

USING SPECIAL EDUCATION INFORMATION TO ASSIST IN YOUR JUVENILE'S CASE

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- I. If possible, consult with advocates who specialize in special education issues (contact information attached at the end of this document):
 - Carolina Legal Assistance
 - Legal Aid of North Carolina
 - Duke Children's Education Law Clinic
 - Governor's Advocacy Council on Persons with Disabilities
 - private attorneys who specialize in the field
 - Exceptional Children's Assistance Center
 - local advocacy groups

- II. Use the juvenile's special education status/information to assist in his/her defense:
 - A. Pre-trial
 - file a motion to contest the juvenile's capacity to proceed based on severe learning disabilities, such as cognitive functioning
 - file a motion to suppress the juvenile's statement, arguing that the juvenile's learning disability impairs his/her ability to understand Miranda warnings and therefore renders the juvenile incapable of making a "knowing and intelligent" waiver of those rights

 - B. Negotiations
 - present your information to the district attorney and request a dismissal, deferred adjudication, reduction in charge or less restrictive disposition for reasons such as:
 - the intent to commit the offense was vitiated or mitigated by the juvenile's learning or cognitive disability
 - the IEP team found the offense was the result (or "manifestation") of the disability, and therefore the court should not be involved
 - "but for" the lack of identification and therefore lack of appropriate services, the offense may not have occurred

 - C. Adjudicatory hearing
 - present your information as evidence at the adjudication hearing for mitigation of the juvenile's culpability or to convince the judge that juvenile court should not be involved:
 - there exists a lack of criminal intent due to the juvenile's learning or cognitive disability
 - the school (teacher, one-on-one, administrator or administration, SRO) is responsible for the juvenile's actions due to knowledge of the juvenile's disability, or should have known about the disability and not evaluate the juvenile/provide services
 - the court should not find the juvenile responsible if the IEP team found that the offense was a manifestation of the juvenile's disability

- Note: even if the court elects not to consider this information for the purposes of adjudication, the attorney's attempt to have this information considered at adjudication may influence the court's decision at disposition

D. Dispositional hearing

- present your information at disposition to advocate for a less restrictive punishment to comport with the juvenile's lack of culpability stemming from his/her disability
- ensure a more tailored disposition by focusing the court on the juvenile's disability issues

E. Reducing or preventing incarceration

- if the juvenile is in detention, in danger of being detained, or in danger of being committed, use the juvenile's IEP to argue that the juvenile will not receive mandated services if detained or committed

SPECIAL EDUCATION RESOURCES

Carolina Legal Assistance

P.O. Box 2446
Raleigh, NC, 27602-2446
Phone: (919) 856-2195
Fax: (919) 856-2244
Email: clamdlp@mindspring.com

Legal Aid of North Carolina

Durham Office, Advocates for Children's Services
201 West Main Street, Suite 400 (27701)
PO Box 2101
Durham, NC 27702
Phone: 919-226-0052 or 919-226-0053
Fax: 919-226-0566
E-mail: ACSinfo@legalaidnc.org
Winston-Salem Office, Advocates for Children's Services
102 West 3rd Street, Suite 305 - 27101
P.O. Box 20188
Winston-Salem, NC 27120
Phone: 336-725-9162, Ext. 108
Fax: 336-703-1343

Children's Education Law Clinic

Duke University Law School
Box 90360
Durham, NC 27708-0360
Phone: (919) 613-7169
Tollfree: (888) 600-7274
Fax: (919) 613-7262

Governor's Advocacy Council on Persons with Disabilities

GACPD
1314 Mail Service Center
Raleigh, NC 27699-1314
Phone: 1-800-821-6922
Fax: (919) 733-9173
Email: GACPD@ncmail.net

Exceptional Children's Assistance Center

907 Barra Row, Suites 102/103

Davidson, NC 28036

Phone: (704) 892-1321

Fax: (704) 892-5028

Parent Information Line: 1-800-962-6817

E-Mail: information@ecac-parentcenter.org

