

# SPECIAL EDUCATION ISSUES FOR JUVENILES WITH MENTAL DISABILITIES

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Presented to:

Fall Seminar for Public Defenders  
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Special Education Juvenile Justice Expansion  
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*A Mental Disability Law Project*

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# *Special Thanks to:*

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- Kathleen McNaught, ABA Center on Children and the Law
- Children's Education Law Center, Duke Law School

# Outline for Presentation

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- The Challenge of Special Education Advocacy in Juvenile Court
- What Is IDEA?
- The Who and the How
- The Meaning of FAPE
- IDEA's Disciplinary Protections
- Related and Transition Services

# The Challenge of Special Education Advocacy

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- Getting juveniles educated
- Keeping juveniles in school
- Getting juveniles out of detention
- Getting juveniles out of the delinquency system

# Individuals with Disabilities Education Act

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IDEA is a federal law ensuring “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.”

# Board of Education v. Rowley, 458 US 176 (1982)

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- The U.S. Supreme Court stated that IDEA was passed in response to Congress' perception that a majority of children with disabilities "were either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out'".

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Over 55% of students with serious emotional disturbances drop out of school, 73% of whom are arrested within 5 years. In addition 49% of all students identified with learning disabilities do not graduate from high school. Approximately 40-50% of youth in the custody of the juvenile correction system have some form of learning disability.

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

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

# The Primary Obligation of IDEA is FAPE

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- 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.

# IDEA Entitlements

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- Appropriate Evaluations
- Individualized Education Program (IEP)
- Least Restrictive Environment (LRE)
- Parent participation in making decisions
- Written Prior Notice
- Conflict Resolution Procedures

# Conflict Resolution Procedures

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

# State Complaint

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Content of letter: "This is a formal complaint on behalf of [child's name] in the [name of school district]. The issue(s) of this complaint is the following:

- List the violation (example: placement changed w/o IEP meeting.

Address to: Mary Watson, Director  
N.C. Dept. of Public Instruction  
301 N. Wilmington St.  
Raleigh, NC 27601-2825

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In *Honig v Doe*, the 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.

# FAPE During Disciplinary Change of Placement (Old) and New Standard

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- (Progress) Participate in the general curriculum (standard course of study);  
(Advance toward achieving) Meet the goals set out in the IEP;  
Address the behavior that prompted disciplinary exclusion so that it does not recur.

New: Services must allow students “to progress toward meeting goals set out in child’s IEP.”

# Disciplinary Exclusion as a Change of Placement

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- 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.

# Functional Behavioral Assessment (FBA)

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- 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?

# Behavior Intervention Plan

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- Information obtained from the FBA is used to design an intervention plan that
  - Reduces the likelihood of the offensive behaviors occurring;
  - Identifies behavioral supports and consequences;
  - Structures the steps to be taken when offensive behaviors occur (redirection, change environment, etc.).

# Manifestation Determination Review (New Standard Effective 7/1/05)

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- Whether behavior was caused by, has a direct or substantial relationship to the disability;
- Whether behavior was the direct result of the failure to implement the IEP.

# Interim Alternative Educational Setting

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- A child carries a weapon to school or to a school function; or
- A child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at a school or a school function;
- Upon the request of a principal, a hearing officer determines that maintaining a child's current placement is substantially likely to result in injury to the student or others.

# New Provision for Interim Alternative Educational Setting (IAES)

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- Allows IAES when a student inflicts serious bodily injury involving
  - Substantial risk of death
  - Extreme physical pain
  - Protracted and obvious disfigurement
  - Protracted loss of impairment of a bodily member, organ or mental faculty.

# Child Find Extends to Students Not Previously Identified As Eligible under IDEA

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- School is presumed to have knowledge when:
- Parent has expressed concern in writing to school that child is in need of special education;
- Student's behavior or performance demonstrated the need for such services (Deleted);
- Parent has requested an evaluation in writing; or
- Teacher or other personnel expressed specific concern about child's pattern of behavior or performance.

# Related Services

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- Psychological services
- Speech-language therapy
- Physical Therapy
- Occupational Therapy
- Rehabilitation Counseling Services
- Social Work Services in School
- Parent Counseling and Training

# *Cedar Rapids Community School District v. Garret F.*

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- U.S. Supreme Court ruled that a student with quadriplegia needing urinary bladder catheterization once a day, suctioning of his tracheotomy, repositioning, and ventilator checks to determine respiratory distress is required to be provided by the school as related services.

# Transition Services

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- Transition services prepare a student to make the transition from secondary school to post-secondary school, from school to work, and from living dependently to living independently. The IEP must address instruction, community experiences, & development of employment & other post-school living objectives, and when appropriate, acquisition of daily living skills.

# Goals of Transition Services

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- Education and employment (college, apprenticeships, continued vocational training, independent or supervised employment, and volunteer positions).
- Independent living (self-care skills-feed, clothe, shelter, manage time, pay bills and travel).
- Interpersonal and social relationships (self-awareness, written and verbal communication, social skills and behavior).
- Self-advocacy (problem solving and decision-making skills, knowledge of basic rights).

# Resources

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- The Special Education Juvenile Justice Project of Carolina Legal Assistance (919) 856-2195, ext 107 or 106.
- Children's Education Law Clinic, Duke Law School (919) 613-7169 or 1-888-600-7274.
- Children's Law Center (704) 331-9474