerance policies .
- Reliance on school police and juvenile courts to address school discipline matters.
- Enrollment barriers.
- Achievement, Discipline, J.J.S. involvement (disproportionate impact of our policies and practices on students of color and students with disabilities)

Federal Policy ESEA Reauthorization, and the School-to-Prison Pipeline





Reading: Why it Matters

- Reading is currency of success after elementary school.
- For students who can't read, every school day is a chore.
- Only looking at mental health when behavior is an issue, masks reading deficits.



Impact of Reading Deficits



- "About 15 to 20 percent of the people in the U.S. have a language-based disability, and of those, most have dyslexia."

http://222.nichd.nih.gov/health/topics/learning_disabilities.cfm

- "74% of the children who are poor readers in 3rd grade remain poor readers in 9th grade."

<http://www.interdys.org/FAQLearnToRead.htm>



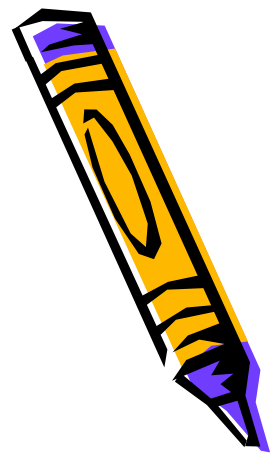
Impact of Reading Deficits



- "While poor reading skills and poor academic performance are not direct causes of criminal activity, adolescents who have deficits in these areas are disproportionately represented in correctional institutions."
- 1997 National Center for Juvenile Justice (U.S. Dept. of Justice).



Juan



- **Juan**, 13 years old, comes into the nurse's office a lot, usually around 11:00 and stays often through lunch. Juan often complains of a stomach ache. He also complains about his teachers and about being bullied by other kids. The nurse finds that if she lets him cool off, he often goes back to class. When she doesn't let him stay in her office, at least for a while, he often ends up in the principal's office. Lately, Juan just hasn't been coming to school regularly. When he is there, Juan's teachers say that he is often unprepared and doesn't apply himself. They believe he could do the work if he stayed in class. They are expressing concerns with his behavior and truancy.



Juan

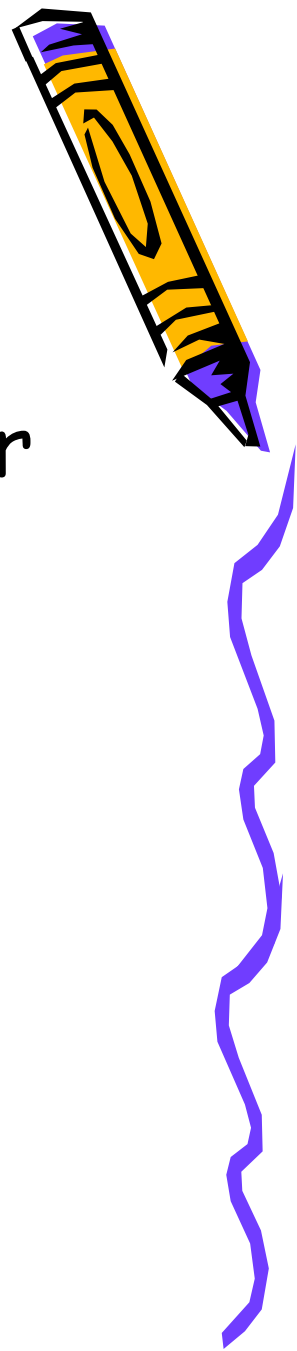


- What are your concerns about Juan?
- What type of information might you try to get from Juan's parents?
- Can Juan be evaluated for special education?
- Can you help him get evaluated?



Other Health Impairment

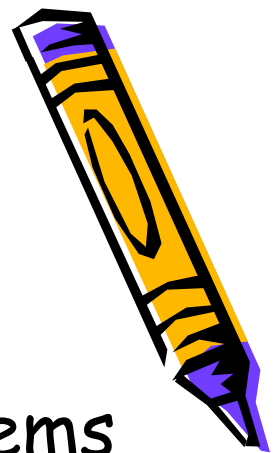
34 C.F.R. 300.8(c)(9)



- Having limited strength, vitality, or alertness, including a heightened alertness with respect to the educational environment, that-



OHI



- Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- Adversely affects a child's educational performance.

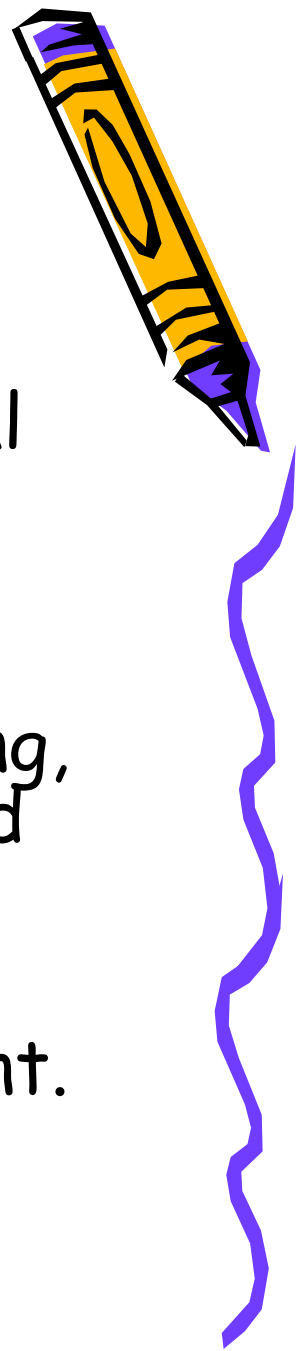


Section 504

- No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . . 29 U.S.C. Section 794(a).



INDIVIDUAL WITH A DISABILITY AS DEFINED UNDER SECTION 504 34 C.F.R. 104.3(j)



- As a person with any “physical or mental impairment” that
- “substantially limits”
- a “major life activity” [e.g. caring for oneself, performing manual tasks walking, seeing, speaking, breathing, learning and working]; or
- has record of such an impairment; or
- is regarded as having such an impairment.



JACOB



- Jacob is 16 years old. He is eligible for special education as a student with autism. He is on a special diet. Jacob does not like transitions. He often doesn't understand what is happening in school. Jacob often yells loudly and rocks. Sometimes he bangs his head. When his teacher is worried about him, she frequently calls his mom to come pick him up early.
 - Jacob was in the library and would not stop yelling, staff told him he had to stop or he would go to the principal's office. He did not stop. He would not go to the principal's office and pushed staff when they got near him. Jacob was suspended for 3 days.



JACOB

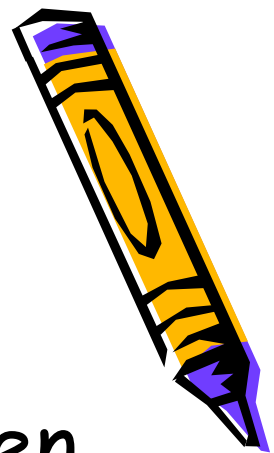


- Can Jacob be suspended?
- What kind of training does Jacob's teacher need? What about the school nurse? The cafeteria manager?
- Jacob's needs are significant, how can the school be expected to develop a program that really meets his needs?
- Does Jacob really belong in a regular school?
- Can the Parents be expected to help more?



Autism

- "Autism now affects 1 in 88 children, 1 in 54 boys"
- <http://www.autismspeaks.org/what-autism/facts-about-autism>



Autism

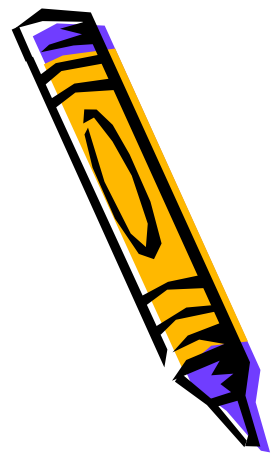


“Researchers have developed a number of effective early intervention models. They vary in details, but all good early intervention programs share certain features. They include:

- ✓ **The child receives structured, therapeutic activities for at least 25 hours per week.**
- ✓ **Highly trained therapists and/or teachers** deliver the intervention. Well-trained paraprofessionals may assist with the intervention under the supervision of an experienced professional with expertise in autism therapy.
- ✓ The therapy is guided by specific and well-defined learning objectives, and the child's progress in meeting these objectives is regularly evaluated and recorded.
- ✓ The intervention focuses on the core areas affected by autism. These include social skills, language and communication, imitation, play skills, daily living and motor skills.



Autism

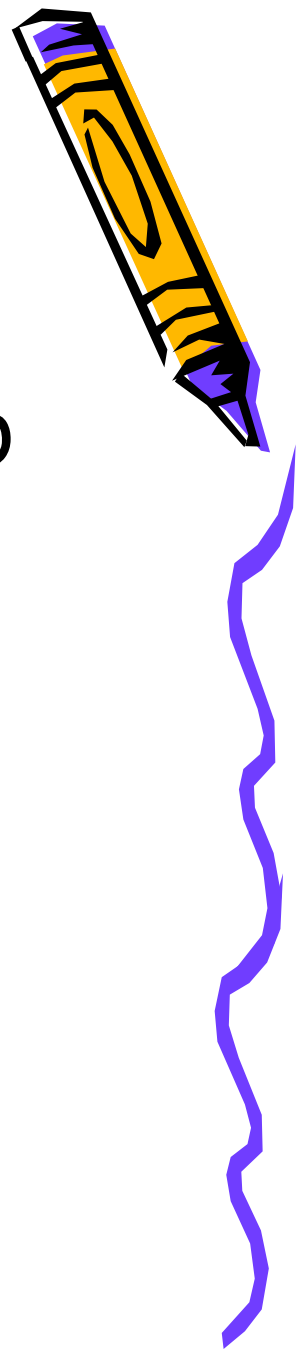


- The program provides the child with opportunities to interact with typically developing peers.
- ✓ **The program actively engages parents** in the intervention, both in decision making and the delivery of treatment.
- ✓ The therapists make clear their respect for the unique needs, values and perspectives of the child and his or her family.
- ✓ The program involves a multidisciplinary team that includes, as needed, a physician, speech-language pathologist and occupational therapist.
- <http://www.autismspeaks.org/what-autism/treatment>

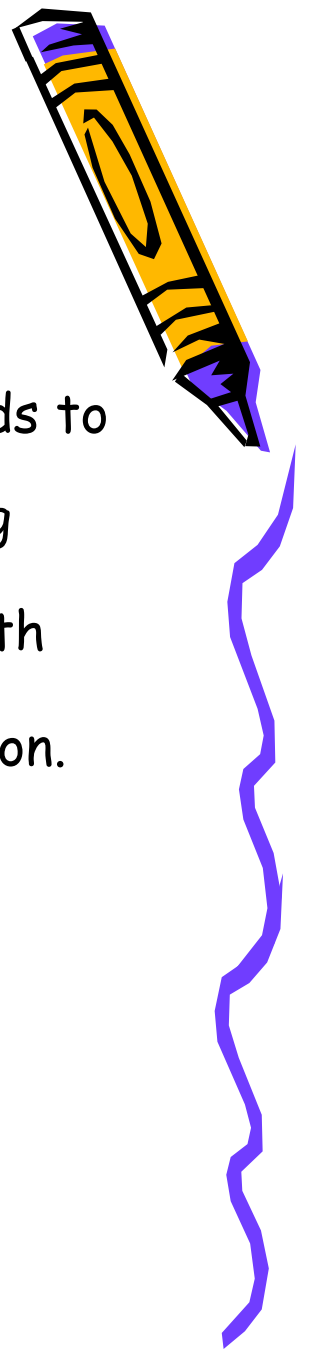


Autism

- Are the needs of students who are eligible under the "autism" eligibility being met as to:
 - Placement
 - Provision of education
 - Positive behavioral supports
 - LRE



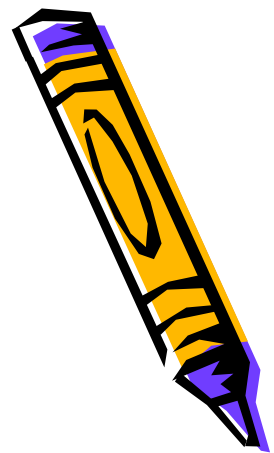
Practical suggestions



- Just as identifying the cause of physical symptoms leads to appropriate treatment, accurate identification of the causes for school failure is the primary step in creating change in student achievement.
- For kids in school, unwillingness is often synonymous with (some level) of inability.
- Question and challenge all uses of restraint and seclusion.
- Don't misunderstand a parent's refusal to allow direct contact between school staff and private providers.



Practical Suggestions



- Do not look to juvenile justice as a service provider.
- Question the role of the SRO (does the person have training to work with kids, kids with disabilities?)
- Ask whether student's special education records were sent with any referral to juvenile justice.
- Understand that referrals to juvenile justice put the child at risk for being adjudicated and sentenced.



Practical Suggestions



- Be straightforward with parents in all matters (parents are allies for getting needed services).
- Nondiscrimination is critical: question different treatment when it is not necessary to receipt of education.
- The fact that the student is passing does not make the student ineligible for services.
- Speak up if you see retaliation against parents or teachers who are advocating for their children with disabilities.





THE END

