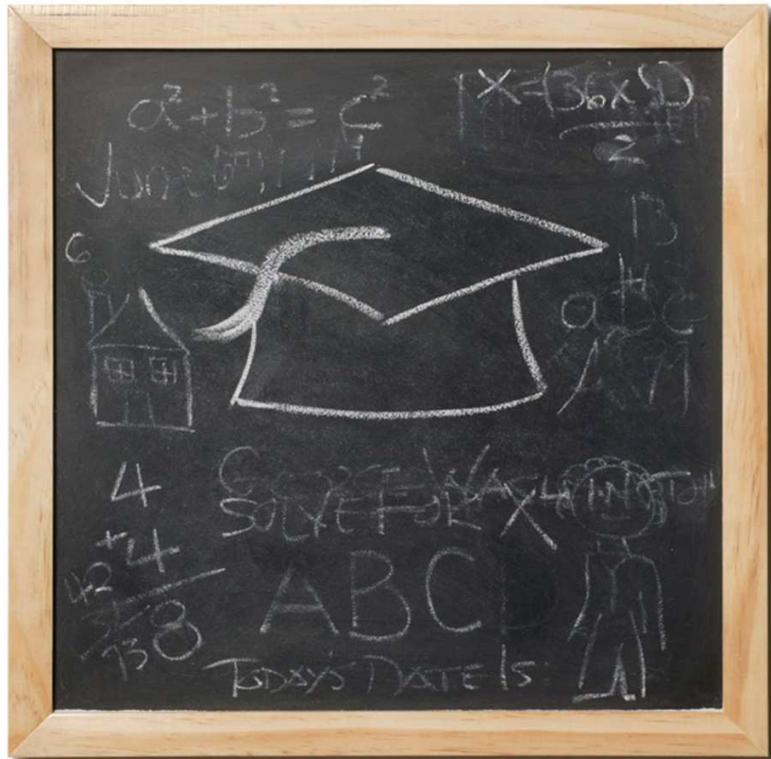


YOUTH DEVELOPMENT & KEEPING OUR COMMUNITIES
SAFE: A Reentry Toolkit for Washington

Field Guide for Issue Spotting and Overcoming Education Barriers for Youth in the Juvenile Justice System



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LEAP

Learning, Employment and Achieving Potential for
Youth with Juvenile Justice Involvement

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Field Guide for Issue Spotting and Overcoming Education Barriers for Youth in the Juvenile Justice System

Youth with juvenile justice involvement can face significant challenges to being successful in school. Some of those challenges may have arisen prior to their delinquent behavior. Other challenges result from a youth's journey through the system after their arrest, detention, adjudication, and reentry back into the community after incarceration. This Field Guide is intended for juvenile justice professionals, including probation counselors, detention staff, and Juvenile Rehabilitation Administration staff. It provides an overview of education rights in Washington and strategies for issue spotting and overcoming roadblocks that may be encountered by youth involved in the juvenile justice system. Where appropriate, this Field Guide will point to more in depth resources on education rights and advocacy that have already been developed for Washington. At the outset, we direct you to two resources that provide a more comprehensive and in depth discussion of education rights and advocacy:

1. The Office of the Education Ombudsman's series of publications called "What Every Parent Needs to Know"
<http://www.governor.wa.gov/oeo/publications/default.asp#manuals>, which are available in English and Spanish and
2. TeamChild's Education Advocacy Manual for youth in out of home care, called "Make a Difference in a Child's Life"
<http://www.teamchild.org/index.php/resources/manual/>

This Field Guide is divided into six sections, with information outlined in a question and answer format:

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SAMPLE RECORDS REQUEST
SAMPLE REFERRAL FOR SPECIAL EDUCATION EVALUATION
SAMPLE REQUEST FOR SCHOOL DISCIPLINE APPEAL

SCHOOL RECORDS: GETTING MORE INFORMATION ABOUT THE EDUCATIONAL NEEDS OF JUVENILE JUSTICE INVOLVED YOUTH

When a student is struggling, has missed a lot of instruction time, or is having behavioral challenges, school records are a good starting point for identifying needs and supports that can get a student back on track. A student's school records are a valuable source of information that can be helpful in understanding gaps in knowledge or academic experiences, areas of strength and success, educational supports that might be needed, and disability issues that are being or should be addressed.

How can I get school records?

If you are helping a youth get back on track in school, you may need to get access to school records. Education privacy laws guide the release of school records. There are some simple rules to follow in order to access school records of a student. The easiest and clearest path is to get written consent from the student's parent or from the student, if he or she is over 18. Several exceptions allow for records to be released without a parent's consent; they are described below.

What are the laws guiding release of education records?¹

The Family Education Rights and Privacy Act (FERPA) is the federal law that protects the privacy of student records.² In general, public schools in Washington must follow FERPA because they receive federal education funding. FERPA gives parents and students over 18 years old certain rights to a student's educational records. Parents and students over 18 have the right to inspect and review the student's education records and to get copies of those records. Generally, schools must have written permission from parents or students over 18 before releasing records to anyone, although schools may list directory information about a student (like what you would see in a high school yearbook) without consent.

Who can sign a release of information?

A parent or student over 18 can sign a release of information. FERPA defines "parent" as "the parent of a student, and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian."³

¹ For more information about FERPA, please visit: U.S. Department of Education, FERPA information <http://www2.ed.gov/policy/gen/guid/fpco/index.html> and U.S. Department of Education, 2010 Guidance on FERPA and Disclosures Related to Emergencies and Disasters <http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>.

² 20 U.S.C. § 1232g; 34 CFR Part 99.

³ 34 CFR § 99.3.

Can records be released without the written consent of a parent or student over 18?

FERPA allows schools to release records without consent to other entities under some circumstances. For example, one school can release records to a school to which a student is transferring. Records can also be released as a result of a court order or lawfully issued subpoena, or to appropriate officials in cases of health and safety emergencies. FERPA also allows information to be released without consent to state and local authorities within a juvenile justice system, if a state law provides for it. In Washington, schools and juvenile authorities are authorized to share and exchange their records about a student who is a juvenile offender, but they are generally not authorized to disclose these shared records to others.⁴

What is in a student's education record?

A student's school records consist of a lot of different kinds of information, and may be kept in different locations within a district. Although a single request for records to the district can produce a complete student file, it is helpful to be thorough and specific about what you are seeking. Districts in Washington typically keep a student's basic school history (attendance, school grades and credit history, standardized test results, immunization and other basic information) in a student's cumulative or permanent file. Discipline history may also be part of this file, though many districts keep detailed discipline records separate from the student's cumulative file. Special education records are also likely to be kept and maintained separately. Classroom observations, daily and weekly progress reports, and other teacher notes or emails are often not part of a student's education record and may not automatically be included in a response to a records request. The following is a checklist of types of records and why they may be helpful in understanding and advocating for a student's needs:

Attendance Records	Help to identify the extent to which a student has gaps in learning or instruction time. Can determine whether extended and extensive absences are linked to school discipline. May also give some clues about when a district should have started interventions to address the underlying causes of truancy and/or filed a petition in juvenile court.
Credit History and Transcript of Grades	Help to determine basic levels of academic performance and whether the student is on track to graduate.
Discipline History	Provide insight into behavioral challenges that the student may be having in school. Reasons for

⁴ See RCW 28A.600.475 and RCW 13.50.050.

	and frequency of exclusion may be clues to underlying disability issues, gaps in knowledge and instruction, and supports needed to a reengage student.
Special Education Records	<p>Will contain a wealth of information, including</p> <ul style="list-style-type: none"> • Referrals for special education or 504 evaluations • Evaluation and reevaluation results • Individualized Education Plans or 504 Plans • Functional Behavior Assessments and Behavior Intervention Plans, and • Information from manifestation determination meeting notes if a student's behavior has triggered a change in placement.
State Testing Results	Students in grades 3-8, take the Measurements of Student Progress (MSP) tests and high school students take the High School Proficiency Exams (HSPE) in reading, writing and End of Course (EOC) exams in math and science. These tests results will provide a sense of student achievement. Some tests are required in order to graduate, so the absence of tests or low scoring on certain tests will be a clue that the student needs additional support. ⁵

⁵ For more information about State testing, see <http://www.k12.wa.us/resources/pubdocs/StateTesting.pdf>

EDUCATIONAL SERVICES WHILE INCARCERATED

In Washington, young people 18 and under are entitled to general education during any period of incarceration, whether it is a county juvenile detention facility, JRA institution or group home, or adult jail.⁶ Incarcerated youth who are eligible for special education and related services under the Individuals with Disabilities Education Act are entitled to education and special education until age 21.

What educational services does a student receive in county juvenile detention?

If a youth is incarcerated in a county juvenile detention facility, the school district in which the facility is located is responsible for providing educational services, including special education. In Washington's county detention centers, school is offered five days per week, five hours per day.⁷

What educational services does a youth receive in a JRA facility?

Youth incarcerated in a Juvenile Rehabilitation Administration institution or group facility are entitled to education and special education. These educational services are provided by the school districts in which the JRA facility is located and are offered five days a week, five hours per day.⁸

What educational services does a youth receive in an adult county jail?

Youth under the age of 18 who are incarcerated in an adult jail are entitled to a program of education from the school district within which the jail is located.⁹ Local districts can provide all or part of these services through contracts with qualified entities like educational service districts, community and technical colleges, or four-year institutions. Jails must host these services and provide a safe and secure setting for the program to take place. Jails must notify the district or contracted provider within five school days that a juvenile is in the facility. The education program services must be initiated within five school days of this notice. The laws recently made it more clear how jails should be providing education to students under 18. Advocacy can be very important where jails have not have fully implemented the provisions.

⁶ For an overview of how Washington provides education to juveniles who are incarcerated, see [Educating Juveniles in Adult Jails: A Program Guide](http://www.k12.wa.us/institutionaled/EducatingJuveniles.aspx), Written and Prepared for the Office of Superintendent of Public Instruction by Katherine A. Carlson and Michelle M. Maike, July 2010. <http://www.k12.wa.us/institutionaled/EducatingJuveniles.aspx>

⁷ Id.

⁸ Id.

⁹ RCW 28A.194, WAC 392-122-22. See also [Educating Juveniles in Adult Jails: A Program Guide](http://www.k12.wa.us/institutionaled/EducatingJuveniles.aspx), Written and Prepared for the Office of Superintendent of Public Instruction by Katherine A. Carlson and Michelle M. Maike, July 2010.

What are important education advocacy goals & strategies for incarcerated students?

- Talk to youth and encourage them to think about how education may be a key to achieving their future goals.
- Be sure that past school records are requested and reviewed. Get consent from parents to request records and use the sample records request that is part of this Field Guide.
- Take advantage of the education resources in institutions or detention to help identify educational needs and strategies. Ask for assessments and testing to identify achievement levels and gaps in knowledge and skills.
- Make a referral to an education advocate.¹⁰
- Develop a plan with the youth and educators on getting caught up in credits, graduation requirements, and any gaps in knowledge and achievement. Help the student request institutional educational support to accomplish these goals. Anticipate educational needs upon release, and ask for tutoring and social support to be put in place.
- Help the youth set long-term goals and a plan for achieving those goals. Encourage the youth to aim high and help put the supports in place. Don't automatically rule out college, vocational, or other post-secondary education for youth just because they are behind in credits or had a bad experience in school. Your confidence and support can go a long way helping a youth actually achieve significant educational goals like high school completion or enrollment in a community college or university.
- Start planning early for release, and be proactive about putting services in place to help with the transition. Identify the home school district and the school or program the youth will be attending. Complete enrollment forms, applications, and requests for financial aid. Set up class schedules, especially if the student is starting mid-year. Identify a person in the community and/or school who can help the youth make these connections and troubleshoot if there are problems.
- Identify and address special education and other disability needs. For older youth, make sure testing, evaluation and transition planning are in place.

¹⁰ OSPI provides funding for education advocates who work with youth in the juvenile justice system. For more information about OSPI's education advocates, see <http://www.k12.wa.us/InstitutionalEd/pubdocs/PhonelistEAOct2012.pdf> and http://www.k12.wa.us/InstitutionalEd/pubdocs/EA_Manual.pdf

ENROLLMENT AND TRANSITION AFTER RELEASE FROM INCARCERATION

What right do students have to education upon release from incarceration?

Students in Washington have a state constitutional right to education.¹¹ Youth who are released from incarceration cannot be denied this right. In addition, Washington education laws protect students from discrimination because of prior incarceration.

*[N]o student may be denied an equal educational opportunity...because of national origin, race, religion, economic status, sex, pregnancy, marital status, previous arrest, previous incarceration, or a physical, mental, or sensory handicap.*¹²

The only exceptions to this rule authorized by the Legislature are that a student *convicted* of a violent offense against a teacher or another student may not be placed in the same class as his/her victim, and that a student convicted of a sex offense against another student may not attend the same school as his/her victim or the victim's siblings (who are also notified of the offender's release from detention).¹³

Schools and juvenile authorities are generally authorized to share and exchange their records about a student who is a juvenile offender, but they are generally not authorized to disclose these shared records to others.¹⁴

If a school tells you that all youth released from juvenile detention must be enrolled in a special program, ask for information about the program's curriculum and compare it with the basic education offered in the district's regular schools. If there is a meaningful difference in the programs that matters to the student, ask for placement in a comprehensive program. If you are not successful, consider filing a grievance with the school district or a discrimination complaint, and contact an advocacy organization.

Do youth have to attend school when they are released?

Washington's compulsory education laws require students between the ages 8 through 17 to attend school.¹⁵ The only exceptions to this requirement are if

- The student is in an approved private, home school, or other education program.

¹¹ See WA. CONST. Art.9, § 1 & 2.

¹² See WAC 392-400-215.

¹³ See RCW 28A.600.460 and RCW 13.40.215.

¹⁴ See RCW 28A.600.475 and RCW 13.50.050.

¹⁵ See RCW 28A.225.015.

- The student is at least 16, lawfully employed, is either emancipated or has parental permission, *and* has already met graduation requirements or received a certificate of educational competence.
- The student is excused from attendance by the Superintendent of the district in which he or she lives because he or she is physically or mentally unable to attend school, is incarcerated in an adult facility, or is attending a DSHS residential school.
- The student is temporarily excused upon the request of their parents for purposes agreed upon by school authorities and the parents.

How does a youth enroll in his or her home district?

A school district must enroll any school-aged student who resides in that district. A student’s “residence” is defined as the location where the student lives the majority of the time. This may be different from the student’s mailing address or different from his or her parent’s address, and the student may be a “resident” of a district even if he or she has no mailing address at all.¹⁶ No proof of residency is required for enrollment, but if a district questions residency, consider providing copies of any documents (letters from probation or parole, court orders, etc.) that support the claim of residency.

Most districts in Washington will need a parent or guardian to complete enrollment forms for a student who is under 18. For a first-time enrollment in Washington public schools, the school district may request a copy of the student’s birth certificate. If the student has previously been enrolled in another school district in the state, the district will ask for the names of prior school districts, information about the student’s disciplinary history, special educational needs, and any health conditions.¹⁷

Proof of immunization is required before beginning school. Immunization means shots or vaccinations that children get to prevent illnesses such as measles. Records that show a student has completed all of his or her vaccinations will satisfy the requirement of proof of immunization. A student can also satisfy the requirement by showing that he or she has started a schedule for immunizations as long as they will be completed by the first day of school the following year. Youth returning from a JRA institution may be able to get their immunization history prior to release. The local health department may be able to help document or ensure immunizations are up to date.

Districts may ask parents for information about a student’s discipline history, history of violent behavior, attendance, immunization records, and academic performance. Districts will also ask for this same information from the school district the student last attended.¹⁸ Although this

¹⁶ See RCW 28A.225.215 and WAC 392-137-115.

¹⁷ See RCW 28A.225.330.

¹⁸ RCW 28A.225.330

information is being requested at the time of enrollment, the district should not deny a student enrollment if the information is not readily available.

What rights do homeless/transitioning youth have to enroll in public school?¹⁹

Schools are required by state and federal law to take steps to help homeless students enroll in school. The law considers a person homeless if he or she lacks a fixed, regular, and adequate nighttime residence, and includes children and youth in foster care or those sharing housing with others because of a loss of housing, economic hardship, or a similar reason. To accommodate the difficulties faced by homeless children, schools can take steps to streamline enrollment by

- Waiving the requirement for parental signatures,
- Arranging for vaccinations at community clinics instead of requiring a written record of immunization,
- Enrolling a homeless student or a student without any legal residence, and
- Allowing a homeless youth to stay in his or her prior school or move to a new school and provide transportation even if it is not usually made available by the school.

Enrollment in school does not have to be delayed for youth being released from secure detention or a JRA facility without a stable place to live. Ask that the child be enrolled right away and make arrangements for providing additional paperwork if it can be obtained later.

Do students have a choice in which school they attend within a district?²⁰

School districts may draw lines within their boundaries to determine which school a student will attend. In addition, a district may use other criteria to determine what the “home school” is for a student. Some schools allow open enrollment in any of the district’s schools; others allow transfers between schools only for special circumstances or needs. Districts must have policies that describe how students can transfer from one school to another within a district. If the student wants to attend a school other than the one to which he or she is assigned, request the district’s policies and any forms needed to request placement in another school within the same district.²¹

¹⁹ See RCW 28A.225.215 and the McKinney Homeless Act at 42 U.S.C. § 11431 and OSPI publication *Amanda Goes to School: An Educator’s Guide for Responding to the Rights and Needs of Homeless Students*. <http://www.k12.wa.us/HomelessEd/pubdocs/AmandaGoestoSchool.pdf>

²⁰ See RCW 28A.225.270.

²¹ **Washington passed the Learning by Choice law in 1990 that outlines a process for parents to have choices when enrolling a student in his or her home district, transferring to another district, or getting into college classes while still in high school.** For more information about the Learning by Choice law, see https://www.k12.wa.us/SecondaryEducation/pubdocs/Learning_by_Choice.pdf.

What if a student wants to enroll in a district that is not his or her home district?²²

If a student wants to attend a district other than his or her home district, the student must get permission from the home district to be released AND be approved for admission by the new district. Home districts usually allow students to transfer to another district. On the other hand, districts don't always admit non-resident students.

All districts must have a written, non-discriminatory policy about whether to admit non-resident students. A district may refuse to enroll students who do not live within its boundaries. For example, a district can deny non-resident students admission if those students are serving a suspension or expulsion from their home district, all the classes in the district are full, or it's the middle or end of the semester.

If either the resident or non-resident school district refuses the student's transfer, the student can appeal the denial to the Office of the Superintendent of Public Instruction. Request and review the non-resident district's enrollment policies for such situations.

What are some alternative school options for students are not able to return to a public school?

If a youth decides that he or she does not want to return to a regular public school setting, there may be some alternatives for completing high school and moving on to vocational or other post-secondary schools. It is important to remember that some options still require enrollment in the school district in which the student lives.

Some districts offer alternative school programs run by the district and even some online instruction. There are over 300 public alternative programs in Washington. Districts may also have agreements with community colleges or other vocational programs that give students the ability to get their high school credits in a different setting. Programs like Running Start²³ or Middle College²⁴ are examples of this type of alternative.

²² See RCW 28A.225.225 for the procedures that have to be followed when a student wants to change districts. Read RCW 28A.225.230 and WAC 392-137-190, 195, 200, 205 to see how to challenge the denial of a request to change districts.

²³ For more information about Running Start, see <http://www.k12.wa.us/SecondaryEducation/CareerCollegeReadiness/RunningStart.aspx>.

²⁴ Seattle Public Schools offers five Middle College programs that offer students unique alternative settings in which to complete their education. For more information see <http://middlecollegehs.seattleschools.org/modules/cms/pages.phtml?pageid=212981&sessionid=6b3da636e4c7c6665aab102b8dd879f0>.

Taking the General Education Development (GED) test is an option that allows some youth and adults to obtain a certification that is considered to be similar to completing high school. The GED test has five parts. The GED can be taken by young people 16 or older who are not enrolled in a public school. Students under age 18 need to have a completed high school release form from their home district or a notarized statement of completion of home schooling form. For more information about the GED and the GED test sites, go to the State Board for Community and Technical Colleges at http://www.sbctc.ctc.edu/public/_y_gedtestingctrs.aspx. Check in with local community providers to see if there are free GED preparation classes and support.

What are strategies for troubleshooting mid-year enrollment?

Youth may encounter challenges if attempting to enroll during the middle of a semester or school year. There are a number of strategies that juvenile justice professionals can use to reduce delays in enrollment. Districts may not be accustomed to this pre-release activity. Help the district understand how advance planning and proactive collaboration and will improve the engagement and transition for youth returning. Remember, school districts must enroll a student for instruction even if it is in the middle of the school year.

For youth returning to the community from a JRA institution,

- Identify the student's home district and begin communications with the enrollment office.
- Support parents or guardians in building relationships between the institution education provider and the home school district.
- Work with the institution education provider to identify special education needs of youth and update special education evaluations and plans.
- Document credit and seat time earned at the JRA school program and develop a plan for transferring that information to the youth's home district.
- Invite the home school district teachers, the home school IEP team, and others to a meeting to talk about what would support a successful return to school after release.
- Identify coursework in the student's home school classes and prepare student for the lessons that he/she will be diving into mid-semester.

For youth returning from a short period of incarceration in detention,

- County detention stays are generally 30 days or less and most youth will stay in detention for less than ten days. These short stays can cause a great deal of education disruption for a youth. Understand the process for enrolling and serving students who are detained for a short time. Determine whether this process creates

barriers for a student to return to a home school upon release. Work with the detention school administration to reduce these process barriers.

- Identify a student's home district (if not the same as the district providing education in detention) and develop protocols for ensuring a smooth transition as the student returns to his or her home school.
- Encourage the development of memoranda of understanding between districts around re-enrollment procedures, academic support, and other support services for juvenile justice involved youth.
- Anticipate challenges for reentry and transition, and work with the youth, family and education advocates to put support in place as the youth transitions back to school.
- Provide information to youth and parents about anticipating and troubleshooting enrollment challenges that might arise as a result of detention or juvenile justice involvement.

What are strategies for troubleshooting discipline as a barrier to enrollment?

Youth may be denied enrollment because of an outstanding disciplinary action like a long-term suspension or expulsion. Helping a student advocate for his or her right to education can turn around a district's initial refusal to deny enrollment because of disciplinary reasons.

Successfully troubleshooting discipline barriers depends upon the timing and circumstances of the discipline.

- If the misconduct resulting in discipline happened recently, the student may be able to request a hearing to challenge the suspension or expulsion. Timelines for appealing are very short, usually only 3 days from the day the family receives notice of disciplinary action. A hearing provides the opportunity to challenge the allegations of misconduct AND the proposed punishment. Even if the student violated a school rule, you can help the student advocate for a shorter length of exclusion or other form of corrective action that does not involve exclusion from school.
- If there was an end date on the exclusion, then the student should be able to return to school after the date the exclusion (usually a suspension) ends. For example if the student received a long-term suspension until the end of October, and he or she is attempting to enroll the following January, the disciplinary action has expired and district no longer has a basis for denying enrollment.
- Students have a right to petition for readmission at any time during a disciplinary exclusion. This is an important tool for reconnecting students who have been emergency expelled, expelled or long-term suspended. Readmission petitions are an opportunity to describe the student's strengths, successes and desire to return to school. Participating in treatment or some other supportive activity, having supervision

through parole or probation, successfully completing diversion, and having positive mentors and activities will be helpful information for a petition for readmission.

- Disciplinary actions are specific to the district that imposes the discipline. If a student has moved away from the district and is trying to enroll in a new home district, the new home district *does not* generally have the authority to discipline the student for behavior that occurred in the prior home school district. As a practical matter, districts will consider and uphold disciplinary action from a prior home district. Advocates should help students assert their right to be in school and if not successful, refer the student for legal advocacy.

What are strategies for troubleshooting juvenile justice involvement as a barrier to enrollment?

Some school districts are reluctant to enroll or place in regular classrooms a student who is facing juvenile offender charges or who is on probation or parole from such charges. Remember, schools have the ability to place students in different programs that meet the student's needs, but schools cannot discriminate on the basis of prior incarceration or arrest.

Youth with juvenile justice involvement may be under court orders that require supervision when they are around other youth or impose other restrictions that may impact their ability to be in a public school environment. Sometimes these orders are part of standard conditions of release or supervision and are not tailored to the individual youth. If a district is denying enrollment or school placement because it believes that a particular court order prevents a student from attending school, then work with the student's public defender, probation or parole counselor, prosecutor and judicial officer to modify and tailor restrictions and supervision requirements for the youth. Engage and educate the district on the court's expectations and the actual safety concerns, if any, presented by the youth. Develop a plan with the school if necessary to ensure safety for the student and school when the student attends.

Review the tips for troubleshooting mid-year enrollment as a way to anticipate and address a district's concerns for serving youth with juvenile justice involvement.

ATTENDANCE & TRUANCY

Youth involved in the juvenile justice system may have attendance problems for a variety of reasons. Being behind in school, feeling bullied or unwelcome, family or home stressors, transportation problems, history of school discipline, and a wide variety of other issues can be the source of attendance issues. Because the reasons vary so widely, the solutions to reduce absenteeism need to be individualized and creative.

What are Washington’s compulsory attendance laws?

Washington has a compulsory attendance law, often referred to as the Becca Bill. It requires students between the ages 8 through 17 to attend school.²⁵ The only exceptions to this requirement are if

- The student is in an approved private, home school, or other education program.
- The student is at least 16, lawfully employed, is either emancipated or has parental permission, *and* has already met graduation requirements or received a certificate of educational competence.
- The student is excused from attendance by the Superintendent of the district in which he or she lives because he or she is physically or mentally unable to attend school, is incarcerated in an adult facility, or is attending a DSHS residential school.
- The student is temporarily excused upon the request of their parents for purposes agreed upon by school authorities and the parents.

The Becca Bill outlines the steps that a district must take when a student accumulates unexcused absences during the school year. If a student reaches a certain number of unexcused absences in a semester or year, districts are required to file a truancy petition in juvenile court. Prior to filing a petition, the school must look carefully at why a student is having problems getting to school and take steps to deal with the problems that cause truancy.

A school is required by law to:

1. Tell the custodial parent, parents or guardian in writing or by telephone whenever there has been even **one unexcused absence**.
2. Call a meeting with the custodial parent, parents, or guardian and the student at a time that is convenient for everyone whenever there have been **two or more unexcused absences**. The purpose of the meeting is to figure out what is causing the student’s absences.
3. At no later than the **fifth unexcused absence**, the district must enter into an agreement with the student and parent that establishes school attendance requirements.
4. During this time, the district must take steps to stop the absences, or at least reduce the number of absences. The steps include:
 - Providing more individualized instruction or other help to catch up in school

²⁵ See RCW 28A.225.015.

- Providing vocational courses or work experience
 - Sending the student to a truancy board, if available in the area
 - Requiring the student to attend an alternative school
 - Helping the family obtain services that might address the cause of the absences
 - Referring the student for evaluation if there is a reason to suspect that the student has a disability and
 - Considering measures such as shortened school days, a late starting time, transportation support, etc.
5. At no later than the **seventh unexcused absence during any month, or tenth unexcused absence within the school year**, a school district must file a truancy case in juvenile court.

What happens to youth when a truancy petition is filed?

When a school files a truancy petition, it is asking a juvenile court judge to take action to stop the student from skipping school. A student who is the subject of a truancy petition may end up in front of a judge in juvenile court and be asked to explain why there are unexcused school absences. If the judge decides that the absences were in fact unexcused and that the school has met its duty to take steps to reduce the absences (see above), then the judge will enter an order requiring the student to go to school.

If the student fails to obey the judge's order, then he or she is in "contempt of court." This means that the student could end up back in front of that judge. The judge has authority to put the student in detention for up to seven days or impose other kinds of punishment to make the student obey the order. Parents, guardians, or other legal custodians can be fined up to \$25 a day for a student's absence from school.

How can advocacy help a youth with excessive absences?

Youth involved in the juvenile justice system may have attendance problems for a variety of reasons. Being behind in school, feeling bullied or unwelcome, family or home stressors, transportation problems, history of school discipline, and a wide variety of other issues can be the source of attendance issues. Because the reasons vary so widely, the solutions to reduce absenteeism need to be individualized and creative. Young people often need help identifying and opening up about these issues. Without the information, schools will have a hard time connecting students with the support they need to be successful in school.

In Washington, students will generally not get an advocate or lawyer to help them through the initial stages of a truancy proceeding, so knowledgeable advocates can make a big difference in helping the school and court understand the youth's underlying reasons for being absent from

school. In addition to the intervention points described above, some districts use community truancy boards, pre-court agreements, and other interventions to keep youth out of court. These approaches offer an opportunity to talk with the youth about the reasons underlying truancy and make requests to the school to help address the problems.

Juvenile justice professionals can provide critical support to a young person who is having attendance issues:

- Take the time to talk to youth about the underlying reasons for the absences – are there things going on in his or her life like family illness, transportation problems, anxiety, unmet child care needs, bullying at school? Brainstorm the ways that attendance can improve – changing schools or schedules, more academic support, better transportation, etc.
- Help the youth and family request support from the school or community providers to address the underlying reasons for the absences.
- Help navigate the truancy court process if the youth is under a petition or order. Advocate for support from the school or community to help address the underlying issues around attendance.
- Recognize that detention time may make attendance worse because of the further disconnection from school. Advocate for community based interventions to support the youth rather than detention.

SPECIAL EDUCATION SERVICES UNDER IDEA AND SECTION 504

A juvenile justice professional should not expect to become an expert in special education law. However, being able to identify special education issues and guide families in the right direction to ensure that a youth receives an appropriate special education program can go a long way in helping a youth stay out of trouble and on track in school. Many students with disabilities end up in the juvenile justice system, and quite a few are referred by their school district for behavior problems that are related to their disability. In some of these cases, the district has failed to identify the disability and/or failed to provide an appropriate program of supports and services prior to the juvenile justice referral. If advocates are aware of the disability and the student's resulting educational needs, they can work with the school to prevent challenging behaviors from reoccurring. This section provides some basic information about special education rights. Two publications provide much more detailed information about special education rights for students with disabilities:

1. The Office of Education Ombudsman Publication, "Protecting the Education Rights of Students with Disabilities in Public Schools" at http://www.governor.wa.gov/oeo/publications/manual_students_with_disabilities.pdf

2. The Office of the Superintendent of Public Instruction’s manual on Section 504 of the Rehabilitation Act of 1973 which can be found at <http://www.k12.wa.us/HealthServices/pubdocs/504ManualFinal.pdf>

What is a disability?

Disability can mean a lot of different things to different people, but it is a natural part of our everyday lives. Laws define disability in different ways, and those definitions are used to determine things like whether a person is protected from discrimination or has access to support and services, including financial assistance.

In general, the term “child or student with a disability” is used to describe a child who has mental, physical, or emotional impairments that affect his or her ability to learn. To qualify for special education services and support in school, a student’s impairment must also meet the definition of disability under special education laws.

It’s important to recognize that having a disability does not mean that a child isn’t smart or can’t learn. It simply means that he or she needs extra help in certain areas.

Why do schools have to provide services for students with disabilities?

There are two main laws that protect students with disabilities. The two laws are commonly referred to as “Section 504” and the “IDEA.” In 1973, the U.S. Congress passed Section 504 of the Rehabilitation Act, which made it illegal to discriminate against people with disabilities in programs receiving federal funds, such as public schools. Two years later, Congress passed the Education for all Handicapped Children Act. In addition, in 1991, Congress passed the Americans with Disabilities Act, commonly referred to as the ADA. Title II of the ADA defines disability in the same manner as Section 504. When the ADA and Section 504 both apply, Section 504 is usually used because it has regulations that are more specific for schools.

What is the relationship between IDEA and Section 504?

Under both laws, school districts are required to provide students with disabilities with a free appropriate public education, referred to as FAPE. This means that districts must provide a range of special education and related services to meet the individual needs of students who have trouble in school because of a disability.

Section 504 provides services for a broader group of students than does IDEA 2004 because it has a more expansive definition of “disability.” Therefore, if a student meets the eligibility requirements for IDEA 2004, he or she is also eligible for the protections of Section 504. But not all disabled students who are entitled to Section 504 services are eligible for special education under IDEA 2004. The Office of the Superintendent of Public Instruction’s Parent and

Teacher Guide to Section 504 provides a helpful, detailed comparison of the provisions of the two laws. It can be found at <http://www.k12.wa.us/HealthServices/pubdocs/504ManualFinal.pdf>.

How does a district locate students who need special education services?

Under IDEA 2004 and state special education law, districts have an affirmative duty to identify all students residing in the district who might need special education services. This duty is called “Child Find.” Districts are required to have policies and procedures in place to ensure that students with disabilities are identified, located, and evaluated. *See 20 U.S.C. § 1412 (a)(3) and WAC 392-172A-02040.*

Section 504 has a similar expectation for districts to identify and evaluate students to see if they qualify for protections and services. OSPI’s *Parent and Teacher Guide to Section 504* offers some examples of what might trigger a request for an evaluation for Section 504 services:

- *a student is failing to achieve passing grades*
- *a student is failing to advance from grade to grade*
- *a student is chronically absent from school*
- *a student is returning to school after a serious illness or injury*
- *a student is returning to school after alcohol or drug treatment*
- *a student has a “life threatening health condition”*
- *a student has a temporary impairment that will be substantially limiting for an extended period of time*
- *a student has an impairment that is episodic or in remission that is substantially limiting when active*
- *student is failing to meet the standards of personal independence or social responsibility expected of his or her age or cultural group*
- *a student is expelled from school*²⁶

How does a child get evaluated for special education?

Anyone can refer a child for a Section 504 evaluation. Under IDEA, in addition to parents, school district personnel and other public agencies, anyone knowledgeable about a child can make a request for a special education evaluation. Once received, the district must decide whether to evaluate the student, and then get permission or consent from the student’s parent to perform the evaluation. School districts must evaluate a student in every area related to his or her suspected disability. The evaluation must be done at no cost to the student or family.

What is an individualized education program or “IEP”?

The individualized education program, or IEP, is a document that describes goals, objectives and the specific special education services that a student will receive. An IEP should be tailored to

²⁶ Download the OSPI manual on Section 504 at <http://www.k12.wa.us/HealthServices/pubdocs/504ManualFinal.pdf>

the student and his or her educational needs, and it includes a description of the specialized instruction and related services that a student will receive.

What is a Section 504 Plan?

A Section 504 plan is a written plan that describes the educational and related aids and services that a district will provide to a student with disabilities in order to receive a free appropriate public education.

Why is special education an important resource for students involved in the juvenile justice system?

Learning and language delays, social and emotional disorders related to trauma and adverse childhood experiences, and mental illness are more prevalent among youth involved in the juvenile justice system in comparison to their peers. But, these needs can go unidentified and unmet if youth experience disruption in their education. Frequent moves, stays in detention, truancy, and school discipline all contribute to disruption in a youth's education and can result in schools missing the signs that a student has underlying disability needs. When a student qualifies for special education, he or she has access to evaluation and assessment, specialized instruction, related services, behavioral support, and an individualized plan and services to help with transition to adulthood and post-secondary education. These supports can make the difference between success and failure in education for youth with juvenile justice involvement.

Special education laws also provide strong protections for students with disabilities. For example, students cannot be excluded from school for behavior that is related to their disabilities, and even when they are expelled or suspended from school, they must be provided educational services. The law also requires schools to include parents in the special education planning and decision-making and gives parents a range of informal and formal ways to resolve disagreements.

How can juvenile justice professionals help youth with disabilities get the right support in school?

- Learn more about special education rights for youth with disabilities. Be prepared to spot issues and advocate for support that will help a youth be more successful.
- Talk to youth and their families and point them to resources that explain how special education services can help address school challenges, including academic and behavioral problems.
- Talk to the student about making a referral for special education testing if you think that a youth has disabilities that are negatively impacting their ability to learn.
- Support a youth by attending IEP meetings.

- Raise concerns if a youth with disabilities is expelled or suspended from school without educational services. Question whether the behaviors can and should be addressed in the IEP or 504 plan.
- If you are working with an incarcerated youth, check with the institutional education program to make sure that special education and related services are being provided.
- As the youth prepares for release from incarceration, identify the school district and program the youth will be attending. Invite that district's IEP team to meet with the IEP team in the institution to ensure that special education and other services are in place when the student returns home.
- For youth 16 and older, make sure assessment, planning and transition services are in place.
- Make a referral to an education advocate if the student with disabilities is struggling in school or not getting services and support.²⁷

²⁷ OSPI provides funding for education advocates who work with youth in the juvenile justice system. For more information about OSPI's education advocates, see <http://www.k12.wa.us/InstitutionalEd/pubdocs/PhonelistEAOct2012.pdf> and http://www.k12.wa.us/InstitutionalEd/pubdocs/EA_Manual.pdf

SCHOOL DISCIPLINE

Many youth with juvenile justice involvement also experience school discipline. Exclusionary discipline contributes to disengagement and school failure. Juvenile justice professionals should understand school discipline laws and help youth advocate for educational services that are critical to keeping them connected to education and on track to graduate. The following is a general overview of school discipline. More detailed information and advocacy tips can be found at <http://www.governor.wa.gov/oeo/publications/default.asp#manuals> and TeamChild's manual, *Make a Difference in A Child's Life*.

How do districts deal with student misconduct?

School districts in Washington are given the authority by the state to define and address student misconduct. Districts develop school codes of conduct and discipline policies that lay out the framework for corrective action and punishment within the district. These policies can vary from district to district in Washington and can often be found on a district's website, and if not, easily obtained by request.

Teachers and school administrators can use a variety of methods to correct behavior.²⁸ For example, districts can

- Send a student home early,
- Require a conference with the parent, teacher or principal,
- Impose an in-school suspension or detention that separates the student from other students,
- Refer the student to outside help such as counseling or a drug and alcohol evaluation,
- Immediately and indefinitely remove a student from school for an emergency expulsion,
- Suspend a student for a certain number of days,
- Expel a student indefinitely, and
- Call the police or make a referral to juvenile court if a crime is alleged to have been committed.

Washington law requires districts to try other forms of corrective action before imposing suspensions that are longer than ten days and indefinite expulsions. The exception to this rule is when the district has tried other ways that have failed or there is reason to believe that other corrective action wouldn't change the behavior. Districts can also resort to long-term

²⁸ See WAC 392-400-205.

suspensions and expulsions for exceptional misconduct, which is defined by each district's school discipline policies.

What rights do students have to challenge a disciplinary action?

Students' rights to challenge a disciplinary action depend on the type of disciplinary action being implemented. In general, the student can challenge both the allegations of misconduct and the proposed punishment.

Although, students get slightly more formal hearing rights the harsher the proposed punishment, the timelines for appealing disciplinary action are very short – three days for appealing a long-term suspension and ten days to appeal an emergency expulsion. Students and parents must receive a written notice of the proposed disciplinary action that describes the alleged misconduct and the rule that was violated. Improper notice may be a reason for the student to request a hearing, even if the timelines for appealing have already run out.

What right does a student have to education while expelled or suspended?

Students have a constitutional right to education in Washington. While it has not yet been decided by a court of law, advocates can argue and should request that districts provide educational services during the period of exclusion. As a practical matter, districts generally do not provide or offer educational services to suspended and expelled students. A few districts in the state do provide alternative school options and other services. Even if it's not clear if a district provides educational services to suspended and expelled students, advocates, parents and students should request educational services and school work from the district to stay on track during any period of exclusion.

There is no requirement for districts to proactively retrieve students that have been suspended or expelled. It is up to parents and students to reenroll or petition for readmission.

What options do students have if they lose the appeal or miss the deadline to request a hearing?

Students who are expelled or suspended can petition for readmission at any time during the period of exclusion. Each district develops its own criteria for readmission, so look to the district's policies for information about how to petition. Sometimes districts will provide students with a list of things that need to happen before it will consider readmitting the student. Encourage the student and parents to ask the district for guidance on what the district expects. Petitions for readmission might include letters from the student, parent and people or providers who have worked with the student and information about how the student has been successful, changed behavior or attitudes, or is getting support and supervision from others.

What rights do students with disabilities have when facing a disciplinary action?

In general, students with disabilities have the right to additional procedural protections to ensure that they are not punished for behavior that is related to the disability. If a student with a disability breaks a rule that would normally require suspension for more than ten school days or an expulsion for an indefinite period of time, the school must give notice to the parents that a change in placement is being proposed, have an IEP meeting to determine if the behavior was a “manifestation” of the child’s disability, and look at behavior and develop a functional behavior plan for the student.

If the behavior is a manifestation of the student’s disability, the student must be allowed to return to the educational placement that he or she was in before the removal unless the district or parent agree to another placement or if the behavior involved guns/weapons, drugs, serious bodily injury or dangerous behavior.

If the IEP team determines that the misbehavior is not related to the disability and the suspension or expulsion is imposed. During any disciplinary exclusion for more than ten school days in the same school year, the school district must provide another educational setting where the student’s IEP can be implemented, This setting should be one that allows the student to participate in general education curriculum and to make progress towards the goals described in the student’s IEP.

Special education law protects students with disabilities who had not yet been identified or found eligible for special education before being disciplined. A student can get all the protections for special education students if the district had prior knowledge that the student had a disability. The district is deemed to have knowledge if the parent had expressed concerns in writing that the child needed special education, if the parent had asked for an evaluation, or if the student’s teacher had expressed specific concerns about the behavior or performance of the child.

What are key strategies for juvenile justice professionals to help students address discipline issues?

- If the student is facing a disciplinary action, determine whether the student has appealed the school discipline or if there is still a chance to appeal the discipline. A discipline hearing provides the opportunity to challenge the allegations **and** the punishment.
- Help the student prepare a petition for readmission. Gather information that supports the student’s return to school. Engagement in treatment, probation or other programming that helps the school know that the student is getting support. Success at work, home, in detention, or other settings also demonstrate that the student is on track and safe to be in school.

- Remember that students with disabilities have additional protections to ensure that they are not being inappropriately excluded from school. They are also entitled to educational services even when expelled or suspended. Keep an eye out for situations where a student with disabilities has been excluded from school without educational services. Consider this a red flag for getting the family additional advocacy support.

Checklist of Key Education Advocacy Activities for Juvenile Justice Professionals

- Investigate a student's educational status and needs.**
 - Talk to the student, parent, and school
 - Obtain school records - Get releases from parent for youth under 18, from the DSHS social worker if in foster care/dependent or via court order

- Make sure that student is enrolled in and able to attend school.**
 - Identify home district, school, and grade level
 - Help student enroll if not attending
 - Anticipate issues around juvenile justice involvement and incarceration
 - Districts unwilling to enroll because of perceived safety concerns
 - New disciplinary action
 - Conditions of release or supervision interpreted to prevent attendance or contact with other youth
 - Actual conditions that make it difficult to attend

- Troubleshoot, anticipate and address outstanding discipline issues.**
 - Request a hearing
 - Petition for readmission

- Help students get additional support for academic and behavioral needs.**
 - Find or advocate for support to help with missed instruction
 - Prevent loss of credits, help with credit recovery
 - Look at assessments and standardized testing to identify skill deficits and knowledge gaps

- Identify special needs and advocate for special education support.**
 - Is there a disability that impacts learning?
 - Current or past IEP or 504 plan
 - Mental health or physical health history, history of trauma
 - Behavior or other issues that suggest something going on
 - Make sure there is a current evaluation and plan
 - Make a referral for special education
 - Review existing IEP or 504 plan – does it address need and concerns and contain academic, behavioral and transition goals and objectives?
 - Help parent request and attend an IEP meeting

Sample Records Request

Date: _____

To: _____

Dear _____:

I am writing to request educational records for _____ (student's name).

Please send the following to me at the address below:

- All academic progress reports, including grade reports and standardized test results
- All attendance reports
- All disciplinary reports, including referrals and notices of suspension and expulsion
- All documentation, correspondence, and emails regarding consideration for special services
- Evaluations, plans (IEP and 504), and all other documentation regarding special education and Section 504 eligibility and services.

Other _____

Attached is an authorization to release these records to me.

If you have any questions, please contact me at

Phone: _____

Address: _____

Sincerely,

Sample Referral for Special Education

December 15, 2007

Ms. Jane Doe - Principal
ABC Elementary School
1234 5th Avenue
Anywhere, WA 00000

Identify the student

Re: John Smith, date of birth 12/28/95

Dear Ms. Doe:

Identify yourself and the reason for the letter: **Referral for evaluation**

I am writing with regard to John Smith, a student in your school. I am John's foster parent, and I believe that he has several impairments that interfere with his ability to learn. I am requesting that the school district evaluate John for special services under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

Identify areas of suspected disability

I am concerned that John might need special education or services in two areas: reading and his ability to concentrate on a task.

Give examples from personal experience of the areas where the student needs help.

With regard to reading, I have noticed on several occasions that John will not read materials when they are given to him. He later learns the contents of the materials by asking questions of others who have read them.

As for his attention problems, I have found that John has a hard time staying on task. When asked to complete a chore at home, such as taking out the trash, he will start to do it, but within several minutes he becomes distracted. When I remind him that he has a job to do, he usually gets upset and refuses to finish.

If applicable, identify others with concerns and records documenting disabilities.

John's counselor at CDF Mental Health Clinic, David Davidson, is also concerned that John does not read well and may have a disability such as Attention Deficit Disorder. I have enclosed a copy of Mr. Davidson's progress report for John.

State what you expect

I understand that you need consent to proceed with the evaluation. Please contact me as soon as possible to start this process.

Contact information

Thank you for your prompt attention to my concerns. If you have any questions, I may be reached at (555) 555-5555.

Sincerely,

George Johnson – Juvenile Probation Counselor

Sample Request for Discipline Appeal

Date: _____

To: _____

Student _____

Dear _____:

I received the school's notice of LONG TERM SUSPENSION / EXPULSION/EMERGENCY EXPULSION issued against a child in my care. I would like to request a hearing under Chapter 392-400 of the Washington Administrative Code in order to contest this action. I understand that I may have a hearing within 3 days of making this request. In order to prepare for the hearing, I request copies of the following documents as soon as possible:

- A list of all witnesses the school expects to call at the hearing
- Copies of all documents the school intends to present at the hearing, including witness statements, statements by my child, and statements by building officials
- Copies of all records in my child's disciplinary file, including referrals, notices of suspension, notices of expulsion, and any behavior intervention or accommodation plans.

Please call me as soon as possible to arrange for the transfer of these copies to me and the date and time of the hearing.

Please contact me at

Phone: _____

Address: _____

Unless this is an emergency expulsion, I understand that my child is entitled to remain in school during the hearing process.

Sincerely,

(Signature)