

## Using Special Education Advocacy for Juveniles with Disabilities



Presented to: 2006 Annual  
Juvenile Defender Conference,  
August 25, 2006  
Chapel Hill, North Carolina

Special Education Juvenile Justice  
Expansion Project Sponsored by  
Carolina Legal Assistance-A Mental  
Disability Law Project

This Project was supported by the  
Governor's Crime Commission

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## Special Thanks to:

- Eileen L. Ordovery, Center for Law and Education, Inc.
- Joseph B. Tullman, University of the District of Columbia School of Law Juvenile Clinic
- Children's Education Law Clinic, Duke Law School

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## The Objectives of Special Education Advocacy

- Getting Juveniles Educated
- Keeping Juveniles in School
- Reducing High School Drop-out
- Keeping Juveniles Out of the Delinquency System



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**IDEA-Based Issues Regarding School Initiated Juvenile Petitions**

- Whether school system is criminalizing the behavior of a student for whom they failed to provide appropriate educational services?
- Whether school addressed behavioral issues of student as educational needs?
- Will school's response reduce the risk of future school-initiated delinquency petitions or crime reports?

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**Individuals with Disabilities Education Act**

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living".

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**Eligible Children (ages 3-21) need special education based on any of the following disabilities:**

- Mental retardation
- Hearing impairments
- Speech or language impairments
- Visual Impairments
- Behaviorally-Emotionally Disabled
- Orthopedic Impairments
- Autism
- Traumatic brain injury
- Specific learning disabilities
- Other health impairments

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### What is FAPE?

The primary obligation of IDEA is a free appropriate public education. **FAPE** is special education and related services designed to meet the unique needs of the eligible student. An eligible student is entitled to receive FAPE even when (s)he is subject to long-term suspension, expulsion or detention

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### IDEA –Based Legal Analysis

- The duty to provide FAPE includes the duty to identify, evaluate, and serve children whose disabilities have behavioral consequences.
- IDEA requires school compliance with particular procedures when problem behaviors emerge, continue, or escalate.
- Children whose disabilities involve behavioral problems are entitled to receive appropriate educational and supportive services.

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### *Honig v. Doe*, 484 U.S. 305 (1988)

The U.S. Supreme Court held that IDEA prohibited schools from unilaterally subjecting students with disabilities to long-term suspension. Disciplinary exclusion of an eligible student for more than 10 days constitutes a change in placement and triggers IDEA's procedural safeguards for the parent.

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## Disciplinary Exclusion as a Change of Placement

- IEP team meeting
- Functional Behavioral Assessment and Intervention Plan are developed or reviewed.
- Manifestation Determination
  - When behavior not related to disability, IEP team will determine how FAPE will be provided related to discipline action.
  - If behavior is related to disability, child cannot be suspended.



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## Functional Behavioral Assessment (FBA)

- What are the offensive behaviors?
- How often and in what context do they occur?
- What triggers bring on the behavior?
- What is the underlying function of the behavior?
- What are the potential replacement behaviors that will accomplish the same function?

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## Behavior Intervention Plan

Information from the FBA is used to design an intervention plan that accomplishes the following:

- Reduces the likelihood of the offensive behaviors occurring;
- Identifies behavioral supports and consequences;
- Structures the steps to be taken when offensive behaviors occur (for example, redirection, change of environment).

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## Manifestation Determination Review

Parent is invited to an IEP meeting within 10 days of disciplinary change of placement to determine whether behavior caused by child's disability under the following standard:

- if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- if the conduct in question was the direct result of the school's failure to implement the IEP.

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## Manifestation Determination Outcomes

- When the behavior is a manifestation:
  - No suspension
  - Student's behavior must be addressed by the IEP team
  - Placement may be changed by the IEP team.
- When the behavior is not a manifestation:
  - Student may be suspended as any other child but has the right to continued educational services.

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## Interim Alternative Educational Setting

- Carries a weapon to school or to a school function;
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at school or at a school function; or
- Inflicts serious bodily injury upon another person at school or at a school function involving:
  - Substantial risk of death
  - Extreme physical pain
  - Protracted and obvious disfigurement
  - Protracted loss of impairment of a bodily member, organ or mental faculty.

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**Services During Disciplinary Change of Placement**

- A students shall continue to receive educational services so as to enable the student to:
- participate in the general education curriculum
  - progress toward meeting the goals set out in the IEP and
  - receive behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur

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**IDEA Protects Students Not Previously Identified as Eligible**

- Unidentified student is entitled to protections if, before the behavior precipitating disciplinary action occurred:
- parent expressed concern in writing that the child needs special education;
  - parent requested an evaluation; or
  - Teacher or other personnel expressed specific concerns about a pattern of behavior by student to supervisory personnel.

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**Conflict Resolution Procedures**

- IEP Meetings
- State Complaints
- Mediation
- Contested Case Hearing

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## Resources

- Special Education Juvenile Justice Project of Carolina Legal Assistance (919) 856-2195.
- Children's Education Law Clinic, Duke Law School (919) 613-7169 or 1-888-600-7274.
- Council for Children's Rights (formerly Children's Law Center) (704) 331-9474.

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