

The School-to-Prison-to-School Pipeline for Children with Disabilities



Disabilities, Discipline, and Access to Justice

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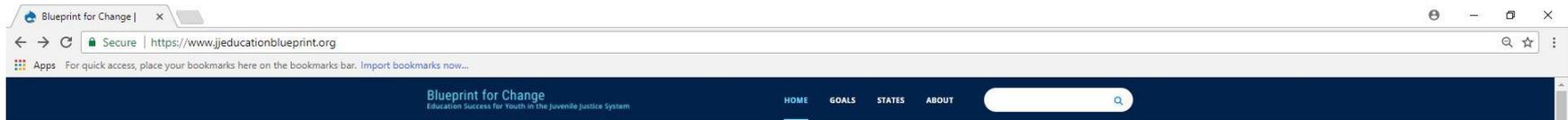
Who We Are

Education Law Center (“ELC”) is a non-profit, legal advocacy organization dedicated to ensuring that *all children in Pennsylvania have access to a quality public education.*

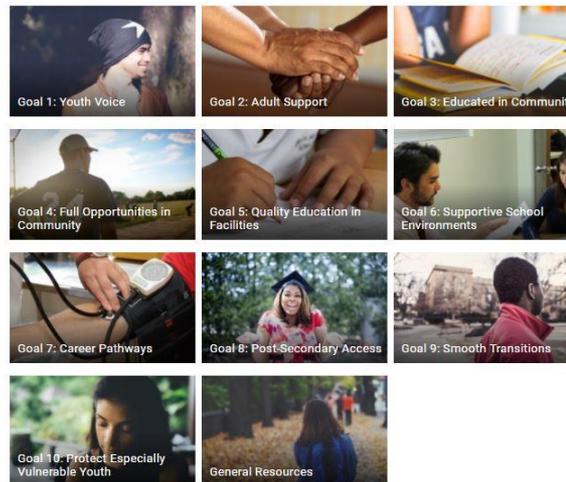
Through legal representation, impact litigation, and policy advocacy, ELC advances the rights of vulnerable children, including children of color, children living in poverty, English language learners, children with disabilities, those in the foster care and juvenile justice systems, and children experiencing homelessness. Our strategic areas:

- **Equal Access to Quality Schools**
- **Adequate & Equitable School Funding**
- **Dismantling the School-to-Prison pipeline**

Legal Center for Youth Justice & Ed



Blueprint for Change: Education Success for Youth in the Juvenile Justice System



Get Started

[Browse by Goal](#)

Find resources related to the Blueprint's key goals and benchmarks

[Browse by State](#)

Learn about specific policies and practices in your state.

[General Resources and Policies](#)

Find general resources and relevant federal policies

How to Use the Blueprint

The *Blueprint for Change* is a tool for change. The Goals and Benchmarks are a framework for both **direct case advocacy** and **system reform efforts**.

Direct Case Advocacy

The *Blueprint* can be used as a checklist or guide by advocates for youth to ensure that all education issues are being addressed. The *Blueprint* examples provide ideas for legal remedies and strategies to use to achieve the best education outcomes for a particular youth or group.

Children with Disabilities are **MORE** likely to enter the juvenile justice system

- ❑ It is estimated that as many as 77.5% of youth in JJ facilities are students who need special education services. Many are not identified.
- ❑ Currently, the percentage of youth with disabilities in juvenile correctional facilities is ***4-7 times the national average.***
- ❑ Regional studies indicate that fewer than 25% receive special education services while in facilities.
- ❑ Youth are below grade level
 - 2/3 in state institutions below grade level in math & reading
 - 44% in local JJ facilities below grade level in math & reading
- ❑ ***Over 2/3 drop out after exiting the juvenile justice system***

School-to-Prison Pipeline

- ❑ Over 5 percent of elementary-school children with disabilities are suspended: *more than double the overall suspension rate.*
- ❑ Among secondary-school students, 18 percent of kids with disabilities are suspended, versus 10 percent overall.
- ❑ A third of all K-12 children with emotional disabilities are suspended at least once. Disproportionately, children of color are diagnosed with “emotional disturbance.”
 - UCLA’s Civil Rights Project Report, 2015
https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf

Why?

- *Policies and practices that push schoolchildren, especially our most at-risk children, out of classrooms and into the criminal justice system.*
 - Failure to identify children with disabilities at a young age – making it more likely that the child will be disciplined again
 - Subjective school policies
 - Failure of teachers to recognize the *manifestation* of a child's disability in the classroom
 - Lack of functional behavioral assessments and positive behavior support plans
 - Lack of 504 Plans for children with qualifying disabilities
 - Failure to follow a child's IEP
 - Inappropriate manifestation determination meetings

Failure to involve the “Parent”

The Individuals with Disabilities Education Act (IDEA) defines a “parent” as

- A *natural or adoptive parent*
- A *foster parent*
- A *guardian* but not the State (thus no caseworkers)
- A *person acting in the place of a parent*
 - Such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare; or
- A *surrogate* parent

Child lacks an “IDEA Parent”

- Family court judge can appoint an Educational Decision Maker (“EDM”)
 - Juvenile Court Procedural Rules 147 and 1147 – applies to children in BOTH dependency and delinquency proceedings when
 - Child lacks a parent or guardian OR
 - Court determines, after notice to all parties that parent is not acting in child’s best interests
 - School District must appoint a Surrogate Parent in specific circumstances
 - EDM > Surrogate Parent
 - More likely to know child already (e.g. appoint a family member)
 - Stays with child longer term – even if child changes districts
 - Can make general education decisions too
 - Part of court review process
- *See ELC/JLC factsheet

Discipline in School: Important Considerations

- Ensure that LEA understands the child's disability
- Request an Independent Evaluation
- Manifestation Determination Review **MUST** be conducted within applicable time frame
- Request documentation of MDR determination:
 - Did parent participate? Did the parent understand “consent”
 - How was the determination made?
 - Was there evidence that conduct was the result of or related to child's disability OR failure to follow an IEP?
 - Did child receive an FBA and PBSP following incident

IDEA Arguments Favoring Keeping Child OUT of JJ Placements

- **FAPE cannot be provided in the placement –**
 - No full-time emotional support
 - No services to address autism
 - 1:1 Support not provided
- **Denial of Least Restrictive Environment mandate**
- **Resources:**
 - Joseph B. Tulman, *Special Education Advocacy for Youth in the Delinquency System*. SPECIAL EDUCATION ADVOCACY (Ruth Colker & Julie Waterstone, eds., LexisNexis, 2011). (course materials).
 - Lisa Geis, An IEP for the Juvenile Justice System: Incorporating Special Education Law Throughout the Delinquency Process (July 1, 2014):
<http://ssrn.com/abstract=2473609>

School Discipline – Special Considerations when Child Has Been Charged

- Statements made by the child in school discipline investigations or hearings may be used against him/ her in delinquency court. Implementation of support services in school or other changes in the school environment can help with pretrial negotiations and disposition arguments in delinquency court.
- **N.B. DELINQUENCY CASES OFTEN MOVE MUCH FASTER THAN EDUCATION CASES- ESPECIALLY IF THE CHILD IS IN CUSTODY.** Information from the delinquency case may assist in school discipline proceedings.

Issues while in a Facility



Parent Involvement

- LEA has an affirmative obligation to ensure parent participation in IEP meetings etc.
- Must undertake and document “reasonable efforts”
 - One attempt to call a parent is NOT enough
 - Commonly, parents do not receive notice of meetings, told they cannot participate via phone or they receive a completed NOREP via mail after the meeting
 - Commonly, they never receive report cards, monitoring reports etc. and are unable to determine if child is receiving a FAPE.

Providing FAPE for Students with Disabilities in Correctional Facilities

- IDEA extends to students in juvenile correctional facilities (and their IEPs still apply)
 - Detention Facilities – short term, but not always**
 - Delinquency Facilities – long term

***Special consideration: Girls often remain in detention longer*
- Interagency Responsibilities and Cooperation (records transfers, etc.)
- Potential Issues
 - Behavior in placement cannot impact child's education
 - Behavior that is a manifestation of a child's disability sometimes (improperly) results in “losing levels”
- Court strategies for review hearings

The LEA where the Facility is Located is Responsible

- This LEA is responsible under the IDEA for all eligible or potentially eligible students in the facility, including:
 - ChildFind
 - Re-evals
 - Comparable services
 - IEP meetings and implementation
 - Related Services
 - Progress Monitoring

Common Problems Resulting in Denial of a FAPE

- Many facilities DO NOT often do not provide:
 - Full-time emotional support (Some will CHANGE the child's IEP to itinerant support as a matter of course)
 - Related Services
 - Requisite Special Ed teachers at applicable ratios
 - Autism services
 - 1:1 Aids
- Functional Behavioral Assessments & Transition Plans
- Facilities educate multiple grade levels in one classroom
- Students fail to make progress and are not monitored

Other Common Problems

- Failure to provide comparable services until new IEP is developed
- Evaluations/Re-evals are not timely
- School Placement is NOT LRE
- Transition services are one-size-fits-all
- YOUTH is NOT consulted or involved in development of IEP

** Use time in placement as an opportunity to *improve* the IEP

Making Progress Towards Graduation: Additional Considerations for Youth in JJ Placement

- Ensure a high quality transition plan and monitor it.
- Ensure that youth's graduation requirements are clear.
- Prior to graduation, get Summary of Academic Achievement and Functional Performance completed
 - Required by IDEA
 - Completed when student graduates from HS
 - summarizes individual abilities, skills, needs, and limitations.
 - provides recommendations to support transition to adult living, learning, and working.
 - Useful for creating a 504 Plan for post secondary ed or training, treatment or day program plan

Making Progress Towards Graduation: Considerations for Youth in Residential Settings

- Credits earned in private academic school
 - Making it count toward graduation
 - Tips to include *ALL* credits earned
 - Documentation required
- Completing Senior Project
 - **MUST** be documented and approved
- Graduating through IEP
 - Decision of IEP Team
 - Must be accomplished through local school district
- Who will issue the diploma?

Accommodations for a Disability* in JJ Placement

- ❑ Children who may have disabilities that interfere with living should be evaluated
- ❑ Child CANNOT be discriminated against
- ❑ Parent and Student Participate in Team
- ❑ Children **entitled** to accommodations in school accomplished through a “504 Plan” or “Service Agreement”
- ❑ Least Restrictive Environment (LRE)
- ❑ Procedural Safeguards & Due Process

**Includes current alcoholism and recovery from drug addiction*

Returning to School



*** Reentry planning must begin as soon as youth enters the facility***

Reentry Challenges

- *“It’s like the bottom dropped out...I fell further and further behind, just when I thought things would be different in school.”*
- Students who return to school from JJ placements often learn that:
 - They are not doing well academically in “regular” school
 - They are below grade level in core subjects
 - Credits earned in the JJ placement will not count; at best they have only earned partial credits due to fragmented learning
 - They are not on track to graduate; overaged & under-credited
- They are discouraged, overwhelmed & drop out.

Appropriate School Placement

➤ A school district cannot refuse to enroll a child based on the child's disciplinary or delinquency record.

★ **A school district cannot automatically enroll a child in an AEDY program** based on the child's disciplinary record or placement history

- Exception: If child is currently expelled for a weapons offense, the district may assign that student to an *alternative assignment* or provide *alternative education services* for the length of the expulsion. The district has discretion in this case.

See Hoke v. Elizabethtown Area Sch. Dist., 833 A.2d 304 (Pa. Commw. Ct. 2003).

➤ Students returning from delinquency placement are entitled to an informal hearing before placed in AEDY.

School Placement Considerations

- ❑ Was student newly identified for special education while in placement?
- ❑ Where can IEP be best implemented?
- ❑ Did student make progress towards goals/graduation?
- ❑ What courses has the student taken and which are still needed to graduate?
- ❑ Has student engaged in Career and Technical education and could benefit from a school placement that offers this track?
- ❑ Need for rapid credit recovery or other special programs?

Enrollment & Records Transfer

- School must enroll child within 5 days of “submission of enrollment documents” and must request records from any prior district within 10 days.
- Children who are homeless must be immediately enrolled even if required information is not available.

McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431, *et seq.*

- Enrollment = attending school.

PDE’s *Enrollment of Students* Basic Education Circular (BEC) at http://www.portal.state.pa.us/portal/server.pt/community/basic_education_circulars/7497

Credit & Diploma Issues

- ❑ HS graduation requirements: 22 Pa. Code § 4.24

- ❑ **All credits earned in a public school MUST be accepted by another public school.**
 - See 22 PA Code §4.74

- ❑ **Waivers may be granted to accommodate students who experience extenuating circumstances** (including serious illness, death in immediate family, family emergency, *frequent transfers in schools or transfer from an out-of-State school in 12th grade*).
 - 22 Pa. Code § 4.51(d) (emphasis added).
 - Waivers will be granted on case by case basis, for good cause shown. **Specific additional requirements apply.

Resources

- Sue Burrell and Loren Warboys, *Special Education and the Juvenile Justice System*, OJJDP Juvenile Justice Bulletin (July 2000) (course materials).
- Joseph B. Tulman, *Special Education Advocacy for Youth in the Delinquency System*. SPECIAL EDUCATION ADVOCACY (Ruth Colker & Julie Waterstone, eds., LexisNexis, 2011). (course materials). Additional Tulman resources here: <http://www.law.udc.edu/?JTulman>
- Lisa Geis, An IEP for the Juvenile Justice System: Incorporating Special Education Law Throughout the Delinquency Process (July 1, 2014): <http://ssrn.com/abstract=2473609>
- ELC/JLC, *Educational Decision Makers and Surrogate Parents in Pennsylvania: How to Ensure that Every Child in the Dependency and Delinquency Systems Has an Active, Involved Adult to Make Education Decisions*: http://www.elc-pa.org/wp-content/uploads/2014/04/ELC_Fact-Sheet_Ed_DecisionMakers_4_15_14.pdf

Resources

- ❑ Peter Leone & Lois Weinberg, *Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice System and Child Welfare Systems* (2012): <http://cjjr.georgetown.edu/pdfs/ed/edpaper2012.pdf>

- ❑ Southern Education Foundation, *Just Learning: The Imperative to Transform Juvenile Justice Systems Into Effective Educational Systems* (2014): <http://www.southerneducation.org/getattachment/b80f7aad-405d-4eed-a966-8d7a4a12f5be/Just-Learning-Executive-Summary.aspx>

- ❑ National listserv Education for Juvenile Justice Involved Young People
 - email kburdick@jlc.org to join

- ❑ Education Law Center-PA: www.elc-pa.org

- ❑ Juvenile Law Center: <http://jlc.org>

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