



## WEBINAR MATERIALS

**Time for Change:**  
*Challenging School Policies & Practices to Help  
Students with Disabilities Stay in School*

November 10, 2010

*Presenters:*

**Kathleen B. Boundy, Esq., & Lili Garfinkel**

### ABOUT THE PRESENTERS:

**Kathleen B. Boundy, Esq.**, is co-director of the Center for Law and Education (CLE) and has an extensive background in education law. An attorney with CLE for more than 30 years, Ms. Boundy has played a significant role through legislation, policy development and litigation in implementing and enforcing the rights of students with disabilities, including improved educational outcomes under the Individuals with Disabilities Education Act, as amended, and Section 504 of the Rehabilitation Act of 1973 and No Child Left Behind.

**Lili Garfinkel** is Project Coordinator for Juvenile Justice at the PACER Center in Bloomington, MN. Ms. Garfinkel has coordinated PACER's Juvenile Justice Project since 1994 and prior to that served as the coordinator of PACER's Child Abuse project. From 1999-2006 she was also the Assistant Director of the National Center on Education Disability and Juvenile Justice or EDJJ, a unique partnership that provided research, training and technical assistance as well as parent advocacy in this emerging field. Ms. Garfinkel has written more than 10 publications on youth with disabilities and juvenile justice, and is a frequent presenter at national conferences.

The Advocate Academy® is a project of



A not-for-profit organization dedicated to services and projects  
that work to improve the lives of children, youth and adults with disabilities.

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**Presenters**

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- **Lili Garfinkel** (Part I)  
Project Coordinator for Juvenile Justice  
PACER Center :: [www.pacer.org](http://www.pacer.org)
- **Kathleen Boundy** (Part II)  
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**Agenda**

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- School policies/practices that contribute to the school to prison pipeline
- Characteristics of juveniles in corrections
- Strategies for parents and parent advocates -  
What do parents and kids need to know?
- Tools for challenging denial of students' right to HQ education and to protect their rights to remain in school



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## Pacer's Juvenile Justice Project

- Established in 1994
- Advocacy for youth at risk for entering the jj system or already in the system and their families
- Assist parents, youth parent centers, public defenders, corrections professionals and all those interested in better outcomes for kids
- Develop trainings, curricula and resources

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## Defining the School-to-Prison Pipeline

- process by which students are “pushed-out” from their current educational environments into the juvenile justice system

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## Policies/Practices that Push Youth Out of School

- Lack of a high quality education is the *primary* factor related to students becoming entangled in the “School-to-Prison Pipeline” through their constructive exclusion from school
- Overzealous use of zero tolerance discipline policies and suspensions/expulsions cast a wide net capturing disproportionately racial and ethnic minority youth & students w/ disabilities
- Students' behavior is criminalized through inappropriate referrals by school personnel to law enforcement instead of treating behavior as an education issue

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### Academic Push Out Policies/Practices

- Ineffective support/ interventions for struggling learners
- Lack of school/district accountability for truancy and drop-outs
- Reliance on retention as response to academic struggles
- Failure to accommodate mobile students, migrants, children in foster care.
- Failure to treat students who must pass high stakes tests with fairness
- Use of academic sanctions as discipline response
  - Loss of credits
  - Denial of make-up tests/homework
  - Aging out

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### Academic Push Out Policies/Practices

- Failure to modify IEP, to recognize need for FBA, to provide necessary support services in regular school environment;
  - To provide FAPE with necessary support services before/during exclusion\*
  - To provide access to ESY to make effective progress; to accelerated curriculum
  - To develop/implement effective IEPs to support students w. behavioral challenges [PBIS, mental health & wrap-around services] or to develop mental health goals that respond to diagnosed needs
- Reliance on behavior goals that are punitive rather than instructive
- Use of inappropriate, separate "therapeutic" programs in isolation from peers, participation in general education curriculum

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### Disciplinary Push Out Policies/Practices

- Exclusion from instruction is generic administrative response to truancy/other status offenses, and innumerable behaviors not harmful to self/others.
- Failure to respond to pattern of exclusion; to implement evidence-based preventive school-wide practices for improving student behavior & creating a safe climate conducive to effective learning
- Failure to restrict exclusion offenses to those most serious, unable to be addressed w/out removal from learning environment
- Failure to provide preventive, supportive interventions to resolve inappropriate behavior (behavioral plan, contract, counseling), including effective teaching & instruction
- Failure to minimize length & educ. impact of exclusion
- Failure to provide FAPE consistent with IDEA\*

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## Zero Tolerance Discipline Policies

- Charges are possible for nonviolent behaviors (swearing, disrespect)
- Do not discriminate between “dangerous” and “disrespectful” behaviors
- Zero tolerance policies disproportionately impact youth of color, youth with disabilities, and students who have low test scores
- **Do not reduce the number of incidents or change behavior**

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## What the Research Says about Exclusion

- Removal of students from their educational programs as a means of punishment:
  - is ineffective in helping students change behavior or in creating a safer school environment;
  - may lead students to engage in delinquent behavior by providing extra time to be w/o adult supervision;
  - may result in suspended youth developing low self-esteem, feelings of alienation from peers, and negative attitudes about school; 61% of youth in delinquent facilities report having been expelled/suspended during prior year (Sedlac & McPherson 2010)
  - acts as a perverse disincentive for students already not engaged in learning - allowing them to fall further behind and increasing likelihood of their dropping-out of school

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## Connection b/w Suspensions & Race and b/w Suspensions & Disability

- African American males receive out-of-school suspensions at nearly 3x the rate as white, non-Hispanic male students (Schott 2008).
- Students of color tend to be disproportionately charged with minor offenses such as disobedience and disrespect. (HCRP 2000).
- Schools that rely heavily on suspension and expulsion tend to have the highest rates of the overrepresentation of students of color in suspensions and expulsions.
- SwDs tend to be disproportionately affected by suspensions and expulsions, often for behavior that is related to their disability (Zhang et al, 2004).
- A recent longitudinal study found 33% of SwDs had been suspended or expelled during their school careers (SRI Intl),
- 61% of students w/ ED found to have been subjected to disciplinary action in one school year (SRI International, 2006).

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## Criminalizing Student Behavior

- Criminalization reflected in increased police presence in schools
  - Raising questions re/ Constitutionality of searches, interrogations of minors, implications for Manifestation Determination reviews
  - Charging students for overbroad and vaguely defined offenses, e.g., "disturbing school assembly"; "disrupting public schools"
  - Over charging students, e.g., fighting becomes A & B, kicking becomes "A & B with a dangerous weapon - to wit a shod foot"; venting becomes "making threats" - resulting in delinquency charges being filed, leading to long-term suspensions/expulsions

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## Criminalizing Behavior of SwDs

- School's treatment of a SwD's needs and behavioral manifestation as a crime instead of addressing the challenging behavior as an education matter --in effect criminalizes the student for the school's own violations of the student's rights under IDEA & sec. 504, e.g., denial of FAPE, failure to identify, properly evaluate and meet child's needs, including challenging behaviors, by providing appropriate educational and supportive services
- Ineffective professional development & training of school staff, including school liaison officers may contribute.

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## Students with Unaddressed Mental Health Related Needs

- Schools designate behaviorally disruptive children as ED and rarely designate the most common mental health problems that inhibit a student's learning:
  - Anxiety disorders
  - Depression
- Most needing help don't receive it though it is generally recognized that the greatest risk factor for future behavior problems are past un-remediated behavior problems.

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## Characteristics of Youth in the JJ System

- Youth who enter Juvenile Justice system are likely to have experienced an education that is far below the level of quality required by law.
- This often means a "watered-down," low-level curriculum in failing schools that have low expectations for students (Murnane).
- Such youth are more likely to have received lower and/or failing grades, to have had poor school attendance, and to have been retained in grade (Foley, 2001; Wang, Blomberg, & Li, 2005; Zabel & Nigro).
- Nearly 50% of youth in JJ facilities function below grade level, compared to 28% of peers in the general population (SYRAP, citing U.S. Census Bureau, 2005).

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## Overrepresentation of Students of Color in the JJ System

- African Americans are approximately 16% of all school age youth, yet comprise 43% of youth in juvenile detention & correctional facilities (NDTAC, 2010)

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## Overrepresentation of SWDs in the JJ System

- 33.4% of sample of 34000 youth in juvenile correctional system were receiving special education under IDEA (Quinn, Rutherford, Leone, Osher, Poirier 2005)
  - 47.7% of these youth were classified as ED
  - 38.6% had a learning disability
  - 9.7% had an intellectual disability

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## High Prevalence of Youth w/Mental Health Needs

- 2/3 - 3/4 of a sample of 1,829 detained youth met the criteria for at least one psychiatric disorder:
  - 50% of Males and almost 50% of Females have a substance abuse disorder; more than 40% of M & F met the criteria for disruptive disorder; more than 20% of F met the criteria for major depressive episode (Teplin, Abram, McClelland, Dulcan, & Mericle, 2002).
- Youth in juv. corrections have higher rates of untreated mental health disorders than youth in the general population (Teplin, Abram, McClelland, Washburn, Pikus, 2005).
- Unaddressed mental health-related needs put juveniles at greater risk for adult mental, emotional, & behavioral disorders (Hafemeister, 2004).

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## What are my child's rights when questioned about a crime in school?

- When you are developing your IEP include something about your child being questioned
- Ask that someone from the IEP team be present (someone you trust); make sure that he isn't questioned alone
- Let the team know that if this information can be used against him in court he **does not have to say anything**
- Above all, tell your child to never answer questions or sign anything without a responsible adult or attorney

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## Why are they charging him when it was a manifestation of the disability?

- When behaviors are out of control teachers often act forcefully rather than determine the source of the problems
- Teachers believe they need to set an example for other students
- They are concerned with safety and liability
- Once a police or liaison officer is called, they often feel they need to "teach the kid a lesson"
- School liaison officers frequently have no training about special education and few are familiar with disability appropriate de-escalation strategies
- Charges are often arbitrary

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### Reminder: Rights under the IDEA

- FAPE (Free Appropriate Public Education)
- LRE (Least Restrictive Environment)
  - Mainstreaming & Inclusion
  - Continuum of Services, Including 24-Hour
- IEP (Individualized Education Program)
- Related Services
- Transition Services
- Functional Behavioral Assessments (FBA) and Behavioral Intervention Plans (BIP)
- Assistive Technology
- **FAPE is a right in school, corrections settings, and other out of home placements**

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### Remember 300.125. Child Find

The State must follow effective policies and procedures in place to ensure that all children with disabilities, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.

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### Child Find

- Parent needs to **put in writing** that they request an evaluation for the disability (copy to district special education director)
- School **must** conduct the evaluation at no cost to the parent
- The multidisciplinary team has 30 school days to conduct a full and individual initial evaluation of areas suspected of disability (i.e. health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities). (34 C.F.R. § 300.531 and 34 C.F.R. § 300.352 (g))

Page 24



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## Functional Behavioral Assessment

- When a child's behaviors do not respond to the interventions used with all students, or
- When the team cannot provide data that supports why inappropriate behaviors occur, or
- When a child is repeatedly punished for behaviors that do not improve, and
- is also required by states order to qualify for Special Education services under Emotional or Behavioral Disorders, or after 10 days of suspension in a school year.



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## Developing a Meaningful IEP may also Include a Positive Behavior Intervention Plan

### What is a Positive Behavior Intervention Plan?

**A plan that supports:**

- The child
- The IEP goals
- The identified related services

**A plan that:**

- Is proactive, not reactive
- Implements and supports replacement behaviors
- Engages the child

A **crisis plan** determines what steps will be followed if the behavior has already occurred.

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## And Meaningful Consequences...

- Reflect disability needs and realistic responses
- Help change and maintain behavior across time and be used in all classes
- Consequences must:
  - Be clearly stated and communicated
  - Be logical - bear some relationship to the behavior
  - Be instructive rather than punitive
  - Apply universally to all children

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### What are Student and Parent Rights in School?

- School: No "right" to have parent contacted but parent can request that such step or action be written into the child's IEP (some states have language that requires the school to call a parent)
- Student's statements CAN be used against him or her
- No "right" to have *Miranda* rights read in school *except when the child is subject to a "custodial interrogation"* (home, police station, community)
- Does the student understand his Miranda rights?

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### Preparing your Child for a Meeting with the Police

- Role play what can happen when your child is arrested, stopped or questioned
- If they mouth off or say something inappropriate act it out for them and ask them what they think
- Model the behavior you think they need to have, including the language and the gestures
- If they have a cognitive, hearing, or language processing disability, they should say they don't understand, (could they carry some ID?)

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### What Should I Do if my Child is Questioned by the Police?

- Tell your child to be polite even if the police officer is not polite
- Tell him never to argue, lie, or run away
- He can tell the police he can't answer questions without someone like a parent, an IEP team member or an attorney with him.
- If you are worried, let the police in your neighborhood know about your child's disability and how best to approach him

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### Being questioned in police custody (home, school, community, police station)

**Police:**

- If student is in custody of police and unable to stop the questioning and leave
- Must be advised of Miranda rights
- Do not have to notify parents ( check your state law)
- However, parents should tell their child that they cannot speak to anyone or sign anything unless they have an attorney present
- Remember that police officers can question children for a long time, and ask questions different ways so they become confused and scared.

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### Other issues parents, advocates and kids need to know?

- Never agree to "waive" your rights to an attorney
- Juvenile records are not always "sealed"
- You may have to file an "expungement motion" (if the child is eligible)

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### Parents in Court

- Let the intake officer know about the disability at the time the youth is first detained
- Present information about the disability and necessary accommodations in writing prior to the pre-dispositional hearing
- Have copies of the child's latest IEP and evaluation and manifestation outcomes available to the court.
- Have documentation from a professional recommending the interventions for this child's disabilities, including medication
- Make sure public defender has documentation and an understanding of the circumstances of the crime

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### What does the court want to know from a parent ?

- The disability is not seen as an excuse but an explanation
- There will be consequences
- The child has been unable to access appropriate services\*
- The child understands and has remorse\*
- That parent and youth are working with providers to get help

34



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### What Should Parents Provide To the Court

Information about the child's diagnosis, medication and IEP ( the connection to the incident)  
Try and write a timeline of what happened ( including school not addressing issues)  
Ask people who know your child from church, sports activities, etc to write a letter of support to the court  
Be very careful about bad mouthing others in court:  
You may say that you have tried to get help before, or that the school is working with agencies to access services that were not in place before  
When possible, ask your child to make or write a statement

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### If a child is placed in an out of home setting,

- Work with case manager, social worker, or other staff to address feelings of anger and fear
- Find out as much as possible about the disability (disability groups, mental health associations, etc) and rights
- Connect with probation officer to educate them about the disability
- Make sure you participate in the re-entry plan so that there are realistic expectations
- Work with an advocate to modify the IEP so that it is not a "set-up" when he returns to his school

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### If a Child is referred to a Detention or Correctional Center ....

Parents and Advocates should:

**Stay involved!!**

- Provide the facility with written information about the youth's existing IEP or 504 plan as soon as possible
- Meet with the educational staff to develop a "change of placement" IEP
- Wherever possible consult with the youth's home school to coordinate planning
- If the family lives far away, a team can phone or FAX , appoint a surrogate parent or the family can identify another individual to participate in the IEP on their behalf
- **Parents retain the same rights to due process and timelines while the child is in the facility**

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### Returning to School is a Right

- Parent should contact their district of residence school system to set up an IEP meeting at least a month before the youth completes his/her correctional placement
- The IEP team must place the student in an appropriate placement as soon as possible
- If the student returns when an expulsion is in place, the district must still make alternative arrangements for his education
- If a district refuses to place a student, ask them to put the reason in writing;
- Then follow due process procedures to resolve the matter

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### Center for Law and Education

A national nonprofit legal resource center whose primary mission is to make the right of all students to a quality education a reality, and to help enable low-income communities throughout the nation to address their own public education problems effectively.



*"Working to make the right of every child to a high-quality education a reality"*

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### Tools to Challenge School Push-out Policies & Practices

- ✓ Using **Title I & IDEA** to *Ensure High Quality Education* for All Students, At-Risk of Push-out Policies/Practices
- ✓ Using the **Title I** Parent Participation Provisions to *Effectuate Change* in Push-out Policies and Practices
- ✓ Filing Systemic **State Complaints** under IDEA
- ✓ Filing **Complaints with OCR** Using Section 504 & Title VI



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### Using Title I to Counter School Push-out Policies & Practices

- Purpose of Title I/No Child Left Behind Act is “to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.”
- Achievement gaps between rich and poor; white and children and of color; children with and without disabilities are not acceptable.
- No exception for SwDs, children of color, ELLs, or children and youth pre or post adjudication, in detention or other juvenile correctional facilities



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### Making Schools Accountable for Educating All Students to State Standards

- Each State must establish single statewide system of accountability to reduce gap between higher & lower achieving students and must:
  - Adopt challenging academic content and achievement standards for **all** students to learn.
  - Use multiple measures of assessment to see if children are learning
  - Publicly report results of assessments by subgroups (race, LEP/ELL, SPED, low-income) in meeting annual measurable outcomes (AMOs) by school district and school.
  - Use interventions/options when schools do not make adequate improvement (AYP): school choice, SES, corrective action.



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### Elements of a Right to Quality Education within the Framework of Title I/NCLB

- A high quality education is one that enables all students to learn to the high standards that a state adopted for all students to learn.
- Law does not simply require a system for measuring whether students have made adequate progress (AYP) toward proficiency but has a set of core program requirements.
  - An accelerated enriched curriculum aligned w/ state standards of what all students should learn
  - Effective instructional methods used by qualified teachers to teach students well the things they are expected to learn
  - Effective and timely individual assistance for students struggling to master knowledge & skills in the state standards



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### Key Components of the Legal Framework under Title I/NCLB & IDEA: Academic Standards

- **NCLB requires** adoption and use of the same academic content standards for all students in the State without exception—in mathematics, reading or language arts, and science—include same knowledge and skills, and levels of achievement expected of all students.
- **IDEA requires** provision of FAPE “consistent with State educational agency standards”
  - Special education = specially designed instruction to ensure access to the general curriculum so that each child can meet the **educational standards** that apply to all children
  - State performance goals for SwDs must be the same as the State’s definition of adequate yearly progress under NCLB, including State’s objectives for progress by SwDs; also indicators for measuring progress must include “measurable annual objectives for progress by SwDs under NCLB



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### FAPE Remains Key to Opportunities under IDEA 2004 as Aligned with NCLB

FAPE means special education and related services that are available to all children with disabilities in a state that

- are provided at public expense, under public supervision and direction, and without charge;
- **meet the standards of the State educational agency (SEA);**
- include an appropriate preschool, elementary school, or secondary school in the state; and
- are provided in conformity with the Individualized Education Program established for the child.



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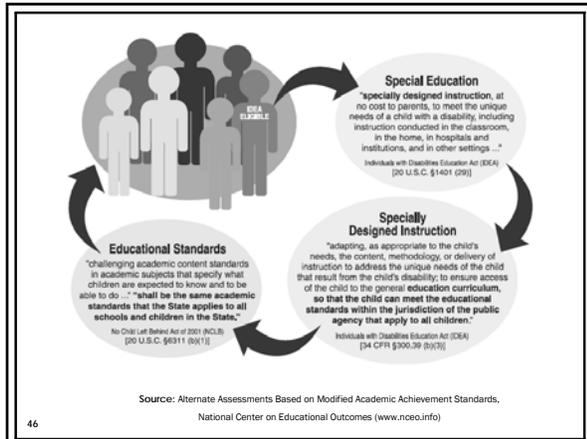
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**The Other Accountability Framework under NCLB:  
 Using a Rights-Based Focus for Reform**

**Title I** as a critical lens for school reform by focusing on every child's right to a high quality education:

- Focusing on each school's **core academic program**
  - *What does the school need to do to bring about desired student outcomes?*
  - *What does the state and district need to do re/resources and support, technical assistance?*
- Focusing on the **goal** that all students learn to proficiency, not as a requirement for which a school is sanctioned when not met, but as a trigger for action when students are not on track to master what all students should learn.

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**Using Title I Parent Participation Provisions to Eliminate School Push-out Policies and Practices**

- ✓ Consider implementation of Positive Behavioral Interventions & Supports in school because all students don't come to school with socially accepted behaviors but can learn through modeling of respect and appropriate interventions that reward positive behaviors.
- ✓ Consider a targeted program for Professional Development re/effective teaching & instruction that acknowledges & addresses student behavior as an education issue, and that
- ✓ Prepares teachers to use effective interventions or strategies to mitigate escalation of inappropriate behaviors.

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### Using Parent Involvement Provisions under Title I to Ensure All Students Receive a High-Quality Education

- Parent Involvement Policy (PIP) req'd by Title I/NCLB describes *how* parents will be involved in the school decision-making process; specifically, in the planning, creation, and review of the School Improvement Plan (SIP).
- PIP must specifically detail *how* parents, teachers, and administrators will share responsibility in the *joint development* and *implementation* of the SIP.
- The PIP addresses the training and information needs of parents and educators.
- It must be *jointly developed* and agreed upon.
- SIP must be *jointly developed* & agreed upon together with parents.
- The SIP must describe how the entire school community will provide a **high-quality education** for every child.



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### Using Title I parent participation provisions as a tool for promoting effective school level changes

- ✓ Identify & implement preventive measures that can improve school climate and reconnect alienated youth
- ✓ Evaluate all school discipline strategies, including out-of-school suspension, expulsion, transfer to alternative education programs, restorative justice, student tribunals to identify which are effective in addressing student behavior and ensuring school safety.
- ✓ Consider rewriting the school discipline code through collaboration of students, teachers, parents, & other members of the school community.



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### Promoting effective school level changes thru Title I parent participation provisions

- ✓ Consider developing a plan that promotes increased cooperation and communication among schools, parents, mental health providers and other supports for SwD with behavioral needs.
- ✓ Examine underlying concerns of students, parents & members of school community with respect to school climate, including ineffectiveness of the school's exclusionary discipline policies and disparate impact on SwDs and racial and ethnic minority students.



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**Another Strategy for Systemic Challenge:  
Filing State Compliance Complaints under IDEA**

- ✓ Review state and federal monitoring reports for prior findings re/denial of FAPE, LRE, access to regular ed curriculum, disproportionate suspension/exclusion
- ✓ Gather and review school data re/disciplinary exclusion of SwDs – as available by race, ethnicity; length of exclusions; provision of FAPE during exclusion
- ✓ Examine sample of IEPs of SwDs w. behavioral issues, focus on SwDs' access to learning, unnecessary exclusion from instruction with peers in regular education curriculum aligned with state standards; delivery of services in IAES
- ✓ Monitor manifestation determination reviews and outcomes



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**State Compliance Complaint & Systemic Failure of  
IEPs to Address Behavior as an Education Issue**

- **Look for evidence in IEPs that:**
  - access to school is accompanied by a right to *educational* programming that addresses behavior as an educational need.
  - SwDs' behavior-related educational needs are addressed thru specially designed instruction and supportive, corrective or developmental services.
  - "education" is broadly defined & evidence of FAPE & LRE
  - IEPs address behavior as a 'special factor'
  - IEPs include effective strategies and supports, including positive behavioral interventions that address specifically SwD's behavior and enable him to learn in regular classroom;
  - On-going professional development to improve teaching



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**Filing Systemic Complaints with  
US ED's Office for Civil Rights**

- Primary responsibility for enforcing Title VI (race, color, national origin) Section 504 (disability) and Title II of ADA in education matters rests w. the Office for Civil Rights (OCR).
- Complaint may be filed by any individual or class who believes school officials have discriminated against them on basis of disability.
- Section 504 provides that "no ...action may be taken until the department or agency concerned ...has determined that compliance cannot be secured by voluntary means." Emphasis is on voluntary compliance & negotiation.



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### Civil Rights Laws Complement Key Title I Program Requirements

- Title VI of the Civil Rights Act of 1964 (race, national origin) & Section 504 (disability) bar practices that absent some overriding educational necessity, disproportionately exclude students of one race, color, national origin, or by disability from the high quality curricula and instruction that schools must provide under Title I.
- Such students are protected from being denied opportunities to learn to high standards; participation in meaningful assessments so as to ensure that they are learning and being taught effectively what they need to know; effective instruction by qualified teachers; and individualized assistance/timely interventions



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### Legal Implications under Sec. 504 of Denying SwDs Meaningful Participation in State Accountability System

- Setting lower standards for certain students and depriving them the skills and body of knowledge expected to be learned by all other students without irrefutable proof that giving SwD access to the same level of knowledge and skills is pointless - violates §504
- If a State adopts lower standards (i.e., less challenging, modified standards at reduced levels of difficulty) for SwDs on basis of their disabilities, it creates an intentional classification based on disability and one that has the effect of subjecting them to lower standards in violation of §504 and the 14<sup>th</sup> Amendment.
- If LEA assigns SwD to alternative school, to homebound instruction because of behavior related to disability, or to a so-called 'therapeutic' program that denies access to opportunities to learn to gen'l curriculum aligned to state academic and achievement standards set for all, practice is discriminatory and in violation of §504



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### Systemic Challenge to Behavioral Exclusions Based on Disability thru an OCR Complaint

- OCR generally doesn't look at result of individual placement or programming decisions but at whether schools use correct procedures in reaching placement or other educational decisions.
- Consider challenges re/disparities in punishment/application of zero tolerance policies, SwDs disproportionately transferred from regular education to alternative education for behavior and denied comparable education.



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**Challenging Systemic Disciplinary  
Exclusion of SwDs**

- Challenge policy of exclusion & transfer to alternative education setting as having disparate effect based on disability, unnecessary to maintain safe learning environment; exclusion is not necessary/not justifiable, as less onerous alternatives available.
- Challenge school's failure to provide SwDs in alternative education setting comparable aids, benefits and services provided other students in regular ed setting.
- File complaint challenging policies as discriminatory on basis of disability under section 504, 34 CFR 104.4; also violation of FAPE and LRE.



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## ***Web sites that can help you find juvenile justice resources in your state:***

### **Annie E. Casey Foundation Programs on Juvenile Justice Reform**

<http://www.aecf.org/CaseyPlaces.aspx>

The Annie E. Casey Foundation's juvenile justice reform agenda is designed to improve the odds that delinquent youth can make successful transitions to adulthood, primarily by reforming juvenile justice system so that they lock up fewer youth, rely more on proven, family-focused interventions, and create opportunities for positive youth development.

Related publications of interest:

#### ***Fact Sheet: A Road Map for Juvenile Justice***

<http://www.aecf.org/~media/PublicationFiles/FINAL%20%20%202008%20Juvenile%20Justice%20Fact%20Sheet%20%20%20with%20logo.pdf>

#### ***Reform the Nation's Juvenile Justice System***

[www.aecf.org/~media/PublicationFiles/Juvenile\\_Justice\\_issuebrief3.pdf](http://www.aecf.org/~media/PublicationFiles/Juvenile_Justice_issuebrief3.pdf)

### **Children's Defense Fund Directory of Child Advocacy Organizations**

(organized by regions)

<http://www.childrensdefense.org/child-advocacy-resources-center/child-advocacy-groups/>

### **Coalition for Juvenile Justice State and Territory Directory**

<http://www.juvjustice.org/states.html>

### **Court Appointed Special Advocate (CASA) program** *(Search by zip code)*

<http://www.nationalcasa.org/VolunteerInquiry/index.aspx>

### **Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform (2008)**

[http://www.ncijservehttp.org/NCJJWebsite/publications\\_detail.asp?n=488](http://www.ncijservehttp.org/NCJJWebsite/publications_detail.asp?n=488)

Online report mapping current state laws governing the trial, sentencing, and sanctioning of juveniles as adults. It summarizes the transfer and blended sentencing laws of all 50 states and the District of Columbia as of the beginning of 2008.

### **Directory of Law School Public Interest and Pro Bono Programs**

<http://www.abanet.org/legalservices/probono/directory.html>

### **Directory of Local Pro Bono Programs**

<http://www.abanet.org/legalservices/probono/directory/programlinks.html>

### **Disability Lawyers Directory - American Bar Association Commission on Mental and Physical Disability Law**

<http://www.abanet.org/disability/disabilitydirectory/home.shtml>

*Neither the American Bar Association nor the Commission on Mental and Physical Disability*

### **Models for Change Directory**

<http://modelsforchange.net/directory/listing.html>

Models for Change is a national initiative funded by the John D. and Catherine T. MacArthur Foundation to accelerate reform of juvenile justice systems across the country. States are involved in Models for Change through participation in action networks. This directory helps you find related projects in sixteen states: **California, Colorado, Connecticut, Florida, Illinois, Kansas, Louisiana, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Pennsylvania, Texas, Washington, and Wisconsin.**

### **National Center on Juvenile Justice (NCJJ) State Juvenile Justice Profiles**

(Not a directory but provides information about your state's juvenile justice systems and policies) <http://www.ncjj.org/stateprofiles/>

### **National Juvenile Defender Center - Regional Centers**

[http://www.njdc.info/regional\\_centers.php](http://www.njdc.info/regional_centers.php)

### **State Children's Mental Health Contacts**

<http://cecp.air.org/resources/statemh.asp>

### **State Protection and Advocacy (P&A) Agencies for Persons With Developmental Disabilities, Mental Illness & Client Assistance Programs (CAP)**

[http://www.ndrn.org/aboutus/PA\\_CAP.htm](http://www.ndrn.org/aboutus/PA_CAP.htm)

### **U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention State Contacts Directory**

<http://www.ojjdp.ncjrs.gov/statecontacts/resourcelist.asp>

### **How to Establish and Run a Truancy Program (ABA)**

*(not a directory but a resource that would be relevant in any state)*

<http://www.abanet.org/crimjust/juvjus/truancyarticle.pdf>

# Criminal Records have Consequences

- **Brief contacts with the criminal justice system can create everlasting barriers for today's youth!**

**A criminal record is created with:**

- ◆ **An Arrest [even if no charges are filed]**
- ◆ **A Charge [even if it is later dismissed]**
- ◆ **An adjudication of delinquency**

**These records rarely disappear with age, cannot be completely erased and are easily accessible to the general public. They can often render youth ineligible for assistance, counseling services, special schooling, treatment programs and housing.**

**There records can impact today's youth for the rest of their lives**

## **Housing:**

- ◆ **Parents may lose public housing due to child's record**
- ◆ **Years from now, he/she may be ineligible to receive public housing assistance**
- ◆ **Private landlords access records, including juvenile records, before renting**

## **Employment:**

- ◆ **Nearly 80% of employers [up from 30% in 1996] now run criminal background checks**
- ◆ **Many employers will refuse to hire someone with a record, even if that record is only an arrest**
- ◆ **By statute, individuals are disqualified [sometimes for life] from certain types of work, school and volunteering [e.g., CNA, A&D Counseling, daycare, teaching] due to a criminal record...if only an arrest record.**

**To find out more about good intentions leading to negative consequences contact:**

Contact Katalina Jimenez at [kjimenez@midmnlegal.org](mailto:kjimenez@midmnlegal.org) to request a training near you.

**Trainings presented by: Emily Baxter, Council on Crime and Justice; Lori Semke, Children's Law Center; and Diana Hamilton, Legal Aid Society of Minneapolis**

*NOTE: The content of this document is intended for general information purposes only, and is not legal advice. Legal advice depends on the specific facts and circumstances of each individual's situation. Those seeking specific legal advice or assistance should contact an attorney.*

*Ms. Baxter, Ms. Semke, and Ms. Hamilton are attorneys with the Youth Law Summit*

# CENTER FOR LAW AND EDUCATION

[www.cleweb.org](http://www.cleweb.org)

**FOR IMMEDIATE RELEASE**

**Contact:** Paul Weckstein  
Co-Director  
(202) 986-3000  
[pweckstein@cleweb.org](mailto:pweckstein@cleweb.org)

## **American Bar Association Calls for Action on Right to High-Quality Education**

Washington, D.C., August 6, 2009: The American Bar Association – the primary organization of American lawyers, with over 400,000 members – is calling for action by school districts, states, and the federal government to secure the right of every child to a high-quality education. It also asks the nation’s attorneys and bar associations to assist in securing that right through improving law and policy, through representation of students and their families, and through community legal education to foster better understanding of existing laws related to rights to quality education.

The Center for Law and Education played a major leadership role in this multi-year effort. Paul Weckstein, co-director of the Center for Law and Education and member of the ABA’s Commission on Youth at Risk that sponsored the resolutions, was principal author of the recommendations approved by the ABA and of the submitted reports that accompany them. Weckstein said, “We are very excited about the ABA’s push for changes in education law, policy, and implementation and by its call upon the lawyers of the nation to join the effort to fulfill the right to quality education.”

At its annual meeting this week, the ABA adopted three sets of recommendations on the right to high-quality education. In introducing them, Laura Farber, the Commission’s chair, invoked the promise of equal educational opportunity in *Brown v. Board of Education* that remains to be fulfilled: “Children should have a right to a high quality education that will prepare them for productive work and for contributions to our communities and to our society. Many children still do not have that opportunity; many individuals, students, parents, and organizations...do not understand the laws in place and their ability to participate in decisions that affect their right to education.”

The first of the sets of recommendations and accompanying reports is aimed at ensuring *the right to a high-quality educational program*, provided to all, and calls for federal, state, and local action to spell out core elements of that right to quality education, to ensure that all schools provide those elements to every child, and to implement and enforce existing provisions of law targeted at enabling students and parents to effectuate their rights to quality education and to participate fully in decisions affecting them.

A second recommendation is aimed at securing *the right to remain in school*. It seeks to change the policies and conditions which often lead children to drop out of school. It also seeks to reduce the removal of students from instruction as a result of disciplinary exclusion or police and court referral in response to school-related behavior.

The third recommendation seeks to secure for all youth who have left or been excluded from school or are incarcerated *the right to resume their education* in a high-quality, age-appropriate program that enables them to graduate and prepare for higher education.

Weckstein emphasized that “A rights-based approach to school reform – by focusing on what students, their families, and communities can actually count on from their schools in the way of a high-quality education, and on what we need to *do* in order to achieve the results we want for kids – is crucial to making reforms real.” He noted: “In our ongoing work on these issues, including assistance with an educational quality bill of rights spelling out elements of a high-quality program, as called for by the ABA, in areas such as curriculum, instruction, and individual student attention, we at CLE are looking forward to collaborating with the ABA and others in our efforts to help educators, parents, students, communities and advocates make the right to high-quality education a reality.”

The ABA recommendations and their accompanying reports can be found at CLE’s website, [www.cleweb.org](http://www.cleweb.org).

**About the Center for Law and Education:**

CLE is a national organization with offices in Boston and Washington DC. It strives to make every child's right to high-quality public education a reality throughout the nation and to enable communities to improve their schools and address their own public education problems effectively. CLE works on school reform from a rights-based perspective through the development of federal law and policy and through implementation assistance to communities, schools, districts, and states.

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