

*SPECIAL ED KIDS
IN THE JUSTICE SYSTEM:*
How to Recognize and Treat
Young People with Disabilities
That Compromise Their Ability to
Comprehend, Learn, and Behave

American Bar Association Juvenile Justice Center
Juvenile Law Center ! Youth Law Center

Lourdes M. Rosado, Editor

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In 1999, responding to the crisis in juvenile indigent defense, the ABA, in partnership with Youth Law Center and Juvenile Law Center, created the National Juvenile Defender Center (NJDC). NJDC supports lawyers who represent children in delinquency and criminal proceedings throughout the country by improving access to counsel and the quality of representation. In order to develop the capacity of the juvenile defense bar, NJDC offers a variety of services including training, technical assistance, advocacy, networking, and resource and policy development. NJDC and its eight Regional Affiliates work together to provide quality representation for every child involved in the justice system. NJDC will ensure continuity in the development of each Regional Affiliate, coordinate efforts to provide a national voice on quality, access, and policy issues, and serve as a catalyst for change in the defense of children.

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Juvenile Court Training Curriculum

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This talented and diverse group of people created a curriculum that we hope will aid juvenile court practitioners in the many difficult decisions they have to make every day, and result in better outcomes for our children and our communities at large.

THE PROJECT TEAM
June 2000

Preface

Background

In 1996, the John D. and Catherine T. MacArthur Foundation funded the Youth Law Center, the Juvenile Law Center, and the American Bar Association Juvenile Justice Center to develop and provide training for juvenile justice professionals around the country. The goal of the project was to develop a training curriculum that applied the findings of adolescent development and related research to practice issues confronted by juvenile court practitioners at the various decision-making stages of the juvenile justice process.¹ The long range objective was to improve the quality of decisions made by juvenile court practitioners.

Two jurisdictions – West Palm Beach, Florida and Oakland, California – agreed to serve as pilot training sites. Project staff worked with juvenile court professionals at both sites and a national advisory committee of practitioners and trainers to identify the training topics. The topics chosen were relevant to adolescent development and related research, unique to juvenile court practice, and typically excluded from professional training curricula.

Over the course of two years, the project sponsored a series of trainings in the pilot sites. The trainings were developed and delivered by experts from all parts of the country. Project staff recruited trainers with specialized knowledge in the relevant subject matter whose expertise was broadly relevant to juvenile court practice. The trainings were cross-disciplinary -- delivering the information to judges, prosecutors, defenders and probation staff at the same time. In both sites, the presiding juvenile court judge set aside specific dates for the trainings, and either closed the courts or lengthened the lunch recess. Most of the trainings were three hours long.

Project staff then created training modules that corresponded to the training topics. The resulting modules incorporate the materials developed by the trainers; supplemental research, literature and training materials; and feedback from the pilot sites. The completed modules were reviewed by a group of professionals with broad expertise in each subject matter.

The Training Modules

The training curriculum consists of six separate modules:

Module One: *Kids Are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Court*

Module Two: *Talking to Teens in the Justice System: Strategies for Interviewing Adolescent Defendants, Witnesses, and Victims*

¹The Foundation also launched the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice in 1997. The mission of the Network is to develop new knowledge regarding the assumptions on which the juvenile justice system functions, and to improve legal practice and policy-making with accurate information about adolescent development. For more information about the Network, please consult its website: <http://www.mac-adoldev-juvjustice.org>.

- Module Three: *Mental Health Assessments in the Justice System: How To Get High Quality Evaluations and What To Do With Them in Court*
- Module Four: *The Pathways to Juvenile Violence: How Child Maltreatment and Other Risk Factors Lead Children to Chronically Aggressive Behavior*
- Module Five: *Special Ed Kids in the Justice System: How to Recognize and Treat Young People with Disabilities That Compromise Their Ability to Comprehend, Learn, and Behave*
- Module Six: *Evaluating Youth Competence in the Justice System*

The modules were designed for maximum flexibility and broad application. The modules stand alone, so that jurisdictions can use any individual module or any combination of modules. Each module contains extensive information on the topic, which can form the core of the training, as well as a “tool kit” containing interactive exercises, hypothetical cases, video clips and other training tools. The information in the modules is sufficiently general to apply in any jurisdiction. However, the tools can be adapted to make the subject matter relevant to the daily practice of participants in any particular training site. The curriculum also contains an extensive literature review listing materials relevant to the training topics and related subjects. Selected articles can be assigned for reading prior to the trainings, or the literature review can be made available as a general resource.

Project staff also incorporated the advice of adult learning specialists and professional trainers who served as consultants to the project. These consultants recommended that trainers emphasize a limited number of basic concepts in each subject area and actively engage participants in the learning process. Thus, each module contains a list of the major themes to be discussed, and the subsequent information refers back to those main themes. Similarly, the modules contain several interactive exercises to involve the audience in the training process and to draw upon their experiences to illustrate significant points.

How to Use the Curriculum in Your Jurisdiction

Effective use of this curriculum in a local jurisdiction requires an individual or group of people to organize trainings that are tailored to the specific needs of practitioners. It is important to engage practitioners in the planning process from the beginning. Organizers can work with representatives from the relevant professional groups to determine what areas they are interested in covering. This feedback will help organizers decide whether to present the entire curriculum or select individual modules.

Organizers can also ask the participants to recommend potential trainers. Trainers should have expertise and experience in the relevant subject matter. Familiarity with local juvenile court practice is also helpful. However, it is even more important that the trainer be skilled in engaging the audience in the learning process, drawing from their experience and utilizing tools to make the subject matter relevant to daily juvenile court practice. Straight lecture format – even by a learned and interesting trainer – is not usually an effective method for presenting the material. Potential sources for trainers are local colleges and universities; law schools; local chapters of national organizations, such as the American Psychological Association; and local or state professional organizations and societies. Organizers may also contact the American Bar Association Juvenile Justice Center for suggestions for experts to conduct the trainings.

Organizers can work with trainers to adapt the curriculum to make it relevant to local practice and current issues. Again, consultation with the relevant professional groups is important. For example, a fact pattern in the curriculum may require some changes to accurately reflect state law, local practice and current trends. Similarly, a video clip in the tool kit may present a scenario that is not representative of the issues important to the audience.

Organizers can also decide whether to conduct cross-disciplinary trainings, or to train professional groups separately. There are advantages and disadvantages to each approach. Cross-disciplinary trainings ensure that all of the juvenile court practitioners benefit from the same information. Issues raised and insights gained from the trainings may lead to changes in practice, which will be more successful if there is shared understanding and consensus among juvenile court professionals. Training the professions together also presents the opportunity for lively discussions among practitioners who have different roles and perceptions of the juvenile court process. On the other hand, candid discussion may be less likely with traditional adversaries in the same room. Attorneys or probation officers might also be reluctant to openly discuss local problems in the presence of juvenile court judges. There is also some advantage to tailoring the presentation of information to the specific professional groups because they are likely to use the information differently. Organizers should consult with the professional groups and determine what means of delivering the training best meets their needs and concerns.

Executive Summary

The goal of Module Five is for participants to learn how to identify and help children in the juvenile justice system with disabilities that affect their ability to comprehend, learn, and behave appropriately. Children who are learning disabled, severely emotionally disturbed, suffer from Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder, or are developmentally delayed may be at greater risk for delinquent behavior as a result of their disabling conditions. Studies, in fact, have shown that there is a high prevalence of such disabilities among the youth who come into contact with the juvenile courts. As a result, juvenile court professionals often make critical decisions regarding how the justice system will respond when a special education child offends. Moreover, juvenile court personnel regularly face the challenge of securing an appropriate education for children with special needs in the justice system.

In this Module, participants will learn:

- ! The learning/behavioral/emotional disabilities that are most prevalent among youth in the juvenile justice system.
- ! How to determine if a child has such a disability by using diagnostic tools and checklists introduced in the Module.
- ! The relationship between disabling conditions and delinquency, including the specific attributes of special education children that may predispose them to delinquent behavior.
- ! The federal legal entitlements of children to special education, including:
 - the nuts and bolts of the referral, evaluation, and Individualized Education Plan (IEP) development process under the Individuals with Disabilities Education Act (IDEA).
 - due process rights and proceedings mandated by IDEA.
 - disciplinary actions under the IDEA when special education children get into trouble at school, including the rules for disciplinary exclusions.
 - Children's right to education when they are involved in the juvenile and adult criminal justice systems.

In addition, participants will experience first hand what it is like to be a learning disabled child by engaging in a series of unique simulation exercises on visual perception, reading comprehension, visual-motor coordination, and oral expression. Participants will come to understand how children with learning disabilities often misinterpret both visual and audio cues, especially in stressful situations.

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I. Introduction

- A. **Goal of this module.** The goal of this module is for participants to learn:
1. How to identify children with disabilities that affect their ability to comprehend, learn, and behave in an appropriate manner;
 2. What it is like to be a child with such a disability;
 3. The possible relationship between these disabling conditions and delinquent behavior;
 4. The legal entitlements of children to special education, including when they get into trouble at school and when they are in state custody pursuant to a delinquency adjudication or criminal conviction; and
 5. How a better understanding of these disabilities can lead to better-informed decision-making in court.
- B. **Where in the juvenile justice system do we make decisions related to education and a child's disabilities?**
1. Whether the juvenile justice system should proceed with cases referred from a school, especially in instances where the child has some type of disability that may be related to his/her misbehavior.
 2. Whether to adjudicate delinquent a child who has diminished capacity due to a disability. Is a child with a disability "responsible" for his/her misbehavior, or is the misbehavior a manifestation of the disability?
 3. In disposition planning, how to teach accountability and community responsibility to a child with a disability that affects his/her ability to learn, comprehend and/or behave.
 4. At disposition review hearings, how to evaluate the quality of education being delivered to adjudicated children in out-of-home placements, i.e., residential treatment facilities, state training schools.
 5. In discharge planning, how to place children back in schools in the community after they are discharged from court-ordered placements, when the schools themselves put up improper barriers to their enrollment.
 6. At a disposition review or probation revocation hearing, how to evaluate whether a child has committed a probation violation by not going to school, when there is a question of whether the child is appropriately placed and the school does not meet the child's needs.
 7. Whether judges and prosecutors should take into account what type of education would be available to a given child in an adult jail and/or prison in deciding whether to transfer/direct file a child to adult court.

II. **Children in the Juvenile Justice System with Disabilities that Compromise Their Ability to Comprehend, Learn, and Behave in Socially-Acceptable Ways**

A. **Estimates of the incidence of learning disabilities among the juvenile offender population** vary based upon the definitional criteria used and the type of assessment instrument employed.

1. Studies that adhere strictly to federal standards for learning disabilities tend to find lower rates of learning disabled children among juvenile offenders as compared to studies that base disability qualification simply on observed academic lags (sharp discrepancy between intelligence (normal) and standardized test performance (sub-normal/radically inconsistent)).
2. Direct assessment reveals substantially higher rates of learning disabilities than survey research and file reviews.
3. Estimates from professional associations exceed the findings of research studies.

B. **Statistics on the prevalence of children with disabilities in the juvenile justice system** (as compared to the population as a whole) *(Note to trainer: trainer should show as overhead chart attached as Appendix L):*

1. **General Population:** a recent statistical compilation estimates that 2-5% of all public school students in the United States are Severely Emotionally Disturbed (SED), 5% are Learning Disabled (LD), 1-2% are Mentally Retarded (MR), and 3-5% have an Attention Deficit/Attention Deficit Hyperactivity Disorder (ADD/ADHD). Between 7-12% of the school age population is believed to have some sort of educational disability.
2. **Juvenile Delinquents:** 28-46% of the juvenile offender population has an educational disability. Within that group, 9-42% are LD; 16-50% are SED; and 3-30% are MR. There are no applicable statistics to show the incidence of ADD/ADHD among this population.
3. **Incarcerated Juvenile Delinquents:** 28-60% of the incarcerated juvenile offender population has an educational disability. Within that group, 11% are LD; 20% are SED; 18% have some kind of ADD/ADHD; and 3-10% are MR.
4. **Arrest Rates:** It is estimated that 18% of the mentally retarded, 31% of the learning disabled, and 57% of the emotionally disturbed will be arrested within five years of leaving high school.
5. **Victims of Crime:** the disabled are far more often the victims of crime than the perpetrators, particularly among the developmentally disabled

population, of whom 75-90% are estimated to have been the victims of sexual or physical abuse at the hands of care givers and others.

- C. **Overview of the types of disabilities commonly found in children in the juvenile justice system.** Note to trainer: citations to the relevant sections of the Individuals with Disabilities Education Act, 20 U.S.C. § 1401 et seq, and/or accompanying regulations, 34 C.F.R. Part 300, are provided below.

1. **Learning Disabled (LD).** See 20 U.S.C. § 1401(26); 34 C.F.R. § 300.7(c)(10).
 - a. LD is a disorder in children of average or above average intelligence that affects one or more of the basic psychological processes involved in understanding or using language and manifests itself as difficulties in listening, thinking, speaking, reading, writing, spelling, and the ability to do math.
 - b. Learning disorders are diagnosed when the individual's achievement on standardized tests in reading, math, or written expression fall substantially below that expected for that child's age, schooling level, and normal intelligence.
 - c. Types of LD disorders:
 - (1) Perceptual disabilities
 - (2) Brain injury
 - (3) Minimal brain dysfunction
 - (4) Dyslexia
 - (5) Developmental asphasia (an inability to acquire language normally that cannot be attributed to a specific factor, i.e., mental retardation, sensory disorder, neurological damage, emotional problems, or environmental deprivation)
2. **Seriously Emotionally Disturbed (SED).** See 34 C.F.R. § 300.7(c)(4). SED is a condition exhibited by one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:
 - a. An inability to learn that is not attributable to intellectual, sensory or health factors;
 - b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - c. Inappropriate types of behavior or feelings under normal circumstances;
 - d. Pervasive, chronic unhappiness or depression;

- e. Tendency to develop physical symptoms or fears associated with personal or school problems.

Note: SED does not include children who are simply socially maladjusted, although distinguishing such children from those with severe emotional disturbance is difficult in practice. The term includes children with schizophrenia.

3. **Attention Deficit Disorder (ADD) and Attention Deficit Hyperactivity Disorder (ADHD).** See 34 C.F.R. § 300.7(c)(9).

- a. ADD/ADHD is an educational handicap caused by substantial inability to pay attention, impulsivity (making a series of unpremeditated decisions with poor outcomes), distractibility, and/or hyperactivity that interferes with developmentally appropriate social or academic functioning.

- b. Diagnostic criteria.

(1) Child exhibits either (a) or (b) below:

- (a) six or more of the following symptoms of inattention have persisted for at least six months to a degree that is maladaptive and inconsistent with the normal developmental level of children that age:

- i) often fails to give close attention to details or makes careless mistakes in schoolwork or activities;
- ii) often has difficulty sustaining attention in tasks or play activities;
- iii) often does not seem to listen when spoken to directly;
- iv) often does not follow through on instructions and fails to finish chores, schoolwork (and this failure is not due to oppositional behavior or failure to understand instructions);
- v) often has difficulty organizing tasks and activities;
- vi) often avoids, dislikes or is reluctant to engage in tasks that require sustained mental effort (such as schoolwork or homework);
- vii) often loses things necessary for tasks or activities (e.g., pencils, books, assignment sheets);
- viii) is often easily distracted by extraneous stimuli;

- ix) is often forgetful in daily activities.

AND/OR

- (b) Six (or more) of the following symptoms of hyperactivity-impulsivity have persisted for at least six months to a degree that is maladaptive and inconsistent with the normal developmental level of children that age:
 - i) often fidgets with hands or feet or squirms in seat;
 - ii) often leaves seat in classroom or in other situations in which remaining seated is expected;
 - iii) often runs about or climbs excessively in situations in which it is inappropriate (in adolescents, may be limited to subjective feelings of restlessness);
 - iv) often has difficulty in playing or engaging in leisure activities quietly;
 - v) is often "on the go" or often acts as if "driven by a motor";
 - vi) often talks excessively;
 - vii) often blurts out answers before questions have been completed;
 - viii) often has difficulty awaiting turn;
 - ix) often interrupts or intrudes on others (e.g., butts into conversations or games).

AND

- (2) Some hyperactive-impulsive or inattentive symptoms that caused impairment were present before age seven; **AND**
 - (3) Some impairment from the symptoms is present in two or more settings (e.g., school, home); **AND**
 - (4) Clear evidence of clinically significant impairment in social or academic functioning; **AND**
 - (5) The symptoms do not occur exclusively during the course of a Pervasive Developmental Disorder, Schizophrenia, or other Psychotic Disorder and are not better accounted for by another mental disorder (e.g., Mood Disorder, Anxiety Disorder, Dissociative Disorder, or a Personality Disorder).
- c. ADD/ADHD are not separate disability categories under either federal or state law. Instead they are covered under the IDEA

“Other Health Impairments” provision in cases where the condition is a chronic or acute health problem that results in heightened alertness to environmental stimuli that, in turn, causes the child to have limited alertness with respect to the educational environment. See II.C.6 *infra*.

4. **Mental Retardation/Developmental Delay.** See 20 U.S.C. § 1401(3)(B), 34 C.F.R. §§ 300.7(b) and (c)(6), 300.313.
 - a. Mental retardation is a disability as a result of the interaction between the limitations in capability (intelligence and adaptive skills) and the demands of the environment.
 - b. Mental retardation/development delays are diagnosed when significantly sub-average general intellectual functioning (IQ of 75 or below) exists concurrently with deficits in two or more of the following adaptive skill areas:
 - (1) communication
 - (2) home living
 - (3) use of community resources
 - (4) health and safety
 - (5) leisure
 - (6) self-care
 - (7) social skills
 - (8) self-direction
 - (9) functional academics
 - (10) work

5. **Language and Speech Disorders.** See 34 C.F.R. § 300.7(c)(11). Language and speech disorders are defined by a difficulty in understanding or using spoken language resulting from one or more of the following:
 - a. articulation disorders
 - b. abnormal voice characterized by persistent, defective voice quality, pitch or loudness
 - c. fluency difficulties
 - d. inappropriate or inadequate acquisition, comprehension, or expression of spoken language
 - e. hearing loss.

6. **Other Health Impairments.** See 34 C.F.R. § 300.7(c)(9).
 - a. This is a catch-all category that covers children who have limited strength, vitality, or alertness due to chronic or acute health

problems, such as heart condition, tuberculosis, rheumatic fever, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, nephritis, or diabetes, that adversely affects the child's educational performance.

- b. In addition, children diagnosed with ADD/ADHD are classified, for the purposes of statutory entitlements to special education, as having "other health impairments."

Interactive Exercises: What is it like to be a Learning Disabled child?

*The following exercises are reproduced from the video "The F.A.T. (Frustration, Anxiety and Tension) City Workshop," Produced by Peter Rosen Productions Inc. for the Eagle Hill School Outreach Program, Greenwich, Connecticut
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Note: To be effective, these exercises must be conducted in an atmosphere of stress and tension. The trainer must be willing to intimidate the participants to a degree. Also, trainers are advised to conduct a number of these exercises at one sitting, to create a fatigue factor that will enhance the impact of the exercises. Trainers are greatly encouraged to view "The F.A.T. City Workshop" video prior to running the exercises themselves. To obtain a copy of "The F.A.T. City Workshop" video, please see the information attached as Appendix M.

Exercise #1 -- Experiencing the anxiety of being a LD child

The key to this exercise is for the trainer to give directions and ask questions very quickly, and respond with sarcasm, impatience, blame, etc., when people give incorrect answers or fail to respond.

The trainer should provide participants with the packet of materials that is attached at Appendix F. This packet contains pages of various colors with drawings of various animals, and minimal text. Trainer should then ask rapid-fire questions and give rapid-fire directions to the participants (i.e., turn to page three, what color is page three, what is the animal on page five, name me three stories that have that kind of animal in it, what does it say on the top of page seven, etc.). Trainer should engage in this rapid-fire questioning for at least five minutes, going around the room to engage as many participants as possible.

Exercise #2 -- Visual Perception

The purpose of this exercise is to clarify the distinction between vision and perception. In this exercise, the participants will be able to see the photo, but won't be able to give meaning to the photo until the trainer gives them cues to help them understand what they are seeing.

Trainer should give out copies of one of the photos attached as Appendix G. Trainer should give the participants approximately a minute to look at the photo, and then guess what is depicted in the photo. Trainer should then reveal what is in the photo.

Exercise #3 -- Reading Comprehension

Reading is traditionally taught through vocabulary comprehension. In other words, we teach children the words we think they don't know in a given piece of text, and then assume that if they know all the words they will understand the text. The purpose of this exercise is to demonstrate that reading comprehension is a much more complex process.

Trainer should first give out and/or put on an overhead projector the Table of Words attached at Appendix H. The trainer should ask participants if they've seen the words on the table, and if they know the meaning of the words. Next the trainer should give out and/or put on an overhead of Text #1, also attached at Appendix H. Ask if anyone in the room can explain the meaning of the text.

Then the trainer should give out and/or put on an overhead of Text #2, also attached at Appendix H. Trainer should then ask the following about Text #2: When did story take place? Who was Fligledobe with? Where were they? What were they "treppering"? What were they cleaning? What kind of "strezle" came along? What did the "strezle" do? Where did the "strezle" "boof"?

Although participants will recognize and know the meaning of all the words in Text #1, they will not be able to explain Text #1. Participants will be able to answer all of the trainer's questions regarding Text #2, but they will have no idea what the story is about.

Exercise #4 – Effect of Perception on Behavior

The purpose of this exercise is to demonstrate how children with Learning Disabilities can misperceive stimuli and, as a result, engage in unacceptable behavior, without even knowing that what they did was wrong.

Trainer should show drawing attached at Appendix I, entitled "Vanity." (The drawing appears to be that of a skull, but is in reality, upon a closer examination, of a woman looking at herself in the mirror.) Trainer should then ask participants to write down a title for the drawing, and then call on an individual to read out loud his/her answer. When the participant provides a title (which will be appropriate for a drawing of a skull), the trainer should berate the participant (i.e., what, do you think that's funny? Are you trying to be a smart aleck?) Trainer should then give participants a closer look at the drawing to demonstrate that it is, in fact, a drawing of a woman.

Exercise #5 – Visual-Motor Coordination

(Note to trainers: A mirror approximately the size of an 8 ½ x 11 sheet of paper, and tracing paper is needed for this exercise.)

The purpose of this exercise is to demonstrate how difficult the writing process is for many Learning Disabled children.

Trainer should ask for volunteer(s) from the audience, and provide the volunteer(s) with a copy of the fictional letter, "tedra," attached as Appendix J. The volunteer should place the sheet on top of a desk or table, with a piece of tracing paper on top of it. The volunteer should then place a mirror on the table so that it is perpendicular to the sheet of paper and thus reflects the fictional letter. Volunteer should then attempt to trace the letter by *only* looking at its reflection in the mirror.

Exercise #6 – Oral Expression

This exercise illustrates a problem – dysnomia – that many Learning Disabled children experience. Dysnomia is when you have the problem of finding the right word to express yourself. This happens to the average person a few times a day; this happens to a child with a learning disability hundreds of times a day.

Trainer should start off a round-robin story-telling exercise. Specifically, the trainer should pose the opening line of a story (i.e., the two boys decided that they wanted to go on a picnic). The trainer should then go around the room and have participants supply the next line of the story. The trainer should then conduct the same exercise, but this time instruct participants that they can not use any words containing the letter "n." The trainer should switch the prohibited letter every so often, so that participants will not be able to prepare their answers prior to their turn.

Exercise # 7 – Reading and Decoding

This exercise demonstrates the difficulty LD children often have in reading because of problems with spatial identification.

Trainer should show the figure attached at Appendix K (which could be a "d," "b," "q" or "p" depending on its orientation). Trainer should rotate the figure, and ask participants to identify the figure at each new spatial orientation. Trainer then should take off his/her watch and rotate it, similarly asking participants to identify the object at each orientation.

Up until the time we go to school, we learn that spatial orientation has nothing to do with object identification: a watch is a watch no matter which way you turn it. Then children are taught to read, and they learn that spatial orientation does, indeed, have a relationship to object identification. Many children with learning disabilities have problems with spatial orientation.

D. The Identification of Children with Disabilities

1. **Development of the science of learning disabilities.**
 - a. Pre-1900: the standard response to disabled people was to segregate them in institutions that provided few, if any, services.
 - b. 1900-1950: scientific research on brain functioning, chromosomes, and human behavior/psychology promoted greater understanding of disabilities and spurred the development of specialized teaching methodologies.
 - c. 1950-1970: specialized teaching methodologies proliferate; special education classes established in many public schools; efforts made to develop culturally unbiased tests to eliminate minority over-representation in special education classes; more disabled children included in regular classrooms.
 - d. 1970-present: the era of "mainstreaming," in which children with special needs educated without segregation and stigmatization. The goal of mainstreaming is to identify children with educational disabilities, design and implement individualized education programs to compensate for those disabilities, and implement those programs, to the maximum extent possible, in the regular classroom.
2. **Importance of identifying disabilities early on.** Early detection of learning disabilities appears to be the determining factor in the degree of success to which learning disabled children are able to compensate for deficiencies in their ability to learn and develop intellectually. The earlier the disability is addressed, the faster the child receives the educational training and services appropriate to her special needs, the more likely the child will be to compensate successfully for his/her disability.
3. **Legal obligation to identify disabilities in children.** School districts and other agencies have an affirmative obligation under state and federal law (the so-called "Child Find" Requirement) to identify all children suspected of having a disability and refer them for an evaluation to determine eligibility for special education services, so that the child can obtain an Individual Education Program (IEP). See 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.125, 300.300. We will be reviewing federal and state education special education law in more depth later in the module.
4. **Diagnostic Tools for Identifying Disabilities: Learning Handicap Checklist.** (Trainer should hand out checklist attached as Appendix A and explain how the checklist can be used as a diagnostic tool). Because a child's disabilities may not be readily apparent or documented, it is important that everyone in the juvenile court system who is involved in

handling the child's case be alert to the existence of possible educational disabilities. Probation officers interviewing the child at intake, attorneys appointed at the time of the initial court hearing, judges observing the child in court, and medical/psychiatric experts should incorporate questions about educational disabilities into their routine investigative work. To that end, those who work in the juvenile court should be familiar with the legal definitions of educational disabilities and the tests/checklists designed to ferret them out.

III. The Relationship Between Disabling Conditions and Delinquency²

- A. **Susceptibility.** (Note to trainer: trainer should show as overhead and/or distribute chart attached as Appendix C to illustrate susceptibility.)
1. There are certain variables inherent in learning and developmental disabilities that make an individual more susceptible to criminal involvement. Specifically, these disabilities predispose an individual to:
 - a. make poor decisions and social judgments that lead to involvement in crime;
 - b. have weak or no avoidance techniques that lead to detection and eventual arrest (i.e., they are more likely to get caught);
 - c. have social skill deficits that result in harsher treatment once in the justice system; and
 - d. have learning difficulties that almost ensure increased recidivism (i.e., it is more difficult for them to "learn their lesson" and reform their ways).
 2. The chart attached as Appendix C outlines several susceptibility variables, and, under each variable, lists typically observed difficulties that may account for increased juvenile justice involvement:
 - a. Reduced Cognitive Ability
 - (1) Lower average IQ
 - (2) Poor decision-making skills
 - (3) Increased probation violations and recidivism
 - b. Language Immaturity
 - (1) Reduced self-talk (i.e., guiding one's own actions through inner language)
 - (2) Deficient verbal mediation skills
 - (3) Need for outside coaching or direction
 - c. Developmental and Academic Lags

²For more information on the relationship between disabling conditions and delinquency, the trainer is referred to the following scholarly articles: Katherine A. Larson, *A Research Review and Alternative Hypothesis Explaining the Link Between Learning Disability and Delinquency*, 21 JOURNAL OF LEARNING DISABILITIES 289 (June/July 1988); Norman Brier, *The Relationship Between Learning Disabilities and Delinquency: A Review and Reappraisal*, 22 JOURNAL OF LEARNING DISABILITIES 546 (1989).

- (1) Immature/missing cognitive strategies
- (2) Information-processing deficits
- (3) Illiteracy and other skill deficits

d. Social Perception and Problem-Solving Deficits

- (1) Misinterpreted social cues
- (2) Reduced empathy and role-taking skills
- (3) Poor planning skills
- (4) Inability to generate adaptive solutions

e. Interpersonal Skills Deficits

- (1) Social abrasiveness
- (2) High suggestibility
- (3) Inattention, distractibility and impulsivity

B. **School failure/school frustration.** *(Note to trainer: trainer should show overhead attached as Appendix D to illustrate the relationship between school failure and delinquency.)*

1. A disabled child enters junior high or high school with poor skills that have not responded to educational intervention, which leads to poor grades and underachievement in school. The resulting embarrassment in front of peers and negative self-image causes the student to develop a high level of frustration with academic tasks, cut classes and seek out delinquent-prone peer groups to find acceptance, a social identity, and a sense of achievement lacking in the school setting. Finally, the student drops out of school altogether, joins a gang, commits delinquent acts, and enters the juvenile justice system.
2. Although clinical observation, school records, and tests of basic academic skills tend to support the School Failure Hypothesis, the evidence derived from academic studies does not support a direct causal relationship between academic underachievement and delinquency in learning disabled youth. (Larson 1988). One well-known educator of LD youth explained the significance of the School Failure Hypothesis as "tell[ing] the story of frustration that many disabled teens feel in the peer group. Some of these youngsters will do almost anything to make up for their shortcomings and earn the respect of their peers. Thus many disabled students assume mascot status, especially in youth gangs, where they are used as "go-fers" or scapegoats." (Cowardin 1998).

C. **Differential treatment.** Studies support the claim that, when the treatment of disabled children in the juvenile system is compared with the treatment of similarly situated non-disabled children, those with disabilities are subject to harsher treatment at arrest, adjudication and disposition as compared to that of their non-disabled peers. The statistics below are provided by the National Center for State Courts and Nancy Cowardin.

1. At Arrest.
 - a. The Statistics: Learning disabled youth are 200% more likely to be arrested than nondisabled youth for comparable delinquent activity.
 - b. Possible reasons:
 - (1) Lack of avoidance/nondetection strategies
 - (2) Used as scapegoats by peer groups
 - (3) Act defiantly, uncooperatively or evasively
 - (4) Less adept at knowing how, when, and with whom to talk
 - (5) Failure of the system to perceive disabilities and respond to them

2. At Adjudication.
 - a. The Statistics: Adjudication has been found to be 220% more likely if the offender has a LD. Nonadjudicated youth averaged two years higher in school achievement than those adjudicated delinquent, despite similar backgrounds of offenses.
 - b. Possible reasons:
 - (1) Negative school history and continuing failure
 - (2) Reduced ability to comprehend legal proceedings
 - (3) Reduced ability to self-advocate
 - (4) Poor social presentation
 - (5) Failure of the system to perceive disabilities and respond to them

3. At Disposition.
 - a. The Statistics: despite similar records of prior offenses, once adjudicated delinquent, the term of incarceration and/or probation averaged 2-3 years longer for those with disabilities as compared to their nondisabled peers.
 - b. Possible reasons:
 - (1) Reduced ability to comprehend terms of probation and/or release document (*Note to trainers: attached at Appendix E is alternate wording for juvenile probation conditions that probation officers can use with LD children.*)
 - (2) Inability to comply with academic and other requirements named as terms for termination/release
 - (3) Behavior and interpersonal problems with staff and other students

- (4) Failure of system to understand and make allowances for cognitive differences

IV. **Summary of Attributes of Special Education Children that May Predispose Them to Delinquent Behavior**

*Reproduced from the CRIMINAL JUSTICE TRAINING WORKBOOK FOR IDENTIFYING AND ACCOMMODATING LEARNING AND DEVELOPMENTAL DISABILITIES, by Nancy Cowardin, Ph.D.
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- A. **External Locus of Control.** Many learning disabled individuals have a limited inner guidance system, depending instead on outside direction or relying on "luck". Without self-direction, they are easily lead by others into criminal activity.
- B. **Impulsivity.** This quality may result in making a series of quick, bad decisions. The individual does not take the time to think through and weigh the possible consequences of a proposed action, but simply "jumps in" using a "seat of the pants" mentality.
- C. **Poor Social Cognition/Perception.** The learning disabled individual may be unable to intuit people or actions which can lead him in to trouble. He is likely to trust the wrong people for the wrong reasons, and they in turn may use him as an accomplice, then leave him as a decoy when the police arrive.
- D. **Poor Planning Ability.** In contrast to impulsivity, this quality is evident even when a Learning Disabled individual has sufficient time to plan and think through a proposed action. However, even under these circumstances, he does not seem able to envision various logical consequences or outcomes, hold them in mind simultaneously, and plan steps to attain the best one. These individuals will often operate using a "half-plan" to obtain a nebulous goal. They do not take into account the various pitfalls which may arise, and have no alternative responses ready when things begin to go wrong.
- E. **Hyperactivity.** Hyperactivity is not only defined by high activity level, but also includes random and purposeless actions which seem beyond physical control. Imagine how a hyperactive youth or adult might act if handed a gun to hold in a tense situation. Without intending to, he could suddenly find himself arrested - very confused - for murder.
- F. **Poor Social Cognition.** Often the Learning Disabled individual does not intuit or grasp the precariousness of his actions or the magnitude of the predicament once apprehended. At the outset, he thinks he is invincible. Once caught, he shows no "presupposition", that is, he naively believes that any story he offers will be believed despite evidence to the contrary.
- G. **Poor Avoidance Techniques.** Some Learning Disabled individuals cannot avoid detection because social "tip-off" cues are not being received. The are often left literally "holding the bag" by peers who, sensing danger, have left the crime scene. Here, the disabled individual remains behind, confused and without an escape plan of his own.

- H. **Inability to Conceal Thoughts.** Many individuals with language-based disabilities need to speak aloud to organize themselves mentally. Since this practice would appear odd to others, they often become followers, relying on outside direction from a group leader. We might also encounter this sort of individual, before a planned crime, discussing his group's plans within earshot of school authorities.
- I. **Social Abrasiveness.** Many persons with Learning Disabilities resort to unacceptable verbal behavior when cornered. They do not have other strategies available to extricate themselves from unpleasant social situations, and instead offer sullen, defiant, or confrontive responses. Needless to say, this sort of behavior can result in police detention for minor as well as major offenses.
- J. **Deficient Language Processing Skills.** The police interview can pose additional problems for language disordered individuals which can result in formal charges. We have seen disabled suspects agree with facts and events which did not occur, provide misinformation to fill in memory gaps, and allow interviewers to manipulate, cajole and coerce confessions, leaving them upset and confused.
- K. **Illiteracy.** At arrest, poor and nonreaders are occasionally presented with written versions of the *Miranda* warnings and their own transcribed verbal statements and asked to sign them. We have found that, almost without exception, they will do so in an attempt to mask their deficiencies.

Interactive Exercise: Assessing the Culpability of Learning Disabled Youth Who Commit Offenses

Step One: Hand out the case profile of Bobby Carlisle attached at Appendix N and ask participants to read it to themselves.

Step Two: Pose the following questions for discussion:

- ! How would you assess Bobby's culpability (his intent) in the charged offense? What other information would you need to know before making this assessment?
- ! How would you compare Bobby's culpability to that of a child without Bobby's disabilities who committed a similar offense?
- ! How would an assessment of Bobby's cognitive abilities – i.e., his ability to make decisions and foresee the long-term consequences of his actions – impact your assessment of his culpability?
- ! How do you assess Bobby's dangerousness or level of risk to his family and community? Do you see Bobby's level of risk as a permanent condition, or do you think his level of risk could be reduced by interventions? What type of interventions might decrease his risk of re-offending?

- ! How, if at all, do you think Bobby's disability affects his ability to process and apply a value system (i.e., knowing what's right versus wrong) to his decisions?

V. **Overview of Law on the Right to Education Generally**

A. **Federal Law**

1. U.S. Supreme Court has held that the U.S. Constitution does not explicitly establish a right to education. *See, e.g., San Antonio Ind. Sch. Dist. V. Rodriguez*, 411 U.S. 1 (1973). Therefore the Court has never held that a state has an obligation to provide education.
2. Absence of an explicit constitutional right to education does not bar federal legislation creating such an entitlement. However, the U.S. Congress to date has not established such a right through legislation. Congress has passed statutes establishing equal access to education, such as the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq, which we will be discussing at length in this module.

B. **State Law and State Constitution**

1. Absent a federal constitutional or statutory right to education, the creation of the right to education depends on state constitutions and statutes.

(Note to trainer: at this point in the module, trainer should give a brief overview of the right to education as defined by his/her state constitution and/or statutes.)

VI. **Overview of Federal Special Education Law: The Individuals with Disabilities Act, 20 U.S.C. § 1400 et seq³**

(Note to trainer: trainer should weave into this part relevant state law and local practice.)

- A. **The Entitlement.** The Individuals with Disabilities Act (IDEA) entitles disabled children ages 3-21 to a free, appropriate public education (FAPE), which includes

³ This module focuses on the IDEA. However, the trainer should briefly mention two related anti-discrimination statutes which provide further protections to disabled students: Section 504 of the Rehabilitation Act of 1974 (29 U.S.C. § 794) (implementing regulations at 34 C.F.R. § 104 *et seq*), and the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134 (implementing regulations at 28 C.F.R. Part 35).

Section 504 is a general anti-discrimination law that states “no otherwise qualified individual with a disability shall . . . solely by reason of [that] disability, be excluded from any program or activity receiving Federal financial assistance.” Although most disabled students are covered under the IDEA, there are exceptions. For example, some ADD-diagnosed children do not fall under the IDEA’s “other health impairment provision” but can still receive special education and related services under Section 504. Sometimes a child is disabled under the IDEA, but does not need special education. For example, a child may have a purely physical disability that does not affect his/her ability to learn. In such cases, the child may still receive related services and accommodations (i.e., transportation, special seating in the classroom, etc.) under Section 504.

Section 504 and the ADA also provide rights to children in disciplinary exclusions. This is extremely important for disabled children who are not covered by IDEA because: (a) they do not have one of the specific disabilities listed in IDEA; (b) they are disabled but do not require special education; and/or (c) although they were IDEA-eligible, they were not identified, through no fault of the school district, prior to the disciplinary event in question. The protections afforded disabled students in disciplinary exclusions under Section 504 and the ADA, however, are significantly weaker than under the IDEA; most importantly, these statutes do not provide “stay put” protection or a right to education after suspension/expulsion for behavior that is not a manifestation of the child’s disability.

Section 504 and ADA also provide protection against disability discrimination in investigations of school misconduct. The manner in which school officials gather and use information when investigating allegations of disabled student misconduct may constitute impermissible disability discrimination under Section 504 and the ADA, which require school disciplinarians to take into account and accommodate the disabilities of accused students. For example, rapid-fire, repeated questioning may cause a child with cognitive disabilities to give confused and contradictory responses. If the student is subsequently deemed guilty of the charged offense on the basis of her “dishonesty” during questioning, then the student has been discriminated against on the basis of her disability.

For more information about the protections provided disabled students under Section 504 and the ADA, trainers should consult Joseph Tulman & Joyce A. McGee, *SPECIAL EDUCATION ADVOCACY UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) for Children in the Juvenile Delinquency System* (The University of the District of Columbia School of Law Juvenile Law Clinic, Washington, D.C., 1998.)

“special education,” “related services,” and “transition services” in the Least Restrictive Environment. See 20 U.S.C. § 1412.

- B. **What is a free and appropriate education (FAPE)?** A free and appropriate education includes the following components:
1. **Special education.** See 20 U.S.C. §§ 1401(8) and (25); 34 C.F.R. §§ 300.13, 300.26, 300.121 and 300.300. Specially designed academic programs tailored to meet the unique needs of disabled children that:
 - a. are provided at public expense;
 - b. meet state educational standards;
 - c. include an appropriate pre-school, elementary and secondary education; and
 - d. are provided in conformity with an Individualized Education Program (IEP).

 2. **Related Services.** See 20 U.S.C. § 1401(22); 34 C.F.R. § 300.24. In addition to special education services, federal law mandates that eligible children receive any other needed related services, defined as “transportation and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education.” Related Services include but are not limited to the following:
 - a. speech-language pathology and audiology
 - b. psychological services
 - c. physical and occupational therapy
 - d. recreation and therapeutic activity
 - e. early identification and assessment of disabilities
 - f. counseling services, including rehabilitation counseling
 - g. orientation and mobility services
 - h. school health services
 - i. social work services in school
 - j. parent counseling and training
 - k. transportation
 - l. medical services for diagnostic and evaluation purposes.

 3. **Transition Services.** See 20 U.S.C. §§ 1401(30), 1414(d); 34 C.F.R. §§ 300.29, 300.47, and 300.348.
 - a. Transition Services are defined as a coordinated set of activities for a student that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult educational services, independent living and community participation.

- b. Pursuant to the 1997 IDEA Amendments, IEPs of a child aged 14 and older must include a statement of the transition services needs of the child that relate to that child's education.
 - c. IEPs of children 16 and older must integrate the full panoply of transition services, based upon the child's needs and taking into account the student's preferences and interests.
 - 4. **Least Restrictive Environment.** See 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.130, 300.550-300.556. (Trainer should show overhead attached as Appendix B depicting the Cascade Model of Special Education Services.) LRE promotes the underlying goal of "mainstreaming" in selecting the optimal education placement for disabled children. The LRE requirement mandates that schools:
 - a. seek "to the maximum extent appropriate" to educate disabled children with children who are nondisabled; and
 - b. only remove children with disabilities from the regular classroom when the nature or severity of the disability is such that no other reasonable alternative exists.
- C. **Who is Disabled Under IDEA?** See 20 U.S.C. § 1401(3); 34 C.F.R. § 300.7. The following disabilities qualify a child for special education services under IDEA. (The asterisk * indicates disabilities that are most prevalent among children in the juvenile justice system):
 - 1. mental retardation/developmental delays*
 - 2. hearing impairments including deafness
 - 3. speech or language impairments
 - 4. visual impairments including blindness
 - 5. serious emotional disturbance*
 - 6. orthopedic impairments
 - 7. autism
 - 8. traumatic brain injury
 - 9. specific learning disabilities*
 - 10. multiple disabilities
 - 11. other health impairments, including ADD/ADHD* where the condition is a chronic or acute health problem that results in heightened alertness to environmental stimuli that, in turn, causes the child to have limited alertness with respect to the educational environment.

VII. **The Nuts and Bolts of the Referral, Evaluation and IEP Development Process under IDEA.**

(Note to trainer: in this part, trainers should alert participants to the relevant time lines in their jurisdiction if such time lines are not set by federal law.)

A. **Referral Process.** *(Note to trainer: trainer should discuss the referral process in his/her state as set out in state statute and/or regulation.)*

1. A child suspected of having a disability should be referred for an evaluation to determine if she is eligible for special education services.
2. Most jurisdictions require that the referral be in writing, and may be made by a teacher, parent, or other service provider.
3. The referral, delineating specific areas of concern, should be sent to the child's school principal or to the school district's special education office.
4. When the school district declines to conduct the requested evaluation, federal law requires that the school district send a notice to the child's parents informing them of their right to a due process hearing to challenge the decision. See 20 U.S.C. §§ 1415(b)(3); 34 C.F.R. § 300.503, 300.507.

B. **Evaluation Process.** See 20 U.S.C. §§ 1414(a)-(c); 34 C.F.R. § 300.126, 300.320-300.321, 300.530-300.543.

1. **The evaluation plan.** Within a set period of time (set by the state) of receiving the referral, the local education agency (trainer should name the LEA in their locality) must prepare a written evaluation plan explaining each type of assessment that the school plans to conduct. The parent then has a fixed period of time within which to send back a written consent to the assessments. For children who have already been assessed and determined eligible for special education services, a reassessment is required every three years.
2. **Who conducts the assessments?** An evaluation must be conducted by a "qualified person." For example, a health assessment should be completed by a credentialed and appropriately trained school nurse or physician. Similarly, a psychological evaluation must be completed by a credentialed school psychologist with appropriate training.
3. **The final product.** An evaluation is intended to be a comprehensive assessment of the child's functioning in all areas of potential concern relating to the suspected disability. The final product must be a written report containing the following information:

- a. a statement of whether the child needs special education services;
 - b. the basis for this determination;
 - c. relevant behavior noted during observation of child;
 - d. relationship of observed behavior to child's academic and social functioning;
 - e. educationally relevant health and development information, including any medical findings;
 - f. for children with learning disabilities, a statement as to whether the discrepancy between achievement and ability is so extreme as to be unremediable without special education services;
 - g. assessment of the effects of cultural, environmental or economic factors.
4. **Reevaluations.** Reevaluations must be conducted at the request of the child's parent or teacher. If not requested by the parent or teacher, they must be conducted at least once every three years.
- C. **Developing an Individualized Education Program (IEP).** See 20 U.S.C. §§ 1412(a)(4), 1414(d), 1436(d); 34 C.F.R. §§ 300.128, 300.340-300.350.
- 1. After a parent has sent back his/her written consent to the school district's proposed assessments, the school has a set period of time within which to conduct the assessments.
 - 2. If, after conducting the assessments, the child is found eligible for special education, the school has 30 days within which to conduct an IEP meeting.
 - 3. Using the information provided in the assessment, a special IEP team analyzes the child's needs and determines what must be done to meet those needs.
 - 4. **The IEP Team:**
 - a. **MUST** include:
 - (1) a representative of the local education agency who is familiar with area resources;
 - (2) the child's special education teacher;
 - (3) the child's regular education teacher;
 - (4) the parent;
 - (5) an individual who participated in the assessment and determined the child eligible for special education services; and
 - (6) the child, if the purpose of the meeting is to plan for transition services.
 - b. **MAY** also include:

- (1) the child;
 - (2) any one else, with the consent of the parent or school officials, with relevant knowledge or expertise. Such persons may include attorneys, probation officers, social workers, or case managers.

5. **The IEP format.** The IEP must be a written statement that includes the following information:
 - a. the pupil's present levels of educational performance;
 - b. measurable annual goals and short-term instructional objectives;
 - c. the special education instruction and related services needed (amount, frequency and setting for services);
 - d. the extent to which the child will not participate in regular educational programs with nondisabled children;
 - e. the date for the commencement of services and anticipated frequency, location, and duration of such services;
 - f. objective criteria and evaluation procedures for determining, on at least a yearly basis, whether the child's instructional goals are being met; and
 - g. a statement of how the parents will be informed of their child's progress.

6. The IEP must be reviewed, and if necessary revised, on at least an annual basis.

VIII. Legal Rights and Proceedings Under IDEA

A. Parental Rights Regarding the Child's Identification, Evaluation, and Placement.

1. **Definition of parent for purposes of special education law.** See 20 U.S.C. §§ 1401(19), 1415(b)(2); 34 C.F.R. §§ 300.20, 300.515.
 - a. A "parent" is legally defined to include a natural or adoptive parent, a guardian (but not the state if the child is a ward of the state), a person acting in the place of a parent (such as a grandparent or step-parent with whom the child lives, or a person who is legally responsible for the child's welfare), or a "surrogate parent."
 - b. A "surrogate parent" is legally defined as a person assigned by the state to act as the child's parent for purposes of special education services, in cases where the parent cannot be located or the child is a ward of the state. A state or school employee may not act as the child's surrogate parent.
2. **Records.** See 20 U.S.C. § 1415(b)(1); 34 C.F.R. §§ 300.501, 300.517. Parents have the right to inspect and review all education records with respect to the identification, evaluation, and educational placement of their child.
 - a. Such records include: attendance records, progress reports, truancy notices, suspension/expulsion notices, report cards, standardized test results, class schedules, evaluation referrals, evaluations, IEP's, and notices of placement.
 - b. Some states may also give the child access to educational records depending on the student's age and the type or severity of the child's disability. Students aged 18 and older have a statutory right to access their records.
3. **Independent Evaluation.** See 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502. If a child is tested by the school and found ineligible for special education, or is found eligible but the parents disagree with the specific test results, then the parents have the right to seek an independent evaluation at public expense, the results of which must be considered by the school in any educational placement decision for that child. The independent evaluation must meet the same standards used by the school in its own evaluations.
4. **Notice.** See 20 U.S.C. §§ 1415(b)(3), (b)(4), (c) and (d); 34 C.F.R. §§ 300.345, 300.501, 300.503-504.
 - a. Before a school either proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational

placement of a disabled student, it must provide written notice -- in the native language of the parents, if feasible -- within a "reasonable" period of time. Such notice must include:

- (1) a description of the action proposed or refused by the school;
 - (2) the basis for the school's decision;
 - (3) a justification for the rejection of alternative options;
 - (4) a description of the assessment techniques/tests and records used in reaching the decision; and
 - (5) any other relevant factors.
- b. When the school informs the parents of a referral for evaluation, reevaluation, an IEP meeting, or upon the filing of a complaint, the school must provide to the parents a "procedural safeguards notice," which includes a full description of:
- (1) the parents' rights regarding independent evaluations;
 - (2) prior notice;
 - (3) parental consent;
 - (4) access to records;
 - (5) how to file complaints and request a due process hearing, mediation or appeal;
 - (6) educational placement alternatives;
 - (7) civil actions and attorney's fees.
5. **Consent.** See 20 U.S.C. § 1414(a)(C); 34 C.F.R. § 300.505.
- a. Informed parental consent is required before a school conducts an initial evaluation, before a school provides special education and related services for the first time, and before the school conducts a reevaluation of the child. The exceptions are cases of reevaluation; parental consent for reevaluation is not required if the school can demonstrate that it took reasonable steps to obtain parental consent and the parents failed to respond.
 - b. The school may not use parental consent to one or more services to deny the provision of other services to which the parents have consented.
 - c. If the parent refuses to consent to an evaluation or reevaluation, and the school remains committed to conducting one, the school may seek mediation or a due process hearing to resolve the dispute, unless state law provides otherwise.
6. **Participation.** See 20 U.S.C. § 1415(b)(1); 34 C.F.R. §§ 300.345, 300.501, 300.552. Parents have the right to participate in meetings with respect to the identification, evaluation, and educational placement of their child.

7. **The “Stay Put” Provision.** See 20 U.S.C. §§ 1415(j) and (k); 34 C.F.R. § 300.514.
- a. If the parents dispute a school’s proposed placement or program, they have a statutory right to have their child remain in her current placement unless the school can reach an alternative resolution with the parents. Legally, the IDEA provision operates as an “automatic injunction” to prevent a school from initiating a change in a child’s placement over parental objections.
 - b. Not every change in educational placement triggers the “stay put” provision; instead, it is only those changes that result in a fundamental reworking of the student’s basic educational program that allow its invocation. Compare *Concerned Parents v. New York City Bd of Ed.*, 629 F.2d 751 (2d Cir. 1980) (holding that transfer of special education classes at one school to substantially similar classes at other schools in same district did not trigger “stay put” rule) with *Lunceford v. District of Columbia*, 745 F.2d 1577, 1582 (D.C. Cir. 1984) (holding that “stay put” is triggered by “a fundamental change in, or elimination of a basic element of the educational program”).
 - c. **Two major exceptions to the automatic “stay put” provision.** See Part IX.D *infra* for discussion.
 - (1) There are two major exceptions to the *automatic* injunction which prevents a school changing a child’s placement over the parent’s objections:
 - (a) School personnel may change the placement of a child who brings a weapon or illegal drugs into school; and
 - (b) A hearing officer may change a child’s placement on a finding that keeping the child in his/her current placement is substantially likely to result in injury to the child or others.
 - (2) *However, a parent can still trigger the stay-put provision by requesting a hearing or appealing the decision.*
8. **Due Process Rights.** See 20 U.S.C. § 1415; 34 C.F.R. §§ 300.506-511.
- a. **Right to a Hearing.**
 - (1) Parents challenging the identification, evaluation, or educational placement of their child or the provision of a free, appropriate public education to their child, are

entitled to a due process hearing before an impartial hearing officer.

(2) Pursuant to the 1997 Amendments to the IDEA, school districts must make mediation available -- at the state's expense -- as an alternative dispute resolution to identification, evaluation or educational placement challenges. However, mediation cannot be used to deny parents a due process hearing and it must be voluntary on the part of the parties.

(3) The child has no standing to demand a hearing, since federal law confers the right to a due process hearing only upon the parent. Thus an advocate for the child may not seek a due process hearing without the parent's cooperation.

b. **Right to Counsel.** Parents have the right to be accompanied and advised by counsel and by experts in the disability field at the hearing.

c. **Right to Confront.** Parents have the right to present evidence and to confront, cross-examine, and compel the attendance of witnesses.

d. **Right to Exclude Evidence.** Parents have the right to prohibit the introduction of evidence that has not been disclosed at least five working days before the hearing.

e. **Right to a Written Record.** Parents have the right to choose either a written or electronic verbatim version of the record, which includes findings of fact and the decision of the hearing officer.

f. **Burden of Proof.** The allocation of the burden of proof at due process hearings varies among jurisdictions. Some jurisdictions allocate the burden of production to the parent and the burden of persuasion to the school. Some jurisdictions assign both the burden of production and persuasion to the school, while other jurisdictions assign both burdens to the parent. Similarly, rules regarding evidence and witnesses vary by state.

g. **Right to Appeal/Bring Civil Action.** If the hearing is conducted by a local educational agency, the parent has the right to appeal to the state educational agency. The parent also has the right to bring a civil action in state or federal court.

B. **The Advocate's Role at a Due Process Hearing.**

1. **Pre-hearing preparation**

- a. **Identify the legal issues.** For each issue identified (inappropriate/untimely identification, inappropriate IEP, inappropriate placement), the child's advocate should make a complete record so that s/he can rely on specific documents and testimony as well as cite the relevant legal authority. Each issue should be tied to a claim for specific relief.
- b. **Filing the complaint/Requesting a hearing.** Federal law requires that the complaint must state the child's name, address, school, fact-based description of the underlying problem, and a proposed resolution. Filing the complaint triggers the hearing.
- c. **Preparing documents.** The child's advocate must obtain and analyze all of the student's records kept by the school. The child's advocate should document each contact with the school system by contemporaneous correspondence, so that every violation of the child's or parent's rights by the school is noted in a letter to the school. This correspondence serves as evidence that the school has failed the child, knew it was failing the child, and did nothing about it.
- d. **Submitting documents.** All documents used in the hearing, as well as all evaluations and evaluation-based recommendations must be submitted to opposing counsel at least five business days before the hearing.
- e. **Preparing witnesses.** The general rules of witness preparation apply to due process hearings. The child's advocate must discuss with the witness his/her planned testimony and prepare that witness for cross-examination. Whether or not the child testifies depends upon the specifics of the case and the child's willingness to do so. The child's advocate can also compel the attendance of school system employees to testify on behalf of the parent.

2. **At the Hearing**

- a. **Arguing the case.** Although due process hearings are less formal than non-jury judicial proceedings, the procedures are very similar. At the opening of the hearing, the presiding official will make formal remarks as required by statute, at which time the parents may also be read their rights. Each party may then make an opening statement (the advocate's opening should state the legal basis for the parent's claim and the relief sought), which is following by the admission of documents, direct and cross-examination of witnesses (including expert witnesses), and finally, closing arguments. At the close of the hearing, the hearing officer may choose to leave the record open for receipt of briefs.

3. **After the Hearing**

- a. **If the decision is favorable.** The decision of the hearing officer, if favorable, is not self-executing. The advocate should ensure that the decision is actually implemented by notifying the appropriate parties with a copy of the decision. If the school still refuses to comply with the decision, counsel can file a § 1983 claim to seek its enforcement by the courts.

- b. **If the decision is unfavorable.** The advocate must determine the merits of an appeal to the state education agency and/or filing a civil action in state or federal court.

IX. **When Special Ed Children Get into Trouble at School: Disciplinary Actions under IDEA.** See generally 20 U.S.C. § 1415; 34 C.F.R. §§ 300.121, 300.300, 300.519-529.

A. **Legal Obligations of the School**

1. **Schools must address child's problem behavior.** The 1997 amendments to IDEA require school personnel to address a disabled child's problem behavior as an educational matter by developing pro-active, interventionist strategies to help the child control his own behavior, rather than responding by simply removing or excluding the child from regular classroom activities.
2. **IEP modification upon suspension or expulsion for disciplinary reasons.** When a school does suspend a disabled child from school or otherwise removes him for disciplinary reasons, school personnel must conduct a behavioral assessment and develop a behavioral intervention plan. If such a plan already exists in the child's IEP, then the IEP team must review the plan and modify it as necessary to address the behavior that prompted the child's removal.

B. **Suspensions (Short-Term Removal) Requirements.** See 20 U.S.C. § 1415(k); 34 C.F.R. §§ 300.523-524.

1. **First-time suspensions.** Services need not be provided to the child, even if s/he is disabled, during the first 10 school days in that school year during which the child is suspended.
2. **Subsequent suspensions once first 10 days are up.** Subsequent short-term removals (not more than 10 days) are permissible as long as:
 - a. It is not a change in placement; and
 - b. Services are provided to allow the child to appropriately advance toward achieving the goals in the child's IEP.

C. **Expulsion Requirements.** See 20 U.S.C. § 1415(k); 34 C.F.R. §§ 300.523-524.

1. **The General Rule.**
 - a. No child with a disability can be expelled for conduct related to or deemed to be a manifestation of that disability.
 - b. A child can be expelled for conduct deemed not to be a manifestation of her disability.
 - c. The right to FAPE includes children with disabilities who have been suspended or expelled from school.

2. **The Procedure.** If the school seeks to remove a child for misconduct, including behavior related to weapons or drugs, the school must first follow this procedure.
 - a. Within 10 days of the school's decision to take action, the IEP team is responsible for determining whether the misconduct was related to, or a manifestation of, the child's disability. The child's parent must be given notice of the meeting and an opportunity to participate. This "manifestation determination" may be reached only after consideration of all of the relevant information, including diagnostic tests, evaluations, the IEP program, and input from the parents and the child.
 - b. The IEP team must find that the cited misbehavior was a manifestation of the child's disability if at least one of the following apply:
 - (1) in relation to the misbehavior, the child's IEP or placement was inappropriate; OR
 - (2) in relation to the behavior, special education services, supplementary aids and services, and behavior intervention strategies were not implemented consistently with the child's IEP or placement; OR
 - (3) the child's disability impaired his/her ability to understand the impact or consequences of the behavior; OR
 - (4) the child's disability impaired his/her ability to control the behavior.
 - c. If the team determines that the misconduct is not a manifestation of the child's disability, the school must then follow the disciplinary procedures applicable to non-disabled students. See Part IX.E *infra*.
 - d. If expelled, services must still be provided to the child to allow him/her to progress appropriately toward the IEP goals.
- D. **Exceptions to the General Expulsion Rules.** See 20 U.S.C. §§ 1415(j) and (k); 34 C.F.R. §§ 300.520-521. The 1997 Amendments to IDEA call for a different approach for students accused of engaging in behavior in school (1) involving weapons or drugs or (2) that is "dangerous," irregardless of whether the misconduct is a manifestation of the child's disability. This approach provides students with fewer rights and gives the school greater flexibility. But even if the child is excluded on one of these two bases, the IEP team must still meet to conduct a manifestation determination and to modify the child's IEP and behavioral management plan to address the problem behavior.

1. **Weapons and drugs.**
 - a. A school may place a disabled child in an “appropriate interim alternative educational setting” for the same amount of time as a non-disabled child (but not exceeding 45 days) if the child:
 - (1) “carries” certain dangerous weapons to school or to a school function; OR
 - (2) knowingly possesses or uses illegal drugs at school or a school function; OR
 - (3) attempts to sell a controlled substance at school or a school function.
 - b. In order to place the child in an alternative interim education setting on these grounds, however, the school must show that:
 - (1) keeping the child in the current placement is substantially likely to result in injury to the child or other children; AND
 - (2) reasonable efforts were made to minimize the risk of harm in the current placement, including the use of supplemental aids and services and these measures were not effective; AND
 - (2) the interim alternative educational placement meets statutory requirements, i.e., it will provide the child with the services needed to appropriately progress toward the goals in his/her IEP.
2. **Dangerous Behavior.** If school personnel wish to change a disabled child’s placement because of dangerous behavior that is a manifestation of that disability, and the parents dispute the school’s decision, the school may seek permission from a hearing officer to place the child in an alternative interim educational setting for up to 45 days. To grant the school’s request, the officer must find that:
 - a. the school system has demonstrated by more than a preponderance of the evidence that keeping the child in the current placement is substantially likely to result in injury to that child or others; AND
 - b. the school system has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of supplementary aids and services; AND
 - c. the alternative interim educational setting meets statutory requirements.

- E. **Due Process Rights in School Disciplinary Exclusions.** See 20 U.S.C. § 1415(k); 34 C.F.R. §§ 300.519-529.

1. **Procedural Rights in Disciplinary Exclusion of Any Student.**

- a. The Supreme Court has held that the amount of due process required varies with:
- (1) the interest at stake;
 - (2) the risk of erroneous deprivation of that interest through the procedures used;
 - (3) the probable value of additional safeguards; and
 - (4) the government's interests, including additional fiscal and administrative burdens. See *Matthews v. Eldridge*, 424 U.S. 319, 333-35 (1976).
- b. Any student suspended for any amount of time is entitled, at a minimum, to:
- (1) some form of notice of the charges;
 - (2) an explanation of the evidence supporting the charges;
 - (3) an opportunity to be heard;
 - (4) an impartial decision-maker; and
 - (5) if the student admits to the misconduct, s/he must be afforded a hearing on the issue of penalty. See *Goss v. Lopez*, 419 U.S. 565 (1975).
- c. If the suspension is for more than 10 days, the Supreme Court has said that more process is due. However, the Court has not further delineated the amount of process due and lower courts have varied widely in their holdings regarding due process requirements for longer-term suspensions. Note to trainer: trainer should discuss what due process protections in school suspensions/expulsions are created by statute, case law and/or regulation in his/her jurisdiction.

2. **Procedural Rights of Special Ed Students in Disciplinary Exclusions.**

Under *Honig v. Doe*, 484 U.S. 305 (1988), exclusion of a special education student from her regular placement for more than 10 days triggers all the rights and procedures ordinarily attendant to placement changes under the IDEA. The 1997 amendments to IDEA and the 1999 changes in the federal regulations incorporate the *Honig* ruling. Thus, a special education student and his/her parent have a number of due process rights, including:

- a. **The right to notice.** The school must provide same-day notice to parents of any decision to change a child's placement for more than 10 days or expel her. Such notice must inform the parents of their procedural rights under the IDEA.

- b. **The right to file a complaint.**
 - c. **The right to have a due process hearing.** Parents can contest the expulsion by requesting a due process hearing. (Or, if the decision was made by a local hearing officer, the parents can appeal that hearing officer's decision to the state education agency.) They are entitled to an expedited hearing if (a) they disagree that the child's behavior was not a manifestation of her disability; or (b) if they disagree with any decision made in the disciplinary context.
 - d. **The right to remain in the current educational placement pending the resolution of administrative/judicial proceedings (the "stay put" provision).** See 34 C.F.R. § 300.524. The "stay put" provision still applies when there are challenges regarding manifestation determinations and disciplinary removals!
 - (1) However, the "stay put" provision is not automatic in disciplinary exclusions. The parent must trigger the "stay put" provision by requesting a hearing or filing an appeal to challenge the disciplinary exclusion.
 - (2) Once the parent has triggered the "stay put" provision, the school must obtain a court order to remove a child from her current placement over parental objection. This requires a showing that maintaining the current placement is substantially likely to result in the injury of that child or other children, despite reasonable efforts to minimize the risk of harm through supplementary aids and services.
3. **Education After Expulsion.** See 20 U.S.C. §§ 1415(k)(1), (2) and (3); 34 C.F.R. §§ 300.519-522.
- a. **Alternative interim placement.**
 - (1) While school officials are entitled to expel a disabled student for reasons unrelated to her disability, the state remains obligated to provide that student with a free and appropriate public education. This generally requires the school to place the child in an "alternative interim educational setting." An "alternative interim educational setting" is defined under federal law as an education environment that enables the child to participate in the general curriculum while continuing to receive the services set out in the IEP as well as any additional services required to address the behavior that triggered the removal from the initial placement.

- (2) In a weapon or drug case, the interim alternative educational setting is determined by the IEP team, which, by definition, includes the child's parents.
- (3) In cases of "dangerous" behavior, the hearing officer, who often acts on the school's recommendation, makes the determination.

b. **What happens following the expiration of an alternative interim placement.** See 20 U.S.C. § 1415(k)(7)(c). Once the interim alternative educational setting has expired, the student is entitled to return to her initial placement. The school can request an expedited hearing to change the child's placement because the child continues to pose a danger. (In expedited hearings, a decision must be mailed to the parties within 45 days of the agency's receipt of hearing request.) The hearing officer can grant the school's request and bypass the stay put requirement only if:

- (1) the school system has demonstrated by more than a preponderance of the evidence that keeping the child in the current placement is substantially likely to result in injury to that child and/or other children; AND
- (2) the school system has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; AND
- (3) determines that the placement sought meets statutory requirements.

Interactive Exercise:

Trainer should pose the following questions for discussion:

- ! Has the juvenile justice system become a dumping ground for problem kids in the school system, who are mostly the mentally and emotionally challenged kids?
- ! Are there legal hooks (i.e., the provisions of IDEA that we just reviewed) to prevent dumping?
- ! How can the actors in the juvenile justice system use the law to prevent dumping?

- ! Have participants encountered special ed children who engaged in behavior in school that led to the school referring the child to the juvenile justice system?
- ! Did the school make a determination that the unacceptable behavior was/was not a manifestation of the child's disability?
- ! Did the school attempt to deal with the problem by modifying the child's IEP and/or behavior management plan? If not, did any of the court actors suggest this as a possible route for dealing with the problem behavior, as opposed to proceeding in the juvenile justice system?

X. **Right to Education in the Juvenile and Criminal Justice Systems**

A. **Ensuring that a special ed child involved with the juvenile justice system receives an appropriate education.**

1. Courts have long held that the IDEA requires that eligible children receive special education and related services regardless of their legal status or location. The 1999 amendments to the IDEA regulations specifically state that IDEA provisions apply to children in state and local juvenile and adult correctional facilities. See 34 C.F.R. § 300.2(b)(1)(iv). However, IDEA does carve out an exception for children ages 18-21 who are in adult prisons. See Part X.D. *infra*.
2. **School districts' obligations to educate children in the juvenile court system, and the overlapping responsibility of the juvenile court.** Under federal law, the state department of education and local educational agencies bear the ultimate responsibility for meeting the special education needs of children. At the same time, the juvenile court has the overlapping responsibilities of providing care, treatment, and rehabilitation to the children appearing before it according to state juvenile codes. While the allocation of responsibility as between these institutions is still somewhat confusing, the laws make clear that juvenile court professionals must work with the schools to ensure that the child's educational needs are appropriately met.

Interactive exercise:

Trainer should pose the following discussion questions:

- ! Has the juvenile court in your jurisdiction developed systemic procedures to address the special education needs of adjudicated youth?
- ! Are there any relevant state laws that set forth procedures for the court to follow when dealing with special education children?

(Note to trainer: trainer should be prepared to provide this information if audience does not proffer it.)

Example: in California, when a juvenile court commits an educationally disabled child to the state Youth Authority, that child cannot be placed in physical custody until the Youth Authority is furnished with a copy of the child's IEP. The juvenile court is further required to assure that the probation officer communicates with appropriate staff at the juvenile court school, county office of education, or special education local planning agency to facilitate this process. When referring a disabled child to any licensed children's institution, the court must notify the special education administrator that the child is eligible for special education.

- ! How do the juvenile court, probation and the schools in your jurisdiction work together, if at all, on providing an appropriate education to special education children involved in the juvenile justice system?
- ! How do these three agencies cooperate/fail to cooperate to ensure that a child meets the terms of his probation?
- ! Are there any interagency agreements or protocols (i.e., some jurisdiction are experimenting with school-based probation officers)?
- ! Is there a lack of systematic cooperation? If so, in what specific areas and what are your suggestions for improving the situation?

B. Parental participation in education decisions when child in detention or in court-ordered placement. The IDEA does not limit parental rights when children are in detention or court-ordered placement as a result of a juvenile delinquency case. Therefore, the parents should be given the same opportunities to participate in the assessment and IEP process.

1. Probation officers and the child's attorney should inquire of the parent about that child's special education needs or if there are any problems the child displays that are indicative of a disability. (Individuals can use some of the checklists provided during this training to determine if a child may have an undiagnosed special education need.) Probation officers and the child's attorney should obtain from the parent a copy of the child's most recent IEP, and provide this IEP to the facility.
2. Parents have a right to be involved in the development of a new IEP -- including participation in the IEP meeting -- while the child is in state custody. Juvenile court professionals involved in the case should facilitate the parent's involvement by arranging for transportation to the facility, or by setting up conference calls if the facility is far away.
3. Parents have the right to ask for a reevaluation of their child if they feel it is warranted.
4. Parents have the right to access their child's education records at the correctional facility.
5. Whether a parent retains the right to consent/decline specific education services for his/her child when the child is in court-ordered placement depends, in part, on whether legal custody of the child has been transferred to the state as part of the child's disposition.
 - a. If legal custody of the child has been transferred to the state, federal law requires that a "surrogate parent" be appointed by the school district; the "surrogate parent" will then have the authority to make special education decisions on behalf of the child. 20

U.S.C. § 1415(b)(2); 34 C.F.R. § 300.515. Federal law prohibits the appointment of a government agency or government employee as a "surrogate parent." In theory, the school district can appoint the child's parent to act as a "surrogate parent." The more difficult question to answer is whether and to what extent the parent can continue to exercise control over the child's special education program once the child is in the legal custody of a state and another adult has been appointed as "surrogate parent."

- b. If legal custody of the child has NOT been transferred to the state and is still with the child's parent, the parent should be able to continue making special education decisions. State statutes and local regulations may have some influence. (*Note to trainer: trainer should flag any relevant state statutes and regulations.*)
6. Whether parents have the right to challenge their child's exclusion from a facility school for disciplinary reasons is a difficult question to answer. Theoretically, they do, within the limits described in Part X.B.5 *supra*. Advocates can challenge a facility's decision to exclude a child from school on the grounds that the exclusion violates the goals of rehabilitation and treatment in that jurisdiction's juvenile act. Moreover, a disciplinary exclusion for behavior that is related to the child's disability may violate the Americans with Disabilities Act. *See, e.g., Pa. Dep't of Corrections v. Yeskey*, 524 U.S. 206 (1998) (holding that Title II of the ADA, prohibiting "public entity" from discriminating against "qualified individual with a disability" on account of that individual's disability, applied to inmates in state prisons).
- C. **Aftercare: Placing Children in Community Schools upon Their Release from Court-ordered Placements.** (*Note to trainer: trainer should be prepared to identify the procedures by which probation officers and/or defense counsel can re-enroll children in community schools upon their release from court-ordered placement.*)
 - D. **Children in Adult Facilities.** See 20 U.S.C. §§ 1412(a)(B), 1414(d)(6), 1416; 34 C.F.R. § 300.311.
 1. The 1997 Amendments to the IDEA circumscribe the state's obligation to provide special education and related services for children incarcerated in adult facilities. While the state is not relieved of its responsibility altogether, it has far greater leeway regarding the services it seeks fit to provide.
 2. Specifically, the 1997 Amendments authorize the states to exclude entirely from FAPE eligibility children 18-21 who are incarcerated in adult facilities if: (1) in the educational placement preceding incarceration, the child was not identified as disabled; or (2) the child did not have an IEP.

3. For children aged 18-21 in adult facilities, the states have no affirmative obligation to identify new disability cases within this age-bracket as disabled in order to provide such children with special services. Nor does the fact that a child was diagnosed as disabled at some point in the past guarantee her special education if she was not eligible at the time of incarceration.
4. The state must provide special education to 18-21 year old children deemed eligible at the time of incarceration if they also have a pre-existing IEP. BUT SEE #5 BELOW.
5. **The Withholding Formula.** Under the 1997 Amendments, states are permitted to deny the provision of all special education services to children incarcerated in adult facilities while incurring only a small financial penalty. The governor is permitted to shift the responsibility for meeting IDEA requirements from the state educational agency to another agency, most likely the Department of Corrections. If the state then decides to discontinue all special education services, the federal government may withhold state money only in the amount to which those children would otherwise be entitled according to their pro rata share, determined by the percentage of the overall educationally disabled population. (*Note to trainer: trainer should advise participants of the situation in his/her jurisdiction.*)
6. **Other Modifications under the 1997 Amendments.** If states do decide to continue providing special education services to children incarcerated in adult facilities, the states
 - a. do not need to ensure that these children have access to standardized statewide educational testing.
 - b. do not have to provide "transition services" to incarcerated children who will be older than 22 at the time of release from prison.
 - c. can change a child's IEP upon a showing of "a bona fide security or compelling pedagogical interest that cannot otherwise be accommodated."

Interactive exercise:

Trainer should pose the following question for discussion:

Should the lack of special education services in adult facilities influence the transfer/direct file decision?

E. The Relevance of a Child's Special Education Status in Key Juvenile Court Decisions

1. **Detention.** A child's special education status and history may be relevant to detention decisions. For example, if the child is enrolled in a special education program, it may be appropriate to argue that the child should remain in the community to avoid disrupting her receipt of services. One way to accomplish this while taking into account competing concerns such as safety or rehabilitation is to place disabled children under restrictive home supervision pending the outcome of the delinquency proceedings.
2. **Adjudication.** A child's special education status may be relevant to competency decisions (i.e., competence to stand trial, competence to waive constitutional rights). An entire separate module is devoted to competency issues, so it is not discussed at length here.

Interactive Exercise:

Trainer should pose the following question for discussion :

What difficulty, if any, do juvenile court professionals have in bringing up the child's special education needs at different points in court proceedings?
3. **Disposition.** Education may be the single most important service that the juvenile court, in its rehabilitative capacity, can offer delinquent children. If the child is adjudicated, a variety of sanctions and rehabilitative services may be provided. The court's order should dovetail with the assessment needs articulated in the child's IEP and other relevant evaluations. All participants in the juvenile court system bear collective responsibility for ensuring that dispositional placements take into account the child's special education needs. There should be a clear allocation of responsibility of completing the following tasks to accomplish this goal: interviewing the child and the parents, using educational/mental health experts, investigating educational services at potential placements, and coordinating juvenile court proceedings with the child's IEP team.

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Loren Warboys, Esq., et al., CALIFORNIA JUVENILE COURT SPECIAL EDUCATION MANUAL. San Francisco, CA: Youth Law Center (1994).

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APPENDIX A

**Diagnostic Tools for Identifying Disabilities: Learning Handicap Checklist
for Determining if a Child is Learning Disabled, Mentally Retarded/Developmentally
Delayed and/or has Attention Deficit Disorder**

*Reproduced from the CRIMINAL JUSTICE TRAINING WORKBOOK FOR IDENTIFYING
AND ACCOMMODATING LEARNING AND DEVELOPMENTAL DISABILITIES,
by Nancy Cowardin, Ph.D
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Diagnostic Tools for Identifying Disabilities: Learning Handicap Checklist

Academic Deficits (poor or failing school grades):

Does the child:

	<u>LD</u>	<u>MR</u>	<u>ADD</u>
Have a record of poor to failing grades despite adequate elementary school attendance?	/	/	/
Not read or write well?	/	/	/
Have a history of special education classes?	/	/	/
Have a school record of low yearly achievement scores?	/	/	/
Have a "flat," sub-average academic profile (shows no areas of strength)?	/	/	/
Have a "spiky" profile (showing both high and low levels of skill across academic subjects)?	/	/	/

Intellectual Abilities (appears unintelligent or slow):

Does the child:

	<u>LD</u>	<u>MR</u>	<u>ADD</u>
Lack general, age-appropriate information?	/	/	/
Have a history of late development in walking/talking?	/	/	/
Exhibit low IQ scores?	/	/	/

Attention Deficits (doesn't pay attention to what is said or what is going on):

Does the child:

	<u>LD</u>	<u>MR</u>	<u>ADD</u>
Get easily distracted from task at hand?	/	/	/
Have trouble focusing/paying attention?	/	/	/
Have a high level of physical activity?	/	/	/
Have a need for constant redirection or prompting to complete tasks?	/	/	/
Exhibit self-stimulating behaviors while working, such as tapping, rocking, noise-making?	/	/	/
Take (or took at one time) Ritalin or Cylert?	/	/	/

Language Deficits (it is difficult to understand and/or communicate with the child):

Does the child:

	<u>LD</u>	<u>MR</u>	<u>ADD</u>
Need constant restatement or simplification of questions and directions?	/	/	/
Have a limited vocabulary to express thoughts?	/	/	/

Talk a lot while making little sense?

' ' '

Lack correct labels for nouns/verbs, or use incorrect ones?

' '

PAGE 1 TOTALS

— — —

Diagnostic Tools for Identifying Disabilities: Learning Handicap Checklist (continued)

Page 2

Physical Disabilities:

	<u>LD</u>	<u>MR</u>	<u>ADD</u>
Does the child have speech/articulation problems?	'	'	
Does the child have brain damage/head injury?	'	'	'
Did the mother take drugs during pregnancy?	'	'	'
Is the child a twin?	'	'	'
Was the child born prematurely and/or have a low birth weight?		'	
Are there family members with similar disabilities?	'		'
Is there a history of birth trauma/injury?	'	'	
Do medical records show chromosomal disorder?		'	

Adaptive Skill Deficits:*Does the child need assistance from others to do the following:*

	<u>LD</u>	<u>MR</u>	<u>ADD</u>
Communicate information?	'	'	'
Accomplish self-care tasks, i.e., grooming, hygiene, dressing?			'
Behave appropriately for his/her for age level?	'	'	'
Housekeeping and cooking?		'	
Find out about and use community resources?		'	
Make appropriate choices for self?		'	'
Maintain responsible health and safety practices?		'	
Apply academic skills to daily living?	'	'	
Engage in work/leisure activities?		'	

Social/Behavioral Deficits:*Does the child exhibit any of the following behaviors:*

	<u>LD</u>	<u>MR</u>	<u>ADD</u>
Misinterprets facial expressions, social gestures, environmental cues?	'		
Impulsivity (i.e., rapid, poorly thought out decisions/actions)?	'		'
Difficulty planning and/or completing and executing plans?	'		'
Emotional mood swings?	'		'
A need for outside direction in a crisis?	'	'	'
Is used by peers as a scape-goat or "go-for"?	'	'	
Is easily led by others to get into trouble?	'	'	
A lack of confidence in decision making abilities?		'	
Feels (or is) unpopular, friendless, rejected by peers?	'	'	

PAGE 2 TOTALS

_____	_____	_____
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Special Education

	<u>LD</u>	<u>MR</u>	<u>ADD</u>
PAGE 2 TOTALS	—	—	—
+			
PAGE 1 TOTALS	—	—	—

	<u>LD</u>	<u>MR</u>	<u>ADD</u>
FINAL TOTALS	—	—	—

Key:

- LD: Learning Disabled*
- MR: Mental Retardation*
- ADD: Attention Deficit Disorder*

<u>LD</u>	<u>MR</u>	<u>ADD</u>
,	,	,

Note: Clients may exhibit characteristics of more than one disability.

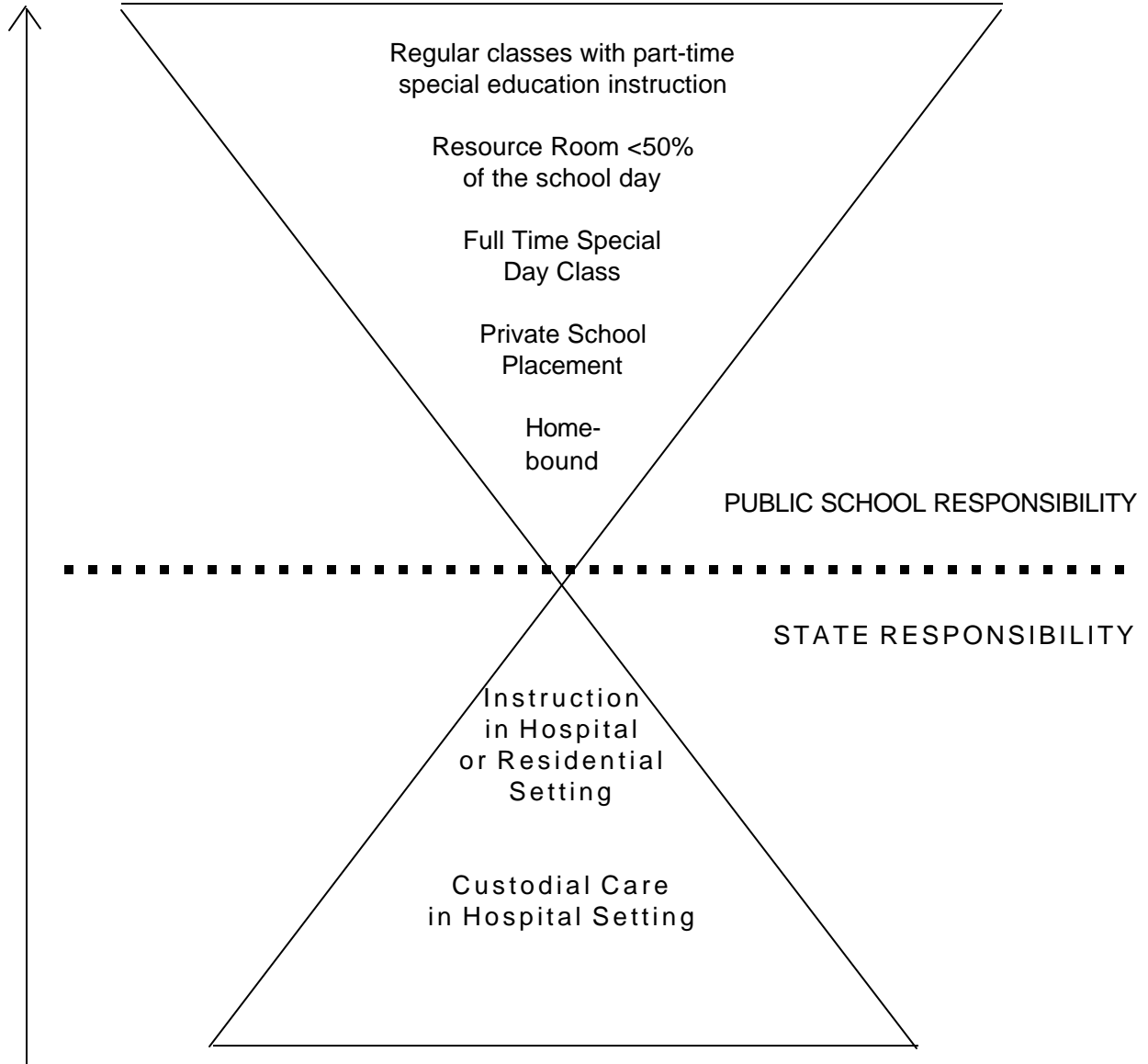
APPENDIX B

Overhead: Cascade Model of Special Education Services

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AND ACCOMMODATING LEARNING AND DEVELOPMENTAL DISABILITIES,
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CASCADE MODEL OF SPECIAL EDUCATION SERVICES

L.R.E.



APPENDIX C

Overhead: Susceptibility Theory

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SUSCEPTIBILITY THEORY

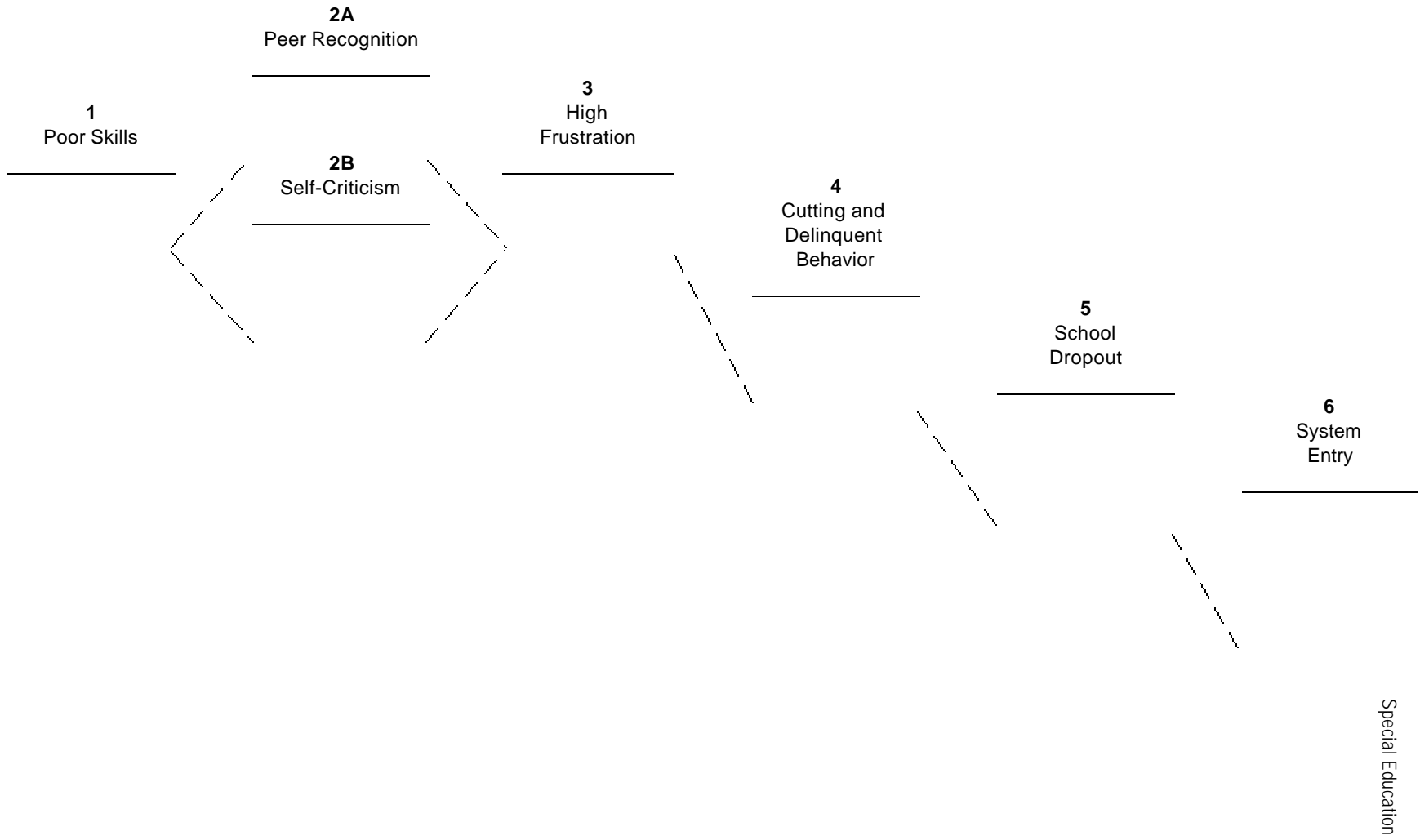
Reduced Cognitive Ability	Language Immaturity	Developmental and Academic Lags	Social Perception and Problem-Solving Deficits	Interpersonal Skill Deficits
Lower Average IQ	Reduced Self Talk	Immature/Missing Cognitive Strategies	Misinterpreted Social Cues	Social Abrasiveness
Poor Decision Making Skills	Deficient Verbal Mediation Skills	Information Processing Deficits	Reduced Empathy and Role-taking Skills	High Suggestibility
Increased Probation Violations and Recidivism	Need for Outside Coaching or Direction	Illiteracy and other Skill Deficits	Poor Planning Skills Inability to Generate Adaptive Solutions	Inattention, Distractibility, and Impulsivity

APPENDIX D

Overhead: School Failure/ School Frustration Theory

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SCHOOL FAILURE/SCHOOL FRUSTRATION THEORY



APPENDIX E

Alternate Wording for Standard Juvenile Probation Conditions

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ALTERNATE WORDING: Juvenile Conditions of Probation
 (Check Conditions Being Recommended)

1. ___ Obey the law. Do everything your Probation Officer (P.O.) says.
2. ___ Do what _____ says.
3. ___ Come to see your P.O. when she/he tells you to.
4. ___ Tell you P.O. if you move, change schools or jobs.
5. ___ Get a job.
6. ___ Don't _____.
7. ___ Don't leave home without permission.
8. ___ Work for _____ hours.
9. ___ Go to school and get good grades. Tell your P.O. when you are absent.
10. ___ Don't go near any school but your own.
11. ___ Don't leave your house between ___ and ___ unless your parents say it's OK.
12. ___ Don't leave home for more than one day unless your P.O. says it's OK.
13. ___ Don't hang around with _____.
14. ___ Don't be in a gang.
15. ___ Don't have a gun/weapon or be with anyone who does.
16. ___ Don't talk to or go near anyone who testified in your case.
17. ___ Don't be with little children under _____ years old.
18. ___ Don't drink any alcohol.
19. ___ Go to drug/alcohol counseling.
20. ___ Don't use drugs and stay away from places where people do.
21. ___ Don't use/have a beeper
22. ___ Don't be with people who sell drugs.
23. ___ Take drug tests at any time your P.O. says to.
24. ___ Take drug tests any anytime a policeman says to.
25. ___ Let the police or your P.O. search you or your house any time they ask to.
26. ___ Go to counseling.
27. ___ Pay \$_____ to the County.
28. ___ Pay for what you took/broke/_____.
29. ___ Pay back the \$_____ you owe.
30. ___ Don't drive without a license and insurance.
31. ___ Don't drive at all.
32. ___ You can only drive to school/work and back.
33. ___ Give your driver's license to the court clerk.
34. ___ Don't use a fake name.
35. ___ Don't write any checks or carry credit cards.
36. ___ Go to counseling with your parents.
37. ___ Your parents must take ten parent education classes before _____, and prove they graduated.
38. ___ If you don't follow these rules, you will go to juvenile hall for at least ___ days, up to ___ days.
39. ___ Go to the work services program for _____ days.
40. ___ Go to juvenile hall for a medical check up:
 _____ Location #1 _____ Location #2 _____ Location #3
41. ___ Other _____.

APPENDIX F

Packet of Materials for Simulation Exercise #1

*Reproduced from
"The F.A.T. (Frustration, Anxiety and Tension) City Workshop"
Copyright 1989 by Richard D. Lavoie*

(Note to trainer: trainer should photocopy the attached packet of materials on various colored paper so that each packet contains pages in an assortment of colors.)

APPENDIX G

Photo for Simulation Exercise #2

APPENDIX H

Materials for Simulation Exercise #3

Reproduced from
"The F.A.T. (Frustration, Anxiety and Tension) City Workshop"
Copyright 1989 by Richard D. Lavoie

Contents:

1. Table of Words
2. Text #1
3. Text #2

TABLE OF WORDS

are
between
consists
continuously
corresponding
curve
draws
variation
graph
if
isolated
known

making
only
often
with
one
points
relation
set
tables
values
variables

TEXT #1

If the known relation between the variables consists of a table of corresponding variables, the graph consists only of the corresponding set of isolated points. If the variables are known to vary continuously, one often draws a curve to show the variation.

TEXT #2

Last Serny, Flingledobe and Pribin were in the Nerd-link treppering gloopy caples and cleaning burly greps. Suddenly, a ditty strezzle boofed into Flingledobe's tresk. Pribin glaped and glaped, "Oh, Flingledobe," he chafed, "that ditty strezzle is tunning in your grep."

Questions for participants:

When did the story take place?

Who was Flingledobe with?

Where were they?

What were they "treppering"?

What were they cleaning?

What kind of "strezzle" arrived?

What did the "strezzle" do?

Where did the "strezzle" "boof"?

APPENDIX I

Drawing for use with simulation exercise #4.

APPENDIX J

Fictional letter "tedra" for use in simulation exercise #5.



APPENDIX K

Figure for use with simulation exercise #7.

b

APPENDIX L

Overhead: Prevalence of Learning Handicaps in Juvenile Populations

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PREVALENCE OF LEARNING HANDICAPS IN JUVENILE POPULATIONS

	GENERAL POPULATION	OFFENDER POPULATION	ALMANSOR CAMP DATA	% ARRESTED 5 YRS. POST HIGH SCHOOL
EMOTIONALLY DISTURBED	2%	16.2%		57.6%
LEARNING DISABLED	3-6%	36% 30-50%	17.5%+ 38%++ 55.7%+++	31.0%
MENTALLY RETARDED `	2-3%	9.5%	3%	18.1%
VISUALLY HANDICAPPED	.1%	1.6%		3.7
HEARING IMPAIRED	.5%	1.4%		12.9
OTHER DISABILITIES	4.1%	2.8%		12.7%

* National Center for State Courts (1982)

** Statistics compiled from 55% of reviewed studies (Brier, 1989)

+ Students who qualify in all 3 academic areas

++ Students who qualify in 2-3 academic areas

+++ Students who qualify in 1-3 academic areas

APPENDIX M

*Information on how to obtain a video copy of
"The F.A.T. (Frustration, Anxiety and Tension) City Workshop,"
Produced by Peter Rosen Productions Inc.
for the Eagle Hill School Outreach Program, Greenwich, Connecticut
Copyright 1989 by Richard D. Lavoie*

APPENDIX N

Case profile of Bobby Carlisle

Bobby Carlisle is a 14 year old boy who lives in XYZ Suburb and attends the Carver Middle School. He is before the City Juvenile Court on a charge of indecent assault and battery, stemming from an allegation that he touched a girl inappropriately on a school bus. You know the following about Bobby from a psychologist who examined him:

Bobby's early speech was marked by stuttering, and Bobby now has significant language development problems. The most recent psychological testing found a full scale IQ of 65 (verbal 62, performance 73), consistent with overall mild mental retardation, especially in language related areas. He has shown consistent serious difficulty both with expressive and receptive language functions. His attention is adequate for simple stimuli, but when tasks become even moderately complex, he is not able to maintain attention and becomes more impulsive. His school functioning has been poor both in learning and in conduct.

He has demonstrated hyperactive and disruptive behavior in school and at home from preschool years, and problems with impulse control and aggressive conduct with resulting conflict with mother and sister (age 10). From about age four he had a preoccupation with matches which reportedly came close to causing serious fires. This abated at about age eight (along with his stuttering); at that time (by mother's report) his aggressive and impulsive behavior got worse.

In recent years his family has raised concerns about Bobby's safety and their own, because of his impulsiveness and aggression. He has had difficulty in the past maintaining himself in after school and summer programs because of his behavior. Over the years, Bobby has been treated with a variety of medications -- including Wellbutrin, Ritalin, and Dexedrine -- without any definitive benefit.

According to Bobby's mother, Bobby has no friends his own age. Instead, Bobby tends to hang out with the younger boys on his block.

Bobby's mother has a long history of drinking and, as a result, Bobby had significant fetal alcohol exposure. (Bobby's mother reports that she has been sober for the last 12 years.) A neurological evaluation last year found no basis for concern about organic brain pathology. CT scan of the head done this year was normal.

At the psychologist's first meeting with Bobby, Bobby related in a pleasant and cooperative but very passive manner. He frequently yawned and seemed tired, and maintained a general demeanor of dull, bland puzzlement through most of both interviews. He offered almost no spontaneous speech, and was responsive to questions only with one or two word answers, or with an occasional sentence. It was common that he did not respond to questions at all until he was prompted with multiple choice options. His responses to such questions were consistent over time, suggesting that they were valid indicators of his thoughts; but these responses may at times have reflected his perception of what was expected.

In general his affect was calm and showed little variation, and he appeared to be somewhat sedated. He did show indications of explicit anxiety when considering the possibility

of going to jail, and of embarrassment when discussing the specifics of the charges against him. He became somewhat less responsive and more oppositional in a subtle and passive way after about an hour of the second interview, when speaking of dispositional options; he replied "Yes" when asked if he was tired. He offered little enough spontaneous speech that it was not possible to determine the presence or absence of disorganized thought or bizarre thought content or perception from his speech; but he did not describe any such abnormalities, and he did not manifest any of the signs of agitation or emotional instability which commonly accompany disordered thought or perception.