

Child Left Behind: The Reality of Special Education for Youth in Detention Facilities

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I. INTRODUCTION

Under Congress' Individuals with Disabilities Education Act (IDEA), identified youth in detention facilities are legally entitled to special education and related services similar to the average special education student in a public or private school setting.¹ While IDEA connects juvenile justice to education by requiring a system of identification to be in place for special education youth in detention facilities,² implementing this presents a unique and extremely challenging situation. What is problematic is that IDEA requires facilities to not only thoroughly conduct the process of identification given the short-term nature of a youth's stay in detention.³ Identification, which occurs at the stage of intake, if not done appropriately can render a youth vulnerable to a variety of unfavorable outcomes such as dropping out of school upon reentry, continuation of disciplinary problems, and ultimately less employment options.⁴

While information generated by the identification process is useful, juvenile justice professionals tend to view it as secondary and unnecessarily burdensome. When looking at facilities such as the Cook County Juvenile Temporary Detention Center (JTDC), compliance with federal legislation is difficult given inadequate intake

¹ William B. Reichhardt, *Legal considerations when advocating for children with special education needs*, 21, THE JOURNAL OF THE VIRGINIA TRIAL LAWYERS ASSOCIATION, 4, 5 (2010) [hereinafter *Legal Considerations*]; *Special Education in Correctional Facilities*, The National Center on Education, Disability and Juvenile Justice. http://www.edjj.org/Publications/pub05_01_00.html. [hereinafter *Special Education in Correctional Facilities*]

² Sue Burrell and Loren Warboys, *Special Education and the Juvenile Justice System*, OFFICE OF JUVENILE JUSTICE DELINQUENCY PREVENTION, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/179359.pdf>, 1,7 (July 2000). [hereinafter *Special Education and the Juvenile Justice System*]

³ *Special Education in Correctional Facilities*, *supra* note 1.

⁴ *Legal Considerations*, *supra* note 1 at 7.

procedures conducted by poorly equipped staff.⁵ This is due to the short timeframe for juvenile court proceedings, and the youth's similarly short stay in the facility itself. A lack of structural identification procedures in place leaves room for youth to go into facilities unidentified and subsequently not receive the services they are in need of and entitled to. To address the problem, detention facilities should be provided more time to invest to the identification process itself and less to its preparation; and the proper training and supplying of staff to these facilities should be outsourced to a separate entity.

The following Article will begin by framing the intersection of the education and delinquency systems with a special focus on Cook County, IL. Second, the Article will provide the federal legislation governing how these facilities must serve their special education students. Third, the Article will identify the most prominent barrier present in the provision of services for these youth to be inadequate intake procedures. Ultimately, the Article will argue that by reshaping the identification process during intake, special education students in facilities such as JTDC can be better served.

II. THE INTERSECTION OF THE JUVENILE JUSTICE AND EDUCATION SYSTEMS

Educational researchers have found that an upwards of 40 percent of incarcerated youth have a learning disability, and that they will face significant challenges when returning to school upon release from detention.⁶ This study is confirmed by the U. S. Department of Education, which stated that 43 percent of incarcerated youth receiving remedial education services in detention did not return to school after release.⁷ Over the

⁵ Special Education in Correctional Facilities, *supra* note 1.

⁶ Barry Holman and Jason Ziedenger, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, JUSTICE POLICY INSTITUTE REPORT, 2, http://www.justicepolicy.org/images/upload/0611_rep_dangersofdetention_jj.pdf. [hereinafter *The Dangers of Detention*]

⁷ *Id.* at 9; LeBlanc (1991), *Unlocking Learning*; Chapter 1 in *Correctional Facilities*, Washington, DC: US Department of Education.

past three decades, the number of these students with disabilities in facilities has risen at over twice the rate of the overall special education population.⁸

A. DETENTION CENTERS: A FOCUSED LOOK AT COOK COUNTY

Today, more than one in three students facing disabilities enters these facilities,⁹ which is a statistic comparable to Illinois, where 30% of detained youth were found to have a diagnosed learning disability.¹⁰ This data suggests is that special education youth are significantly overrepresented in the juvenile justice system. In addition to their presence being significant, nearly 44% of all admissions are released within 7 days, with Cook County's average stay being approximately 21 days.¹¹ A recent study revealed that from July 2011 to June 2012, almost 15% of youth stayed an average of 31 or more days in detention.¹² The short stint of these youths' stay further complicates what services and processes they can be offered.

In 1999, the ACLU filed a class action on behalf of youth detained in the JTDC¹³ alleging that inadequate educational services were being provided.¹⁴ Although a settlement was reached, additional court action was requested due to limited progress.¹⁵ Since then, the Nancy B. Jefferson School, the educational facility within the walls of JTDC, a school falling under the jurisdiction of Chicago Public Schools, has come under

⁸ Special Education in Correctional Facilities, *supra* note 1.

⁹ *Id.*

¹⁰ *Incarcerated Youth: Some Infographics*, Chicago Youth Justice Data Project, Northwestern Children and Family Justice Center, <https://chiyouthjustice.wordpress.com/2013/11/26/incarcerated-youth-some-infographics/>. (Nov. 26, 2013).

¹¹ *FY 2013: Cook County Juvenile Temporary Detention Center Briefing*, OFFICE OF THE TRANSITIONAL ADMINISTRATOR, http://cook-county.granicus.com/DocumentViewer.php?file=cook-county_a5d3a037484df112c098f75b2050d3e9.pdf&view=1, 15 (2013).

¹² *Id.* at 14.

¹³ *Juvenile Detention in Cook County: Future Directions*, NATIONAL COUNCIL ON CRIME AND DELINQUENCY AND THE JANE ADDAMS JUVENILE COURT FOUNDATION, 9 (Feb. 2012). [hereinafter *Juvenile Detention in Cook County*]

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 9.

significant scrutiny.¹⁶ To understand a bit more about how this school should be operating legally speaking, we look to the federal law that governs the provision of services to special needs youth.

III. FEDERAL LEGISLATION: IDEA

IDEA was developed in order to reform the current inadequacies in elementary and secondary education,¹⁷ providing both substantive and procedural education rights to youth with disabilities and their families.¹⁸ The major purposes of IDEA was to: “1) ensure that all children and youth receive and free and appropriate education that is designed to meet their individual needs; 2) safeguard the rights of children with disabilities and their families; 3) assist states and localities in providing education and related services for students with disabilities; and 4) ensure the effectiveness of state efforts to implement IDEA.”¹⁹ Unlike other federal statutes, IDEA has an enforceable mandate tied to state monitoring requirements, and assigns monetary penalties for a state’s non-compliance.²⁰

A. DEFINING FAPE AND ITS APPLICABILITY TO DETENTION FACILITIES UNDER IDEA

Under IDEA, there is a guarantee that children with disabilities must have access to a “free appropriate public education” (FAPE)²¹ Specifically, Section §300.121 requires that each state have a policy in effect that not only addresses but ensures that children with disabilities aged 3 through 21 residing in that state have the right to FAPE, *including*

¹⁶ *Id.* at 27.

¹⁷ Michael A. Rebell and Robert L. Hughes, *Special Educational Inclusion and the Courts: A Proposal for a New Remedial Approach*, 25 J.L & EDUC. 523, 546 (1996). [hereinafter Special Education Inclusion and the Courts]

¹⁸ Mary Dale Bolson, Mary Magee Quinn, and C. Michael Nelson, *Meeting the Educational Needs of Students with Disabilities in Short-Term Detention Facilities*, THE NATIONAL CENTER ON EDUCATION, DISABILITY, AND JUVENILE JUSTICE, 1, 2 (Feb. 2004). [hereinafter Meeting the Educational Needs]

¹⁹ *Id.*

²⁰ *Id.*

²¹ Special Education Inclusion and the Courts, *supra* note 17 at 524.

*children with disabilities who have been suspended or expelled from school.*²² This language provides coverage for students residing in custodial settings, such as detention.

There are no exceptions that specifically exempt youth in custodial settings from receiving FAPE.²³ The only exceptions that do exist are:²⁴ (i) children ages 3 through 5 and 18 through 21, if the provision of services would be contrary to state law or court order; (ii) children ages 18 through 21, consistent with state law requiring no provision of services to these youth who were not actually identified as being a child with a disability prior to incarceration or did not have an individualized education program; and (iii) students with disabilities who graduated from high school with a regular high school diploma.²⁵ Further, the IDEA provisions and/or regulations that establish that IDEA apply to all public agencies within the state *including “state and local juvenile and adult correctional facilities.”*²⁶ While the Act specifies certain age limitations and excludes certain categories of youth, these restrictions ultimately do not apply to the age demographic of youth that detention centers, such as JTDC serves.²⁷ The very absence of language stating otherwise, reveals the legislative intent of providing for children who have special education needs in custodial settings.

B. DEFINING AN IEP UNDER IDEA AND ITS APPLICABILITY TO DETENTION FACILITIES

In addition to FAPE, IDEA also requires that once a student is found to be eligible for special education services under IDEA, they are entitled to the development and implementation of a tailored individualized education plan, (*hereinafter referred to as “IEP”*), which is a written statement of the child's educational needs and specific goals,

²² Meeting the Educational Needs, *supra* note 18 at 3.

²³ Special Education in Correctional Facilities, *supra* note 1.

²⁴ 20 U.S.C. 1412 §612(a)(1)(B)(i)

²⁵ 20 U.S.C. 1412 §612(a)(1)(B)(ii)(I)-(II); Meeting the Educational Needs, *supra* note 18 at 3.

²⁶ 34 C.F.R. §300.2(b)(1)(iv)

²⁷ Special Education in Correctional Facilities, *supra* note 1.

and methodologies and evaluation procedures for meeting them.²⁸ IEP's also include transition plans and services when necessary as dictated by Section §300.29 of IDEA.²⁹ The development of an IEP is a duty placed upon the school district to develop in partnership with a youth's parents, guardians, and teachers.³⁰ This "team" of individuals must meet annually to update the student's present levels of performance, goals and objectives, and needs for services and supports.³¹

If a detained youth has an IEP as determined by the former educational placement, then the facility is obligated under federal law to implement the existing IEP or hold a new IEP meeting,³² just as a subsequent school district would in the event that a special education student transferred from one district to another.³³ If the IEP team elects to modify the IEP, it must provide interim services comparable to those called for in the existing IEP until the new IEP is developed, and must do so as soon as possible.³⁴

Should a youth enter detention without a current IEP immediately prior to detention, but there is history of an IEP at some point in time, the existence of one is strong enough evidence that the youth has/had a disability, and therefore, a facility should implement the previous IEP unless there is a strong reason not to.³⁵

III. IDENTIFYING THE PROBLEM

²⁸ *Id.*

²⁹ Meeting the Educational Needs, *supra* note 18 at 4-5.

³⁰ Special Education in Correctional Facilities, *supra* note 1

³¹ *Id.*

³² 20 U.S.C. § 1414(d)(4); 34 C.F.R. § 300.346(b); *Alexander S. v. Boyd*, 876 F. Supp. 773, 802 (D.S.C. 1995), *aff'd. in part and rev'd. in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. denied*, 118 S. Ct. (1998).

³³ *Youth with Disabilities in Institutional Settings*, Juvenile Justice Bulletin, NATIONAL CRIMINAL JUSTICE SERVICE CENTER, https://www.ncjrs.gov/html/ojjdp/2000_6_5/page3.html (July 2000). [hereinafter *Youth with Disabilities in Institutional Settings*]

³⁴ 34 C.F.R. § 300.342(b)(ii).

³⁵ *Youth with Disabilities in Institutional Settings*, *supra* note 33; *See, e.g., Boyd*, 876 F. Supp. at 802.

Abiding by federal legislation mandates that govern the provision of services for special education youth residing in short-term detention facilities becomes a daunting task given the poor fit between these regulations and the reality that these facilities face when serving these youth.³⁶ Special consideration must be given to the fact that these youths' average stay may be short, their educational histories complex and varied, and that services within each facility may be dependent on resources such as funding, staffing, and training capacity.³⁷

A. INADEQUATE INTAKE PROCEDURES

Poor intake procedures are the root cause for deficiencies in the identification process for special education students. Current intake and assessment procedures at the JTDC include (1) an orientation to detention center programs, rules, and expectations; (2) health screening and medical services, if needed; (3) a review of the youth's juvenile justice history; and (4) application of a mental health screening tool (MAYSI).³⁸ Nowhere in the intake process does it specifically define an identification procedure that is in place for youth as soon as they enter the facility. While there may be a more informal procedure put in place, little information is available about what this process actually looks like, who facilitates and oversees it, and what outside agencies play a role in assuring that it is run smoothly and effectively for students and ultimately in compliance with the mandates of federal legislation.

B. THE IDENTIFICATION PROCESS

IDEA requires education agencies within each state, such as a facility holding custody over delinquent youth, responsible for conducting a full, individual evaluation to

³⁶ Special Education in Correctional Facilities, *supra* note 1.

³⁷ Meeting the Educational Needs, *supra* note 18 at 1.

³⁸ Juvenile Detention in Cook County, *supra* note 13 at 26.

determine whether a child is eligible for services under IDEA.³⁹ This requirement applies regardless of the youth's length of stay.⁴⁰ The evaluation, also known as the identification process that occurs within a facility should involve three steps: screening, identification, and determination of eligibility (or certification).⁴¹

Screening should be an integral step that takes place upon a youth's admittance into the facility for it notifies the facility that this student *may* have a disability that requires special education services.⁴² Screening can reveal information about prior class placements the student was enrolled in, special classes the student was taking, even a disciplinary record, and provide indicators that may signal that a youth may be in need of special education services.⁴³ The subsequent step would be the identification of whether or not this student actually *does have* a disability that would require the provision of special education services.⁴⁴ The last step, determining eligibility, involves a multidisciplinary team (MDT), which must implement an IEP that addresses the specific needs and related services the student must attain.⁴⁵

Unfortunately, the reality is that very few short-term detention facilities offer such comprehensive services when it comes to the identification process.⁴⁶ Limitations in staffing, time, and training, contributes to this. When it comes to staffing, those who conduct the identification process are dually involved in the youth's admittance in the assessment and provision of services stage, which is not ideal and in fact an ineffective

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Meeting the Educational Needs, *supra* note 18 at 8.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Meeting the Educational Needs, *supra* note 18 at 9.

⁴⁵ *Id.*

⁴⁶ *Id.*

over lap of duties).⁴⁷ When it comes to timing, the process is lengthy and requires the coordination efforts of far too many entities, making the completion of assessments difficult prior to a youth's departure or transfer.⁴⁸ Timing is further complicated by the fact that detention personnel face difficulty in securing school records from a youth's former school district, which ultimately delays the identification of students with disabilities and the provision of appropriate services.⁴⁹ Studies have revealed that it was not uncommon for youth to have exited the correctional system by the time their school records arrived.⁵⁰ While there are Illinois-specific laws that promote the prompt release of school records to facilities where children are detained, sometimes these provisions are not always be adhered to.

IV. PROPOSALS FOR CHANGE

A. TIMING

The identification process is typically delayed because of its dependency on getting records and transcripts from community schools.⁵¹ However, when the school district is the entity responsible for serving detained youths, some of these timing issues can be resolved.⁵² Despite this being the structural set-up of the Nancy B. Jefferson School and Chicago Public Schools, little is actually known about the transfer process.

Facilities that have custody over a youth for only a short period of time are already under burdensome regulations by federal law that requires them not only to move these youth swiftly through the evaluation process but to also retrieve the information

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Special Education in Correctional Facilities, *supra* note 1.

⁵⁰ *Id.*

⁵¹ Juvenile Detention in Cook County, *supra* note 22 at 27.

⁵² Special Education in Correctional Facilities, *supra* note 1.

necessary to make sure this evaluation process goes underway.⁵³ These facilities would be able to do a far more effective job in the identification process if they could focus their efforts solely on this process rather than hunting for a youth's former educational records.

One way in which this issue can be resolved is if the transfer of school records is a priority of the courts whether that be placing the burden on a youth's advocate to transfer the youth's educational history records, or whether there is a court-appointed staff member whose acts as an enforcer in retrieving this information. If this task can be essentially delegated to another entity, then detention facilities will have a far easier time focusing on identification procedures. It should not be the role of educators in the detention center nor facility personnel who are already disadvantaged by a lack of adequate funding and resources in identifying youth with disabilities.⁵⁴ The courts and maybe even the legislature should take on a more proactive role in discerning where a youth stands educationally so that detention facility staff can be better positioned to focus their efforts solely on the process of identification. Educational programming within detentions centers should not take a back seat to court hearings, mental health assessments, safety issues, and discipline during a youth's stay in detention.

B. STAFFING

Providing appropriate special education services requires an adequate supply of qualified personnel,⁵⁵ which is a common problem that particularly short-term facilities face. These facilities are either short-staffed or have staff lacking the requisite qualifications to conduct eligibility evaluations of youth.⁵⁶ “Under IDEA, each State must

⁵³ Youth with Disabilities in Institutional Settings, *supra* note 81.

⁵⁴ Special Education in Correctional Facilities, *supra* note 2.

⁵⁵ *Id.*

⁵⁶ 20 U.S.C. § 1414(b); 34 C.F.R. § 300.532.

have in effect a comprehensive system of personnel development (CSPD) designed to ensure an adequate supply of qualified special education, general education, and related services personnel.”⁵⁷ Since staff at a detention facility has the tremendous responsibility of ensuring the safety, security and stimulation of their youth residents, the burden should fall upon the local educational authority (LEA) or state educational authority (SEA) overseeing these facilities to not only establish standards that personnel supplied to these facilities must meet but to also take on the task of training these individuals as well. Further, the LEA or SEA should ensure that these standards remain consistent with whatever State-recognized professional requirements are necessitated for working with high need youth.⁵⁸

C. TRAINING

One of the most daunting tasks detention facilities face is having adequately trained staff that have knowledge of the laws governing special education youth in detention, the ability to correctly identify and assess students suspected of having disabilities, and ultimately the skills to develop individual instructional goals and objectives for these students that meets their unique needs.⁵⁹ A specific solution that has proven successful in addressing the professional development needs of teachers in some facilities has been the “usage of computer-based expert systems that are programmed to arrive at decisions using information provided by the user and the expert.”⁶⁰ SNAP (Smart Needs Assessment Program), was specifically designed for traditional school settings where general education teachers had special education students in their

⁵⁷ Special Education in Correctional Facilities, *supra* note 2.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

classes.⁶¹ “SNAP allows teachers to identify problem situations in their classrooms and query the expert system for recommended behavioral strategies or teaching/learning strategies.”⁶² The system can be translated over to educators who are in need of specialized training to work with offender populations, such as detention center educators.

V. CONCLUSION

While schools prioritize serving the *educational* needs of students, juvenile justice facilities simply cannot do the same.⁶³ Conflicting priorities of either setting where youth are managed make coordination and/or balance incredibly difficult for staff to execute. If detention facilities are supported in devoting their energy and resources to the identification process at intake, and have competent and ample staff to evaluate these youth, then the juvenile justice and education system will have truly established a partnership that betters the educational outcomes for special education youth.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Special Education in Correctional Facilities, *supra* note 2.