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Education Law into Practice
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THE IDEA AND INCARCERATED YOUTH[a1]

Introduction

The primary issues under the Individuals with Disabilities Education Act (IDEA)[1] are identification and free appropriate public education (FAPE).[2] Identification consists of the three successive and interlocking components of child find, evaluation, and eligibility.[3] In turn, for students who are eligible, FAPE consists of special education and related services, as documented in an individualized education program (IEP).[4]

Filling a gap in the legal literature,[5] this article provides a compact yet comprehensive canvassing of the limited IDEA provisions and directly related judicial case law specific to incarcerated youth.[6] This category of students within the Part B provisions for elementary and ***21** secondary education consists of two subcategories within the applicable ceiling for eligibility:[7] (1) those students who are housed in correctional facilities as part of juvenile justice and (2) those who are incarcerated in adult prisons.

The IDEA's rather skeletal framework and the relatively limited case law specific to incarcerated youth are summarized here for each of the two respective subcategories.[8] The abbreviated subheadings refer to these subcategories in terms of their differentiated institutional contexts.

Juvenile Correctional Facilities

IDEA Framework

For the first subcategory, the obligations are almost the same as for students in public school districts. The first difference applies to not only this subcategory but also the other subcategory of incarcerated youth. Specifically, the parental rights transfer to the IDEA-eligible individual upon reaching the age of majority regardless of whether the individual is "incarcerated in an adult or juvenile Federal, State, or local correctional institution."[9]

Court Decisions

In a sixteen-year old's suit against a juvenile detention center for not providing him with any educational or mental health services during his forty-eight-day stay, the Fifth Circuit upheld the hearing officer's dismissal of his IDEA claim because the detention center was not the proper defendant.[10] Instead, per the relevant state law and an interagency agreement, the ***22** responsible entity was the local education agency.[11]

Illustrating the responsibility of the local education agency in a broad-based class action, a federal district court in New York certified a class of sixteen- and seventeen-year-olds incarcerated in juvenile detention facilities, including a subclass of those who were IDEA-eligible, and issued a preliminary injunction that included an order for the designated school district, along with the other defendants, to "IMMEDIATELY afford all juveniles with qualifying disabilities under the IDEA with the special education services and procedural protections to which they are entitled."[12] Similarly and soon thereafter, the same court certified a class action for sixteen- and seventeen-year-olds who were frequently subject to solitary confinement in another New York correctional facility, including a subclass who were IDEA-eligible, and issued a preliminary injunction for sixteen- and seventeen-year-olds that ordered the defendants to "IMMEDIATELY ensure all juveniles have access to at least three hours of educational instruction each day as well as any IDEA-mandated special education and related services.[13] Citing both of these decisions, a federal district court in Indiana similarly certified a for juvenile detainees who were subject to solitary confinement in a juvenile justice center, including an IDEA-eligible subclass, although the published decision did not extend to a preliminary injunction.[14] In contrast, a federal district court in Pennsylvania denied certification to a broad-based class of youth involuntarily detained at a now closed juvenile delinquency center, including the special education subclasses.[15] One of the reasons was the need to determine on an individual basis these subclasses' FAPE and compensatory education claims.[16]

Further, in a decision that implicitly extended to juvenile correctional facilities by relying on the IDEA provisions more generally rather than those specific to adult correctional facilities, a federal district court in Georgia directly showed that the responsibility of local education agencies is not exclusive.[17] More specifically, in this class action case, the court ruled that the county sheriff, who was solely responsible for access to the school district's IDEA-eligible students is jointly liable for systemic violations to them while they were retained in her jail.[18] However, the court reduced the scope of the remedial orders in the subsequent permanent injunction based on the sheriff's resource constraints and security concerns, declining the plaintiff's proposed requirements for formal child find policies and procedures and for extensive arrangements for special education services beyond access to requisite materials along with scheduled and virtual special education services.[19]

Finally, an unpublished interim decision by a federal district court in California, which stayed enforcement pending appeal of a cluster of hearing officer decisions that awarded compensatory and system relief to inmates with disabilities in juvenile correctional facilities, ***23** illustrated the potential role of state law as to the responsible entity.[20] More specifically, the court ruled whether the Ninth Circuit's interpretation of a California law specific to the responsible agency for special education services for adult inmates with disabilities applied to the juvenile corrections context represented a serious legal question meriting the stay.[21]

Adult Correctional Facilities

IDEA Framework

In addition to the abovementioned transfer of parental rights,[22] various other differences from students in school districts apply to IDEA-eligible individuals in adult prisons. In approximately descending order of significance, the first difference is that the IDEA excludes from the FAPE requirements those inmates who are (a) aged 18 through 21, unless state law provides otherwise, and (b) either not previously identified as eligible under the IDEA or did not previously have an IEP.[23] Second, for those not thereby excluded, the IDEA provides that the IEP team may "modify" the IEP and placement despite the FAPE obligation upon demonstrating "a bona fide security or compelling penological interest that cannot otherwise be accommodated."[24] Third and less significantly, the IDEA also provides that the requirements for systemwide assessments and transition services do not apply to the subset of those eligible students incarcerated in adult prisons who are *convicted as adults* under State law and incarcerated in adult prisons" (emphasis added).[25]

Finally, as an overall organizational matter, the IDEA delegates to the state education agency (SEA) the general supervisory responsibility for ensuring compliance, with an express exception for the governor or other duly designated representative to assign to another state agency, consistent with state law, the responsibility for compliance with the requirements applicable to IDEA-eligible individuals "who are *convicted as adults* under State law and incarcerated in adult prisons."[26] In cases where this responsibility is duly assigned to another state agency, the IDEA authorizes the U.S. Department of Education to take corrective action, within specified limits, upon finding that said agency has failed to assure substantial compliance with the requirements specific to this subset of the second subcategory.[27]

***24 Court Decisions**

Based on the qualified modification provision for bona fide security or compelling penological interest,[28] a federal district court in Pennsylvania issued an officially published decision that ruled that the responsible agency denied FAPE to a convicted prisoner in an adult correctional facility who (a) had an IEP before and after incarceration and, due to his repeated serious infractions while in incarceration, (b) was in a special unit that restricted him to his cell for 23 hours each day.[29] Disagreeing with the corresponding ruling of the hearing officer about the interpretation of the IDEA provision upon a bona fide security interest,[30] the court concluded that the defendant's blanket policy requiring in-cell self-study packets did not constitute a particularized determination of an accommodation and even if the requisite interest was not accommodable, the modified IEP and negligible services amounted to effective nullification rather than the authorized modification.[31] As a result, the court awarded the plaintiff full days of compensatory education for the time he was in the restricted unit.[32]

More recently, a federal district court in the District of Columbia revisited this qualified modification provision in the context of an inmate who had an IEP since elementary school and who was in a federal prison in West Virginia. First, the federal district court ruled that, as the "state," the District of Columbia, not the federal Bureau of Prisons (BOP), was responsible to provide FAPE to youth convicted as adults and in custody of the BOP.[33] Rejecting the defendant's policy arguments that it would be difficult to access such inmates, the court pointed to pragmatic forms of relief, such as compensatory education awards and funding arrangements with private contractors or the federal Bureau of Prisons.[34] Subsequently, in granting the plaintiff's motion for summary judgement and remanding the matter to the hearing officer for an appropriate remedy, the court addressed the District of Columbia's argument that its failure to provide the plaintiff with special education services was merely a harmless procedural violation based on the qualified modification provision of the IDEA.[35] More specifically, the District of Columbia argued that based on it bona fide security or compelling penological interest it was permitted to modify the plaintiff's IEP and services and although it had failed to modify the plaintiff's IEP, he had participated in the BOP's GED program, thus allegedly suffering no substantive loss. In rejecting this argument, the court cited the foregoing Pennsylvania ruling that the "modify" does not mean nullify and, alternatively, that even if the defendant had demonstrated a bona fide security or compelling penological interest, it failed to show that the interest could not be accommodated without modifying plaintiff's IEP.

For the separate question of responsibility for the special education services for students aged eighteen to twenty-two incarcerated in county jails,[36] the Ninth Circuit's answer was the school district where the student resides, but the court reached that answer based on a broad interpretation of the California statute that was specific to special education students within ***25** this age range but did not mention correction facilities.[37] In reaching this conclusion, the court cited and found no conflict with the aforementioned IDEA exclusionary provision because the plaintiff student previously had an IEP and the inferable Congressional intent was to leave the decision of the responsible agency to the states.[38] In response to the defendant district's policy arguments, the court concluded that "any potential difficulties arising from designating the school district in which the county jail inmate's parent resides as the entity responsible for providing special education and related services in a county jail may be overcome by the school district's ability to contract with another school district or agency to deliver the necessary services."[39]

Finally, the federal district court for the District of Columbia provisionally certified a class of inmates aged eighteen to twenty-two with IEPs in adult correction facilities who received only work packets rather than their IEP-specified services during the COVID-19 pandemic and (b) issued a preliminary injunction in the plaintiffs' favor.[40] Eight months later in the wake of continued noncompliance with the preliminary injunction, the court found the defendants in contempt.[41] Although not granting all of the relief that the plaintiffs requested, such as adding a uniform block of compensatory hours for each student, the court ordered the defendants to provide within one month individualized plans for rectification and a fully operational system for synchronous virtual special education services as well extension beyond age twenty-two for the period of the delay.[42]

Conclusion

In sum, although the broader history of the IDEA and incarcerated youth extends to a long line of class action settlements[43] and other generally plaintiff-favorable marginal legal sources,[44] the limited but largely plaintiff-favorable judicial case law centrally shows that both juvenile and adult correctional facilities are a ripe target for further litigation in many jurisdictions both on the individual and class-action level. It is undeniable that in the wake of the well-recognized school-to-prison pipeline[45] and the strapped resources and the ***26** penological structure of corrections facilities at both the juvenile and adult level,[46] students with disabilities are disproportionally overrepresented and patently underserved.

Footnotes

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1 20 U.S.C. §§ 20 U.S.C. §§ 1401-82.

2 *See, e.g.*, Perry A. Zirkel, *Special Education Law: Illustrative Basics and Nuances of Key IDEA Components*, 38 Teacher Educ. & Special Educ. 263 (2015) (tracing the primary components of the IDEA).

3 *Id.* at 264-68.

4 20 U.S.C. §§ 1401(9), 1401(14), 1414(d)

5 With the partial exception of Allan Osborne et al., *IDEA Entitlement for Youth Incarcerated in Adult Facilities*, 344 Educ. L. Rep. 572 (2017) (analyzing examples of the previous case law without specific distinction of juvenile and adult correction facilities), the previous legal scholarship is limited to advocacy of alternatives to, rather than analysis of, the specifically pertinent provisions of the IDEA and the directly related judicial case law. *E.g.*, Seth E. Packrone, *Educational Death Sentences: Addressing the Plight of Students with Disabilities in Adult Jails and Prisons*, 59 Harv. Civ. Rts.-C.L. L. Rev. 103 (2024) (advocating IDEA amendments and litigation to remedy the plight of inmates with disabilities in adult prisons); John Bignotti, Comment, *The Proactive Model: How to Better Protect the Right to Special Education for Incarcerated Youth*, 98 Indiana L.J. 14 (2023 Supp.) (advocating amending the IDEA with a proactive model for incarcerated youth); Lauren A. Koster, Comment, *Who Will Educate Me?: Using the Americans with Disabilities Act to Improve Educational Access for Incarcerated Juveniles with Disabilities*, 60 B.C. L. Rev. 673 (2019) (advocating use of the ADA as a more effective litigation tool than the IDEA); Jillian Morrison, Comment, *Juvenile (In)Justice: Reaffirming the IDEA's Application in the Juvenile Correctional Context*, *42* Child. Rts. J. 96 (2022) (advocating broad application of the IDEA's

disciplinary protections to students with disabilities in juvenile correctional facilities); Jennifer A.L. Sheldon-Sherman, Comment, *The IDEA of an Adequate Education for All: Ensuring Success for Incarcerated Youth with Disabilities*, 42 J.L. & Educ. 227 (2013) (describing a consent decree in California as an illustrative but not exhaustive model for systematic reform for incarcerated youth with disabilities).

6 For examples of judicial case law that is more general to incarcerated youth, *see* Handberry v. Thompson, 446 F.3d 335 (2d Cir. 2006) (upholding provisions based on federal law of injunction stemming from long-standing class action litigation that includes but was not limited to students with disabilities); T.G. v. Kern Cnty., 2020 WL 3035199 (E.D. Cal. June 5, 2020), *with amendment*, 2023 WL 5242359 (E.D. Cal. Aug. 15, 2023); Adam X. v. N.J. Dep't of Educ., 2022 WL 621089 (D.N.J. Mar. 3, 2022); G.F. v. Contra Costa Cnty., 2015 WL 7571589 (N.D. Cal. Nov. 25, 2015) (approving class action settlements for incarcerated youth under the IDEA and Sec. 504/ADA); Alexander S. v. Boyd, 876 F. Supp. 773, 98 Educ. L. Rep. 872 (D.S.C. 1995) (ruling that certain conditions of incarcerated youth, including but not limited to those with disabilities violated their constitutional and statutory rights and to allow the parties to determine a remedial plan); Donnell v. Ill. State Bd. of Educ., 829 F. Supp. 1016 (N.D. Ill. 1993); Unified Sch. Dist. 1 v. Conn. Dep't of Educ., 780 A.2d 154, 157 Educ. L. Rep. 237 (Conn. App. Ct. 2001); Conn. Unified Sch. Dist. #1 v. Dep't of Educ., 1996 WL 488857 (Conn. Super. Ct. Aug. 12, 1996) (ruling that the IDEA applies to pre-trial detainees and upholding the resulting remedy of compensatory education); Green v. Johnson, 513 F. Supp. 965 (D. Mass. 1981) (granting preliminary injunction for plaintiff class of incarcerated youth who were eligible for FAPE under the IDEA).

7 The ceiling age of 21 is increasingly interpreted, depending on state laws, as either the end of the school year in which the student reaches age 21 or the day before the student reaches age 22. *See, e.g.*, Allan G. Osborne, *IDEA Eligibility through Age Twenty-One: What Does It Mean?*, 426 Educ. L. Rep. 1 (2023).

8 The coverage here focuses on the IDEA. Thus, alternative legal bases, such as the Constitution, Section 504 of the Rehabilitation Act and its sister statute, the Americans with Disabilities Act (ADA), and state law are only mentioned incidentally at most. Similarly, the coverage does not extend to the Prison Litigation Reform Act (PLRA), including its intersection with the IDEA. *See, e.g.*, T.H. v. Fla. Dep't of Corrs., 696 F. Supp 3d 1117 (N.D. Fla. 2023) (denying preliminary injunction requested by twenty-year old inmate with disabilities to enforce IDEA hearing officer's order for compensatory education due to failure to exhaust all remedies under the PLRA).

9 20 U.S.C. § 1415(m)(1)(D). The corollary IDEA regulations require notice to the student and parents and a statement in the IEP "[b]eginning not later than one year before the child reaches the age of majority under State law" confirming the notice to the student. 34 C.F.R. §§ 300.320(c), 300.520(a)(3).

10 Zapata v. Hays Juv. Det. Ctr., 2023 WL 7870596 (5th Cir. Nov. 15, 2023). In a separate ruling, the court denied the detention center's motion for summary judgment on the plaintiff's Section 504 reasonable accommodation claim, concluding that there were genuine issues of material fact as to whether the defendant had reason to know the plaintiff's disability and whether its limited accommodation of a single counseling session was reasonable. *Id.*

11 *Id.*

12 V.W. v. Conway, 236 F. Supp. 3d 554 (N.D.N.Y. 2017).

13 A.T. v. Harder, 298 F. Supp. 3d 391 (N.D.N.Y. 2018).

14 Wilburn v. Nelson, 329 F.R.D. 190 (S.D. Ind. 2018).

15 Derrick v. Glen Mills Schs., 2024 WL 2134340 (E.D. Pa. May 13, 2023).

16 *Id.*

17 T.H. v. DeKalb Cnty. Sch. Dist., 564 F. Supp. 3d 1349, 402 Educ. L. Rep. 601 (N.D. Ga. 2021).

18 *Id.* at 1358-60. Interestingly, these violations specifically included child find. *Id.* at 1359-60. Yet, to the extent that the county jail was an adult rather than juvenile facility and that some of the plaintiffs may have reached the age of majority, the court's opinion is devoid of the applicable exclusion for child find claims. For the exclusion, *see infra* note 23 and accompanying text.

19 T.H. v. DeKalb Cnty. Sch. Dist., 2022 WL 22890973 (N.D. Ga. Apr. 29, 2022).

20 Contra Costa County v. Barbara A., 2014 WL 2768691 (N.D. Cal. June 11, 2014).

21 *Id.*

22 *Supra* note 9 and accompanying text.

23 20 U.S.C. § 1412(a)(1)(B)(ii). The corresponding IDEA regulation adds a clarification that this exception from the FAPE obligation does not apply to inmates who had been identified as eligible for and received an IEP but "left school prior to their incarceration" and those who had been identified as eligible but did not have an IEP in their last educational setting. 34 C.F.R. § 300.102(a)(2).

24 20 U.S.C. § 1414(d)(7)(B). The quoted limitation is identical in the corresponding regulation, without any additions. 34 C.F.R. § 300.324(d)(2).

25 *Id.* § 1414(d)(7)(A). The provision for transition services is limited to incarcerated youth who age out of IDEA eligibility before release. The corresponding regulations add the italicized clarifying language to this limitation: "whose eligibility ... will end, because of their age, before they will be *eligible to be* released from prison *based on consideration of their sentence and eligibility for early release*" 34 C.F.R. § 300.324(d)(1).

26 20 U.S.C. § 1412(A)(11)(C). The corresponding regulation has identical wording. 34 C.F.R. § 300.149(d).

27 20 U.S.C. § 1416(h). Again, the corresponding regulation repeats the requirement without additions. 34 C.F.R. § 300.607.

28 *Supra* note 24 and accompanying text.

29 Buckley v. State Corr. Inst.-Pine Grove, 98 F. Supp. 3d 704, 323 Educ. L. Rep. 292 (M.D. Pa. 2015).

30 *Supra* note 24 and accompanying text.

31 *Buckley*, 98 F. Supp. 3d at 717-18.

32 *Id.* at 719-20.

33 Brown v. District of Columbia, 324 F. Supp. 3d 154, 160-61, 358 Educ. L. Rep. 123 (D.D.C. 2018).

34 *Id.* at 162.

35 Brown v. District of Columbia, 2019 WL 3423208 (D.D.C. July 8, 2019). A federal magistrate issued this report and recommendation, but it is presumed to have been adopted in light of the lack of subsequent proceedings reported in Westlaw.

36 For another decision addressing the responsibility issue but not making clear the age range of the plaintiffs, *see supra* notes 17-19 and accompanying text.

37 L.A. Unified Sch. Dist. v. Garcia, 741 F.3d 922 (9th Cir. 2018) (citing Cal. (Educ.) Code § 56041).

38 *Id.* at 927-28. For the aforementioned exclusionary provision, *see supra* note 23 and accompanying text

39 *L.A. Unified Sch. Dist.*, 741 F.3d at 937. For similar reasoning in the qualified-modification context, see *supra* note 34 and accompanying text.

40 Charles H. v. District of Columbia, 2021 WL 2946127 (D.D.C. June 16, 2021).

41 Charles H. v. District of Columbia, 2022 WL 1416645 (D.D.C. Feb. 16, 2021).

42 *Id.*

43 *See, e.g.*, Peter E. Leone & Sheri Meisel, *Improving Education Services for Students in Detention and Confinement Facilities*, 17 Child. Legal Rts. J. 2, 3 (1997) (referring to more than twenty class action lawsuits, including eight consent decrees, during the first twenty years of the IDEA). For examples of recent court approved settlements, *see supra* note 6.

44 These sources include agency policy interpretations (e.g., Letter to Duncan, 73 IDELR ¶ 264 (OSEP 2019); Dear Colleague Letter, 64 IDELR ¶ 249 (OSERS 2014)), hearing officer decisions (e.g., Fla. Dep't of Corrs., 83 IDELR ¶ 93 (Fla. SEA 2023); Riverside Cnty. Off. of Educ., 64 IDELR ¶ 155 (Cal. SEA 2014)), and state complaint decisions (e.g., In re Student with a Disability, 82 IDELR ¶ 22 (N.M. SEA 2022); Walnut Twp. Local Schs., 81 IDELR ¶ 270 (Ohio SEA 2022)) under the IDEA.

45 *See, e.g.,* C. Michael Nelson, *Students with Learning and Behavioral Disabilities and the School-to-Prison Pipeline*, in Advances in Learning and Behavioral Disabilities 89 (Brian G. Cook, Melody K. Tankersley & Timothy J. Landrum eds. 2014); Nancy J. Abudu & Ron E. Miles, *Challenging the Status Quo: An Integrated Approach to Dismantling the School-to-Prison Pipeline*, 30 St. Thomas L. Rev. 56 (2017); Jay Blitzman, *Deconstructing the School-to-Prison Pipeline*, 62 Bos. B.J. 9 (2018); Christopher A. Mallett, *The School-to-Prison Pipeline: A Critical Review of the Punitive Paradigm Shift*, 33 Child Adolescent Soc. Work 15 (2016); Emily G. Owens, *Testing the School-to-Prison Pipeline*, 36 J. Pol'y Analysis & Mgmt. 11 (Winter 2017); Joseph Tulman & Douglas M. Weck, *Shutting the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, 54 N.Y. L. Sch. L. Rev. 875 (2009/2010); Mark McWilliams & Mark, *Undiagnosed Students with Learning Disabilities Trapped in School-to-Prison Pipeline*, 89 Mich. B.J. 28 (2010); Michael G. Wilson, *Disrupting the Pipeline: The Role of School Leadership in Mitigating Exclusion and Criminalization of Students*, 26 J. Special Educ. Leadership 61 (2013); Savannah L. Murray, Comment, *It Starts and Ends with the Schools: Using Strict IDEA Enforcement to Sunder the School-to-Prison Pipeline for Special Education Students*, 48 Oh. N.U. L. Rev. 59 (2022).

46 *See, e.g.,* Jonathan Simon, Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America (2014); Peter Lurigo, *Jails in the United States*, 96 Prison J. 3 (2016); Theresa Ochoa et al., *Education and Transitions for Students with Disabilities in American Juvenile Correctional Facilities*, Intervention & Sch. Clinic (2021); Karen Sullivan, Note, *Education Systems*

in Juvenile Detention Centers, 2018 BYU Educ. & L.J. 159; Natasha Yousefi, *The Case for Prison Education Reform*, 18 DePaul J. Soc. Reform 1 (2024).

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