

What Parents Need to Know About Children with Disabilities and the Delinquency System

This fact sheet contains a brief summary of useful information for parents of incarcerated youth with disabilities. It includes information about how parents can be involved in ensuring that incarcerated youth receive the special education and related services to which they are entitled.

The information in this fact sheet is not intended as legal advice. It is always best to consult with correctional teachers and administrators about your child's needs for special education while he or she is incarcerated. You may also want to consult an attorney about your incarcerated child's legal rights to special education.

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What are the most common disabilities identified among court involved youth?

- Attention Deficit Hyperactivity Disorder (ADHD)
- Learning Disabilities (LD)
- Conduct Disorder and other behavioral disorders
- Depression
- Anxiety Disorders
- Post Traumatic Stress Disorder (PTSD)
- Developmental Disabilities
- Many youth have more than one disability classification

Why are youth with disabilities over-represented in the delinquency system?

- As compared with their non-disabled peers, youth with disabilities may be at increased risk for involvement with the police and the courts, and for incarceration. There are many reasons why youth with disabilities may be at increased risk for involvement with the delinquency system.
- Behaviors that are common to many youth with disabilities may contribute to their increased risk for involvement with the delinquency system, including poorly developed social skills, impulsive behaviors, risk taking behaviors, susceptibility to negative peer pressure, and greater difficulty learning in school.
- The ways that schools respond to youth with disabilities may also contribute to their increased risk for involvement with the courts. For example, youth with disabilities may be frequently suspended and expelled, or referred to police for infractions of school rules.
- While problems in school do not directly cause delinquent behavior, delinquency is associated with poor academic skills and school dropout.
- African American youth are over-represented in special education programs in the public schools and in the delinquency system. African American youth are incarcerated at five times the rate for white youth, and they are less likely to have an attorney representing them in juvenile court proceedings. They are more likely to be incarcerated than white youth charged with the same offense and with the same offense history, as described in the article *OFF BALANCE: Youth, Race and Crime in the News*. *Click here to view the article.*
<http://www.buildingblocksforyouth.org/>

What should parents know about school policies on discipline and violent behavior?

- Both you and your child should obtain a copy of your school's discipline policy. Read it over very carefully, and if you don't understand something, ask a teacher or school counselor to explain it.
- If you believe your child needs assistance to meet the school's behavioral expectations, discuss with a teacher or school counselor how the school can help to meet these needs.
- Find out what your school identifies as a weapon and a threatening statement. Be aware and discuss with your child what types of behaviors can result in school suspension or expulsion.
- Click here to view additional information from EDJJ about strategies schools can use to help prevent behavior problems. <http://www.edjj.org/prevention.html>

What should parents tell their child with a disability if he or she is arrested?

- If you are worried the police may stop your child, develop a "game plan" and act it out with him or her before that happens. Repeat the game plan from time to time.
- Explain to your child that if the police stop him or her, they should tell the police their name, address, and phone number. They should ask the police to call you, and a lawyer.
- Tell them to always be polite and cooperative with a police officer if they are stopped.
- Anything your child tells the police may be used against them later on in court.
- The best advice is to tell your child not to respond to specific questions about the alleged offense until you are there to help them.

What can parents do if their child is arrested?

- Go to the police station as soon as you find out your child is being questioned or detained.
- Get as much information as you can about the charges, as soon as possible.
- Find out if there were any witnesses.
- Provide information about your child's disability to the police, to your child's attorney and to the court as soon as possible. Explain how your child's disability affects his or her behaviors, their understanding of the alleged offense, and their ability to answer questions.

Should a parent share information about their child's disability with justice system officials?

- It is essential that information about your child's disability be given to court professionals, especially his or her lawyer, probation officer and judge.
- Ask the court to address the contribution of the disability to the youth's behavior and alleged offense.
- If your child is placed under the supervision of the court or is incarcerated, you want to be certain that he or she receives the mental health services and the special education services to which they are entitled.
- When possible, ask people who know and like your child to write a letter to the court or to come to court to speak on his or her behalf.

What accommodations may be needed by youth with disabilities in court?

- Repetition and explanation of questions.
- Additional time to think about the questions and their responses.
- Questions presented in different formats (e.g., video, writing, sign language).

What special education services are youth entitled to in the delinquency system?

- Children with disabilities who are eligible for services under the Individuals with Disabilities Education Act (IDEA) have the right to a free, appropriate public education (FAPE) including special education and related services, wherever they live or attend school. This includes juvenile correctional placements and with certain exceptions, adult correctional facilities.
- The involvement of parents in special education decision-making is a fundamental principle of the IDEA, and this does not change when a child is incarcerated. Parents/guardians of incarcerated youth should be involved in the development of their child's Individualized Education Program (IEP).
- If the parents/guardians are not able to attend IEP meetings in a correctional facility, they can participate through telephone conferencing. If parents/guardians are not available to participate in the IEP process, surrogate parents can be appointed by the agency funding the youth's education. A surrogate parent assumes the rights with respect to special education that parents normally have. The surrogate parent cannot be an employee of any agency that might have a conflict of interest with the provision of special education services.

- Children with disabilities may also be entitled to services under the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act of 1973.
- If your child has never been identified as having a disability, but you have reason to believe he or she may be disabled and in need of special education, you can ask in writing for an evaluation. The correctional facility is obligated to consider your request and to determine if your child has special needs.
- Services can be provided through an IEP if your child receives special education services under the IDEA, or a “504 plan” if your child receives special help under Section 504, even if that plan has expired.
- When a child is transferred to a correctional facility, an IEP or 504 plan must be developed that specifies the services your child needs in the correctional facility.
- Licensed personnel including special education teachers, psychologists, social workers or mental health professionals, should provide special education services.
- Whenever possible, it is advisable that the IEP meeting include representation from your child’s IEP team in your home school district. If a representative of the home school cannot come to the IEP meeting, they can provide input by phone, mail, or fax.
- If the home school district has not sent your child’s educational records including the IEP or 504 plans to the correctional facility, you may obtain a copy and send it to the facility. These records are very important.
- If you feel your child in a correctional facility is not receiving appropriate special education and related services, you have the same rights under the IDEA to mediation and due process that are afforded to parents whose children attend school in the community.
- Each state has regulations that pertain to transfer of rights for youth over the age of 18 in the IEP process. If your child cannot advocate for his or her rights because of a disability, he or she can transfer the authority to you or to a surrogate parent to act as an advocate in the IEP process.
- If your child uses any psychotropic medication ask your physician or the physician in the correctional facility, to provide a list of the medications, the dosage, the time the medication should be given and any possible side effects, to the education program.
- Click here to view additional information from EDJJ about special education entitlements in juvenile correctional settings: <http://www.edjj.org/education.html>

What transition services should be provided for youth in the delinquency system?

- If your child is over age 14 and eligible for special education services, a Transition Plan must be included as part of their IEP. Transition plans include the skills and services your child will need once they leave public school. Transition services can include instruction in life skills, social skills, assistance in returning to high school, job seeking skills, pre-vocational and vocational training and supports in the community from the educational agency or from adult service agencies.
- When your child leaves a correctional facility, he or she will need an aftercare plan. Ideally, planning for release back into the community should begin when a child enters the facility.
- An aftercare plan includes what your child must do to stay out of trouble, including academic goals and school attendance, ongoing mental health services, substance abuse classes, and meetings with a probation officer. The aftercare plan should be similar to and may be coordinated with the Transition Plan.
- Click here to view additional information prepared by EDJJ about Transition planning and services for youth with disabilities in the delinquency system.
<http://www.edjj.org/TransitionAfterCare/>

What should parents do if their child with a disability is sent to an adult correctional setting?

- Understand your child's disability needs and their rights to education and special education in adult correctional facilities.
- Remain involved and persistent as advocates for your child.
- Contact the staff in the correctional facility to let them know that you are willing to cooperate and work with them, and that your child is entitled to special education and related services.
- Tell the correctional staff what has worked and not worked for your child in the past.
- Do not be intimidated by the corrections setting.
- Most youth with disabilities under the age of 22 and incarcerated in adult correctional facilities are entitled to special services under the IDEA if they were identified as eligible and were receiving special education services through an IEP *prior to* their incarceration.
- Collect information about your child's education including transcripts, IEP, 504 plan and medical needs and provide copies for the correctional education staff.

- Youth with disabilities in adult correctional facilities may also be entitled to services under the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act of 1973.
- Review the information provided in the previous section of the Parent Fact Sheet. Specific rights afforded to parents in juvenile correctional facilities also apply in adult facilities.
- Check the EDJJ website in Spring 2002 for a more detailed article on special education entitlements in adult correctional facilities.

For more information:

- Click here to read "[If Your Child is Arrested](http://www.flabar.org/newflabar/consumerservices/general/consumer.pam/24pam.ph.htm)" prepared by the Florida Bar Association
<http://www.flabar.org/newflabar/consumerservices/general/consumer.pam/24pam.ph.htm>
- To obtain a free copy of "[When People With Mental Retardation Go To Court](http://www.thearcpub.com/)", published by The ARC, click on: <http://www.thearcpub.com/> (item number 30-26-1f).
- To access parent training centers and disability groups in your state or to download [Helping You Help Your Child](http://www.people.virginia.edu/~dcj3z/rick/parentmanual) or the Just Children's parent manual online, click here: <http://www.people.virginia.edu/~dcj3z/rick/parentmanual>
- Contact the Juvenile Justice project of the PACER Center, www.pacer.org, or 1-800-537-2237.

