



Students with Disabilities and Law Enforcement

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Overview

- ▶ Students with Disabilities in the Justice System
- ▶ Contact with the System
- ▶ Legal Requirements: Public Education
- ▶ Threat/ Risk Assessment /Informal Removal

Students with Disabilities in the Justice System

Contact with Law Enforcement

- ▶ Disabilities may prevent youth from advocating appropriately for themselves at the time of arrest and within the system
- ▶ Youth with particular types of disabilities may be more likely to confess to a crime they did not commit
- ▶ Youth may not be able to express exactly what happened during an incident, or may be named by another youth in an attempt to deflect responsibility
- ▶ Some disability related behaviors look disrespectful, evasive, etc.

Contact with the System

- ▶ Not a benign referral source for services.
- ▶ Reputational/record impact
 - ▶ Potential for FERPA violations and information bleed
- ▶ Distracts/diverts time and resources from disability specific solutions
- ▶ The system does not meet their needs and does not “fix” the problem

The Data

- ▶ Prevalence studies have found that 65-70 percent of youth in the justice system meet the criteria for a disability
 - ▶ This is more than three times higher than that of the general population
- ▶ At least 75 percent of youth in the juvenile justice system have experienced traumatic victimization leaving them at-risk for mental health disorders such as posttraumatic stress syndrome

Youth with Disabilities in the System

- ▶ YWD's enter out of home placement earlier and stay longer than youth without disabilities.
- ▶ See [Probation Referral: A Model for Diversion of Children and Youth with Disabilities from the Juvenile Justice System - NDRN](#)
 - ▶ High rates of abuse
 - ▶ Behavior modification models do not accommodate disability
 - ▶ May learn new “skills”
 - ▶ System does not generally address disability or provide treatment

Legal Authority

Relevant Authority

- I.D.E.A.
- Section 504
- U.S. Constitution
 - See: *Goss v. Lopez* (gen'l ed) 419 U.S. 565 (1975)
 - 1st, 4th, 5th and 6th Amendments

Specifics

- ▶ IDEA: esp. 20 USC 1415(k)
 - ▶ See “Child Find”; “Protections for Students Not Yet Eligible”; discipline protections
- ▶ Section 504
- ▶ School Code
- ▶ State and local codes, policy, and procedure

Key Points

- ▶ The need for and provision of appropriate behavior supports are important elements in FAPE and LRE analyses
- ▶ There are no “10 Free Days”
- ▶ All removals count, including informal removals
- ▶ There is a 3 factor test for use in determining when a removal impacts FAPE/LRE

Informal Removal: IDEA Eligible Youth

▶ “Dear Colleague” Letter

▶ <http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>

▶ Stakeholder Brief

▶ <http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-summary-for-stakeholders.pdf>

Threat, Risk Assessment and Informal Removal

What is “Informal Removal”?

Removal of students from school without due process

- ▶ Goss v. Lopez (gen'l ed) 419 U.S. 565 (1975)
- ▶ I.D.E.A.
- ▶ Section 504

Various Methods

- ▶ “Sent homes”
- ▶ Shortened Days
- ▶ Homebound/tutoring
- ▶ Transfers to no where

The 3 Factor Test for FAPE: When A Student is Removed

1. Opportunity to be involved/make progress in the general ed curriculum
 - ▶ Restraint: likely no opportunity for involvement or progress
 - ▶ Seclusion: find out if any academics are provided
2. Receive the Instruction and Services on the IEP
 - ▶ Restraint: likely no services or instruction
 - ▶ Seclusion: kid is alone and unlikely to receive services or instruction
3. Participate with non-disabled students as they would have in their current placement.
 - ▶ Restraint: removed from their peers
 - ▶ Seclusion: no participation with peers

Also found in 71 Fed. Reg. 46715 (Aug. 14, 2006)

What Is “Threat Assessment” ?

- ▶ Originally intended to prevent acts of violence at school
- ▶ Some states and locals require Threat Assessment Teams to analyze certain acts.
- ▶ Wide variation in what process is required.
- ▶ **Does not trump federal statutes or Constitutional protections.**

TA is not an end run...

- ▶ IDEA and Section 504 protections still apply, including the key analysis of the role of disability
- ▶ A student may not be removed from school without evidence that they committed a school code violation
- ▶ Removals cannot be indefinite

TA is not an end run...

- ▶ When removed, the child has the same rights to education and IEP services as the IDEA requires
- ▶ Parental rights waivers/withdrawal agreements are a liability nightmare.
- ▶ IDEA requires that services be free. Parents cannot be required to purchase services or evaluations.

Threat Assessment: The World Has Not Changed

Steps

- ▶ **Apply Legal Protections:** IDEA, Goss, Section 504, state and local authority as required
 - ▶ Ensure that IEP team, special education staff, parents and knowledgeable others are part of the process
 - ▶ Provide an IDEA or Section 504 evaluation if more information is needed.
 - ▶ *Honig* injunctions are available to the LEA if the child is truly dangerous
 - ▶ An IDEA “stay put” exception does not apply to a threat (34 CFR 300.530(g))
- ▶ **Evaluate, plan, serve: Repeat as needed**

IDEA/504 Threat Assessment Cases

Brighton School District 27J: Colorado State Educational Agency

April 19, 2019 (Disciplinary Pattern)

May 25, 2018 **Vilonia_School District:** Arkansas State Educational Agency (affirmed by U.S. District Court)

Brighton

- ▶ Student: Shooting up the school if he didn't get a girlfriend.
- ▶ Dean's recollection: He did not give Parent a set number of days Student would be suspended--Student would be suspended until the threat assessment process was completed.
- ▶ The proposed safety plan: SRO search Parent's house for weapons.
- ▶ Parent adamantly refused ...
- ▶ No MDR and no services while out.
- ▶ Hearing Officer: IDEA pattern analysis reveals it was a suspension.

General Education Approaches

- ▶ *Goss v. Lopez*, 419 U.S. 565 (1975)
- ▶ When state makes education compulsory— property and liberty interests- under the 14th Amendment due process clause are implicated. Permits some limited exceptions
- ▶ Two standards:
 - ▶ Students removed from school 10 days or less
 - ▶ Students removed from school more than 10 days

Goss v. Lopez

“...A short suspension is, of course, a far milder deprivation than expulsion. But, ‘education is perhaps the most important function of state and local governments,’ *Brown v. Board of Education*, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954), and the **total exclusion from the educational process for more than a trivial period**, and certainly if the suspension is for 10 days, is a serious event in the life of the suspended child. Neither the **property interest** in educational benefits temporarily denied nor the **liberty interest** in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary. (*Id.* At 576)
(Emphasis supplied)

Goss v. Lopez

Students removed from school 10 days or less:

- ▶ “..Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires...that the student be given **oral or written notice of the charges** against him and, if he denies them, an **explanation of the evidence** the authorities have and an **opportunity to present his side** of the story. The Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school. (*Id.* at 581) (Emphasis supplied)

Goss v. Lopez

► For Suspensions More Than 10 days:

“...We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. **Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required.**” *Id.* At 584 (Emphasis Supplied)

State Law

- ▶ State laws may impact
- ▶ Examples
 - ▶ Right to education under state law
 - ▶ Exceptions to compulsory education
 - ▶ Compulsory ed waivers
 - ▶ Alternative education requirements for all expelled students

Better Practices?

- ▶ Follow the law (IDEA, Section 504, Constitutional Protections)
- ▶ Do not use LE for acts that the school district staff are not permitted to do
- ▶ Provide behavior supports as per the “Dear Colleague Letter”
- ▶ Use expert advice when needed
- ▶ Involve parents, special ed staff, IEP team.
- ▶ Evaluate children for IDEA and Section 504 eligibility – don’t wait...
 - ▶ Early intervention works.

Presenter Contact Information

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