The Mandate to Use Special Education At Juvenile Delinquency Sentencings

by Bradley M. Bittan

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Special education is a valuable tool to address the needs of disabled youth in the juvenile justice system. The recent enactment of House Bill 03-1025 can bring significant benefits by making sentencings more equitable, effective, and accountable.

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Youth with learning, emotional, and developmental disabilities are disproportionately involved in the juvenile legal system.[1] This disproportionate treatment has serious implications for the disabled youth and the community. House Bill 03-1025 ("H.B. 1025") was unanimously passed by both the House of Representatives and Senate during the 2003 Colorado legislative session and subsequently signed into law by the Governor.[2] This law, which went into effect August 6, 2003, provides clear legislative direction for juvenile courts to use special education in juvenile delinquency sentencing proceedings. H.B. 1025 also facilitates the objective of basing the final disposition of a delinquency case on relevant facts that accurately reflect the juvenile's disabled background.

Historically, the juvenile justice system has been premised on protecting the "best interests" of the juvenile instead of punishment.[3] In fact, the legislative declaration of the Colorado Children's Code states in relevant part:

> . . . [W]hile holding paramount the public safety, the juvenile justice system shall take into consideration the best interests of the juvenile, the victim, and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society.[4]

With those objectives in mind, this article provides background on disability and delinquency, special education, and juvenile delinquency sentencings. It explores the specifics of H.B. 1025 to discover legislative intent, and examines how the practitioner may effectively use changes brought about by the bill for the benefit of the individual juvenile client and Colorado communities. Finally, the article analyzes future possibilities concerning this subject.

Disability and Delinquency in Juveniles

Research indicates that most juvenile justice practitioners, as well as the general public, have minimal understanding of cognitive disabilities and how they may affect a youth's behavior.[5] There also is evidence that youth with disabilities receive inadequate defense representation that fails to take into account their specific needs and potential vulnerabilities in a fundamentally adversarial process.[6]

Youth with disabilities are differentially targeted and processed than nondisabled youth by schools, law enforcement, and the courts. Such disparity in treatment may contribute to their disproportionate representation in the juvenile justice system.[7] A number of additional factors are associated with an increased likelihood of delinquency, includ-

ing hyperactivity, impulsiveness, poor behavioral control, attention problems, low intelligence, and poor attainment in school.[8]

Disabilities Commonly Found in Juveniles

The prevalence of special education disabilities in the juvenile correctional system typically is four to five times greater than the rate of special education disabilities in the general population. Nationally, up to 60 percent of incarcerated youth are qualified to receive special education services.[9] Some juvenile correctional personnel believe this number should be significantly higher. For example, findings from a Rhode Island correctional facility indicate that approximately 78 percent of its incarcerated juveniles are eligible for special education services.[10]

Estimates for specific disabilities vary. Nonetheless, the two most common disabilities found in youth in the juvenile justice system are: (1) emotional disturbance;[11] and (2) specific learning disabilities.[12] In addition to these, almost 13 percent of incarcerated youth have been diagnosed with developmental disabilities (mental retardation).[13]

Emotional Disturbance: Estimates of the prevalence of juvenile offenders who suffer from some form of emotional disturbance are between 77 and 93 percent. This range far exceeds the 10 to 20 percent estimated prevalence rate among the non-delinquent juvenile population.[14]

The most common diagnoses for juvenile offenders are conduct disorder, oppositional defiant disorder, alcohol dependence, major depression, dysthymia, attention deficit hyperactivity disorder ("ADHD"),[15] bipolar disorder (manic depression), generalized anxiety disorder, and post-traumatic stress disorder. Multiple diagnoses of mental illnesses (comorbidity) also are common among juvenile offenders.[16]

Learning Disabilities: Some studies suggest that nearly 36 percent of youth in correctional facilities have specific learning disabilities.[17] The harsh reality is that learning-disabled youth have been found to be more than twice as likely to commit a delinquent offense than non-learning disabled children.[18] Numerous learning disabled youth have comorbid diagnoses, such as ADHD and depression.

Theories Linking Disability And Delinquency

There are three commonly cited theories correlating the link between disability and delinquency. As discussed below, these include: (1) susceptibility; (2) school failure; and (3) differential processing.

Susceptibility Theory: This theory holds that youth with disabilities are more likely to engage in delinquency because of particular characteristics associated with the disability. These characteristics may include impulsiveness, suggestibility, and poor social perception.[19]

School Failure Theory: According to this theory, a disabled student who has not developed appropriately at school will look for acceptance in other ways, such as through delinquent behavior. The student may act out in anger toward school staff and others as a result of the educational failure.[20]

Differential Processing Theory: This theory presupposes that youth with disabilities are different from their non-disabled peers and, as a result, may not respond appropriately to juvenile justice professionals. Because these inappropriate responses are not properly recognized, disabled youth are more likely to be arrested and move further down the delinquency system.[21]

Basics of Special Education Law

In 1975, Congress enacted a special education law that eventually became the Individuals with Disabilities Education Act ("IDEA").[22] The intention of the federal law was to enable disabled students to obtain a free, appropriate public education ("FAPE"). FAPE refers to special education and related services that: (1) have been provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state educational agency; (3) include an appropriate preschool, elementary, or secondary school education in the state involved; and (4) are provided in conformity with an Individualized Education Program ("IEP").[23]

An IEP is developed by a team of qualified people (parents, youth, expert evaluators, teachers, and school system administrators) who devise a strategy to serve the best educational interests of the disabled youth.[24] The IEP should specify what constitutes a FAPE for a particular disabled student.[25] The contents of the IEP should be specifically tailored to the juvenile's needs and also should provide specific, measurable objectives.[26]

Changes Made By H.B. 1025

H.B. 1025 amends existing language contained in CRS §§ 19-2-905(1)(a)(VI) and 19-2-925(2)(d). Following is an explanation of those changes.

CRS § 19-2-905 Amendments

CRS § 19-2-905 addresses presentence investigations. That statute previously indicated that prior to the sentencing hearing, a presentence investigation may "address the juvenile's education history." H.B. 1025 amended CRS § 19-2-905(1)(a)(VI) to add that the investigation of the juvenile's education history may include "any special education history and any current individual education program the juvenile may have pursuant to . . . [CRS §] 22-20-108. . . ."[27]

Disabilities common to juvenile delinquency tend to be overlooked because they are often "invisible." Unless directly brought to the attention of the juvenile justice professionals, a youth's disabilities may go unnoticed for the entire duration of a delinquency case. Behavior interpreted as hostile, impulsive, or otherwise inappropriate actually may be a reflection of a youth's disability. Consequently, a more equitable sentence can be rendered by the court.

The sentencing judge's receipt of a special education history, including the youth's IEP, also can bring about a more effective sentence. For example, an IEP could provide critical insights for the sentencing judge about the youth's current level of intellectual functioning and his or her particular educational concerns and requirements. It may describe the juvenile's social, emotional, and adaptive behavior, as well as his or her daily living skills, health, and developmental history. For instance, if the youth has mental health issues, the information derived from the IEP could enable the court to order the most effective therapeutic services, such as individual counseling and family therapy.

The IEP also provides the goals and objectives of the educational program that ultimately can enable the child to succeed in the future.[28] Education may be the single most important service the juvenile justice system can offer disabled youth to equip them for success. When special education needs are present, these needs should be an integral part of the presentence investigation to guide the court in formulating an appropriate resolution to

a particular case.

CRS § 19-2-925 Amendments

CRS § 19-2-925 addresses terms of probation. Under subsection (2)(d), as minimum conditions of probation, the court may order that the juvenile "attend school or an educational program or work regularly at suitable employment." H.B. 1025 amended this subsection to add that

> if the juvenile has an individual education program [pursuant to CRS § 22-20-108] . . . the court *may order the juvenile to comply with his or her individual education program*, taking into account the intellectual functioning, adaptive behavior, and emotional behaviors associated with the juvenile's disabilities, and subject to a manifestation determination. . . . *(Emphasis added.)*

This statutory change completes the essential balance prescribed by H.B. 1025 on behalf of disabled youth involved with the juvenile justice system. The particular youth must assume responsibility for keeping his or her life on track; the most appropriate and effective IEP devised will not be of any benefit if the juvenile does not put forth the requisite effort to benefit from it. He or she also must understand that being granted probation by the sentencing judge is a genuine privilege and not a legal right. Accordingly, this amendment provides essential accountability by firmly indicating that this privilege must be taken seriously.

During the past decade, an obvious trend is to promote greater accountability for juvenile offenders. For instance, many states have enacted "get tough" laws designed to increase punishment options.[29] Another example is the Juvenile Accountability Incentive Block Grants ("JAIBG") Program, which provides grants to states, including Colorado, that have implemented or are considering implementing legislation or programs promoting greater accountability in juvenile justice.

Of course, not all disabled youth can choose to benefit from their IEP; some lack the capacity to comply. For example, a youth may have Tourette's syndrome or a panic disorder that may prevent him or her from controlling certain behaviors. H.B. 1025 contemplates this type of situation. When a court considers ordering the juvenile to comply with an IEP as a term and condition of probation, it must conduct an individualized assessment of the intellectual functioning, adaptive behavior, and emotional behaviors associated with the juvenile's disabilities.[30]

As provided in H.B. 1025, an additional concern for the court is the "manifestation determination pursuant to . . . [CRS §] 22-33-106. . . ." That statute states in relevant part that a child may not be suspended or expelled from a public school if the actions creating a threat of physical harm to the child or to other children are a manifestation of such child's disability. Alternative procedures are put in place to address the disabled child's situation. The significance of information derived from a manifestation determination in the context of H.B. 1025 is that a sentencing court will receive probative evidence about whether conduct was, in fact, a manifestation of disability, which would correlate to whether that disabled youth has the ability to comply with his or her IEP.[31]

Application of H.B. 1025

H.B. 1025 offers opportunities for practitioners to promote justice on behalf of their disabled juvenile clients. Use of the history of a juvenile's special education could mean the difference between keeping the juvenile in the community so that he or she can successfully pursue an IEP on probation or being committed to the Division of Youth Corrections of the Colorado Department of Human Services ("DYC").

Basics of Juvenile Delinquency Sentencing

To fully understand the impact of H.B. 1025, it is necessary to have a basic knowledge of the juvenile delinquency sentencing process. A juvenile delinquency case generally will proceed to a sentencing hearing unless there is a finding by the trier of fact of "not guilty" or the proceeding was either suspended or dismissed at an earlier stage.

At the sentencing hearing, the court will determine the appropriate sanction or treatment for the juvenile. Pursuant to CRS § 19-2-905(1)(a), a written presentence investigation report typically is delivered to the parties and the court. This report covers the significant aspects of the youth's background, including, but not limited to, the home and school environment; nature of the instant offense; and health, delinquency, and substance abuse history. The presentence investigation also will include a sentencing recommendation for the court to consider. After receiving the presentence investigation, the court will hear the recommendations of the prosecutor, defense counsel, guardian *ad litem* (if applicable), parents, and juvenile.

At the sentencing hearing, the court has a number of options, including a period of probation with specific terms and conditions consistent with the juvenile's need for rehabilitation.[32] Some examples of options for probation terms and conditions include:

- Up to forty-five days in detention[33]
- School attendance
- Obtaining a General Educational Development ("GED") credential
- Employment
- Imposition of a fine
- Payment of restitution
- Community service
- Drug and alcohol evaluation and treatment
- Psychological evaluations with subsequent treatment.[34]

Another possible term and condition of probation could include compliance with the rules of a placement located out of the home.[35] Typically, under such circumstances, a juvenile will be placed in a residential treatment center ("RTC"). The purpose of the RTC placement is to assist the juvenile in becoming a productive member of society by offering a highly structured living environment with clear behavioral rules and expectations.[36]

The court also has the choice of sentencing the juvenile to a commitment to DYC. Such a commitment may be deemed appropriate by the court if: (1) probation would not be consistent with the seriousness of the offense; (2) the juvenile has a significant history of prior criminal activity; or (3) there is a determination that the juvenile cannot be treated successfully in a community-based program or would not benefit from a less restrictive setting.[37]

Before the Sentencing Hearing

As a preliminary matter, counsel should adequately consult and have the agreement of his or her client before pursuing a special education sentencing strategy. Before the sentencing hearing, the practitioner should find out whether the youth with suspected disabilities previously has been evaluated for special education services. If not, the practitioner, through the parent or legal guardian, should consider requesting an assessment by the school. Once completed, the evaluation will include a report on the youth's suspected disabilities and needs.

If the youth is receiving special education services, the practitioner should address whether: (1) there is a current IEP; (2) the current IEP adequately addresses the needs stemming from the pending

delinquency case; and (3) the IEP is being implemented as written. If any of these issues has not been satisfactorily addressed, the practitioner should collect this information and consider presenting it to the court at the sentencing hearing, as indicated below.

The practitioner also should consider setting up a staffing with school personnel to get appropriate services in place. The IEP team can modify and adjust the IEP when appropriate to increase its effectiveness.[38] Finally, counsel should consider subpoenaing school personnel to the sentencing hearing for the purpose of providing additional information to the court.

At the Sentencing Hearing

The sentencing hearing is the best opportunity to educate the judge about the youth's particular disability. In this respect, the practitioner should be well versed about the causes, symptoms, and implications of the disability diagnosis and how special education may effectively redirect the youth's behavior. If the juvenile has not been previously identified as eligible for special education, the practitioner could explain to the court that the youth may have unmet special education needs and such services may mean the difference between law-abiding behavior and recidivism.

If the juvenile is eligible for special education but does not have a current IEP or is not receiving appropriate services, the practitioner may explain to the court that he or she has a legal right to a FAPE. Further, once established and implemented, such services will be an effective and less-restrictive alternative to a DYC commitment. It should be difficult for opposing parties to argue that the youth is resistant to services when they have not been appropriately provided.

As indicated earlier, another relevant concern at sentencing is that certain disabled clients may be unable to comply with their IEPs. In these instances, the practitioner should advocate against IEP compliance as a term and condition of probation. The practitioner should further be aware of the possibility that others involved in the sentencing proceeding might attempt to misuse special education records to obtain a more severe punishment than they otherwise might and, therefore, should be ready to respond to this tactic. For instance, if the IEP identifies a student's behavioral problems within the school environment, it may be argued inappropriately that the disabled youth is incapable of reforming his or her conduct.[39]

Although it may be unrealistic for the practitioner to become an expert on special education, he or she should, at a minimum, know the basics and attempt to become as knowledgeable as possible. For instance, "special education," "FAPE," "IEP," and "transition services" should be readily understandable terms.[40] The busy defense lawyer should constantly keep in mind that if he or she does not realistically have the time to sufficiently assist the client in this area, a request for the appointment of a guardian *ad litem* could be considered. One basis for such an appointment is if the court finds it would be "in the best interests of the child."[41]

Probation Revocation Proceedings

The probation officer is responsible for initiating probation revocation proceedings.[42] His or her decision to pursue a revocation is held accountable and subject to the recommendations of the district attorney, defense attorney, guardian *ad litem* (if applicable), and, ultimately, to the presiding judge.[43] H.B. 1025 does not empower a school to initiate a probation revocation and does not, in fact, give the school additional legal rights. The legal authority of the school to sanction a student lies within Colorado's education laws at Title 22 of the Colorado Revised Statutes. For instance, under certain circumstances, the school may suspend, expel, and deny admission to particular students.[44]

Schools are under increasing pressure to achieve specified performance standards, which may be easier to meet by expelling their behaviorally difficult students. There is little doubt that since the enactment of the No Child Left Behind Act of 2001,[45] entire communities have made increasing demands on public schools to meet higher academic standards. Critics have argued that as a result of this increased monitoring of school performance, too many students are being disciplined and expelled inappropriately. This criticism is premised on the belief that schools are "dumping" disabled youth by expelling these students, allowing them to drop out, and pushing them into alternative education programs and the juvenile justice system. Nevertheless, H.B. 1025 does not enable schools to initiate probation revocation proceedings.

If a sentencing court orders that the youth comply with the terms of his or her IEP, and a violation of that court order is alleged, the practitioner should be sensitized to various issues. As pointed out earlier, whether the disabled youth was *capable* of complying with the IEP is pertinent. The client's inability to comply with his or her IEP could serve as a legitimate defense to a probation revocation proceeding.

In addition, the practitioner should be aware of each of the procedural, due process safeguards to protect against an unfair revocation of probation.[46] Some of the legal rights to protect the youth include: (1) the right to a probation revocation hearing (including the right to subpoena and cross-examine witnesses) within fifteen days after the filing of the complaint, unless good cause is found by the court;[47] (2) the right against self-incrimination;[48] (3) the right to counsel;[49] (4) under certain circumstances, the right to bail;[50] and (5) the right to make the prosecution carry the burden of proof of establishing the violation.[51] Finally, even if the judge finds that a violation of probation has occurred, the court has discretion to reinstate probation.[52]

Beyond H.B. 1025: Suggestions for Change

Although H.B. 1025 has made important statutory amendments, other changes still need to be made to assist disabled youth involved with the juvenile justice system. Following are several suggestions:

- Increasing information about protecting the rights of disabled youth in the juvenile justice system to all interested professionals, policymakers, and the public, as well as law enforcement personnel who make contact with the disabled youth before and at the time of arrest
- More effective coordination of services between professionals as disabled youth become involved in the juvenile justice system[53]
- Improved communication and collaboration between schools and juvenile professionals regarding identification of disabilities and in the development and implementation of educational plans
- Training of law school students with appropriate internships and making special education law an essential element of the juvenile law classroom curriculum.

It is far more cost effective to handle these issues early in the process than to have taxpayers spend approximately $60,000 per year to house a single youth

in a prison environment.[54] More significant, such changes would give disabled youth additional opportunities to turn their lives around.

Conclusion

Special education needs should be addressed in a dispositional outcome because such needs ultimately may reduce the problem behaviors while the youth is under court supervision.[55] The consequences of not addressing the needs of disabled youth include an increased likelihood they will become further involved with the juvenile justice system and, ultimately, the adult system.

Disability may be the only reason a juvenile is in the courtroom facing sentencing. Practitioners should consider using the issue of special education at sentencing hearings to promote the treasured objective of equal justice under the law. The practitioner thus can significantly benefit the disabled youth and the community by helping to make sentencings more equitable, effective, and accountable.

H.B. 03-125 is an attempt to ensure that disabled youth are empowered to meet their potential. Consequently, their involvement with the juvenile justice system can become a blessing in disguise. The practitioner involved in this process has the opportunity to further the idea that the seeds we sow are the sprouts of tomorrow.

NOTES

1. Burrell and Warboys, *Special Education and the Juvenile Justice System* (Wash., DC: Office of Juvenile Justice and Delinquency Prevention, 2000).

2. This law passed on a bipartisan basis after a vote of 61 to 0 in the House and 34 to 0 in the Senate. There were a total of twenty-two co-sponsors on behalf of this bill.

3. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* (New York, NY: Oxford Univ. Press, 1999).

4. CRS § 19-2-102(1).

5. Smith, Esposito, and Gregg, *Advocating for Children With Cognitive Disabilities in the Juvenile Justice System* (College Park, MD: Center for Effective Collaboration and Practice, American Institutes for Research, 2002).

6. Peikin, "Alternative Sentencing: Using the 1997 Amendments to the Individuals with Disabilities Education Act to Keep Children in School and Out of Juvenile Detention," *Suffolk J. of Trial and Appellate Advocacy* 6:139-162 (2000).

7. Keilitz and Dunivant, "The Relationship Between Learning Disability and Juvenile Delinquency: Current State of Knowledge," *Remedial and Special Education* 7:18-26 (1986); Brier, "The Relationship Between Learning Disability and Delinquency: A Reappraisal," *J. of Learning Disabilities* 22:546-553 (1989); Crawford, "Review of Research on Learning Disabilities and Juvenile Delinquency," *in* Cramer and Ellis, eds., *Learning Disabilities: Lifelong Issues* (Baltimore, MD: Paul H. Brookes Pub. Co., 1996) at 203-09; National Center on Education, Disability and Juvenile Justice 2001, *Juvenile Correctional Education Programs* (College Park, MD: U.S. Dept. of Education, 2001); "Twenty-First Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act" (Wash., D.C.: U.S. Dept. of Education, 2001).

8. Farrington, "Predictors, Causes, and Correlates of Male Youth Violence," *in* Tonry and Moore, eds., *Youth Violence* (Chicago, IL: Univ. of Chicago Press, 1998) at 421-75.

9. Bullock and McArthur, "Correctional Special Education: Disability Prevalence Estimates and Teacher Preparation Programs," *Education and Treatment of Children* 17: 347-355 (1994); *Correctional Education Bulletin: Focus on Juvenile Justice*, Vol. 1, Issue 8 (Horsham, PA: LRP Publications, May 1998) at 10.

10. Dumais, Director of Special Education, "Proposal for Court Appointed Educational Consultants" (Cranston, RI: Rhode Island Training School, 1998).

11. Emotional disturbance is defined under 34 C.F.R. § 300.7(c)(4) as:

> a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) an inability to learn that cannot be explained by 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) a general pervasive mood of unhappiness or depression; and (E) a tendency to develop physical symptoms or fears associated with personal or school problems.

See also Colorado Department of Education Rules (for the) Administration of the Exceptional Children's Educational Act ("ECEA") Rule 2.02(5). For an explanation concerning how the practitioner should proceed with the mentally ill client before the sentencing proceeding, *see* CRS § 19-2-702.

12. Specific learning disability is defined as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations." 20 U.S.C. § 1401(26); 34 C.F.R. § 300.7(c)(10). *See also* ECEA Rule 2.02(6).

13. Rutherford *et al., Youth with Disabilities in the Correctional System: Prevalence Rates and Identification Issues* (College Park, MD: Center for Effective Collaboration and Practice, American Institutes for Research, 2002). "Mental retardation means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance." 34 C.F.R. § 300.7(c)(6). *See also* ECEA Rule 2.02(4). For an explanation concerning how the practitioner should proceed with the developmentally disabled client before the sentencing proceeding, *see* CRS § 19-2-702.

14. Lexcen and Redding, "Mental Health Needs of Juvenile Offenders," Juvenile Justice Fact Sheet (Charlottesville, VA: Institute of Law, Psychiatry, and Public Policy, Univ. of Virginia, 2000).

15. *Id.* For an analysis of Colorado's mental health laws pertaining to juveniles, *see* Furman and Janski, "Guidance for Attorneys When Children's Mental Health Concerns are Implicated," 31 *The Colorado Lawyer* 33-35 (Oct. 2002). ADHD rates are four to five times higher in correctional facilities than in schools. It is estimated that from 20 to 50 percent of incarcerated youth have ADHD. Rutherford *et al., supra*, note 13 at 16. *See also* 34 C.F.R. § 300.7 (c)(9).

16. *See Diagnostic and Statistical Manual of Mental Disorders, DSM-IV-Tr* (Wash., DC: American Psychiatric Assoc., 2000).

17. Rutherford *et al., supra*, note 13 at 10.

18. Brier, *supra*, note 7 at 546.

19. Tulman and McGee, eds., *Special Education Advocacy Under the Individuals with Disabilities Education Act (IDEA) for Children in the Juvenile Delinquency System* (Wash., D.C.: Univ. of the District of Columbia School of Law Juvenile Law Clinic, 1998) at 1-6.

20. *See* Ungerleider, *Reading, Writing and Rage*, rev. ed. (Encino, CA: RWR Press, 1996).

21. Brier, *supra*, note 7; Eggleston, "The Justice System," *in* Cramer and Ellis, *supra*, note 7 at 197-201.

22. 20 U.S.C. §§ 1400 *et seq*. Special education is defined as "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability. . . ." 20 U.S.C. § 1401(25); *see also* 34 C.F.R. § 300.26(a).

23. 20 U.S.C. § 1401(8). The IEP is set forth under 20 U.S.C. § 1414(d).

24. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.344. *See also* ECEA Rule 4.02(3)(a). For a comprehensive review of special education law, *see* Wright and Wright, *From Emotions to Advocacy: The Special Education Survival Guide*, (Hartfield, VA: Harbor House Law Press, Inc. 2002).

25. Chapman, "Using the IEP to Get Appropriate Services for Students with Disabilities," 31 *The Colorado Lawyer* 29 (Oct. 2002). *See also* 20 U.S.C. § 1414(d) and ECEA Rule 4.02(4).

26. 20 U.S.C. § 1414(d)(1)(A) and (d)(3)(B); 34 C.F.R. § 300.347. *See also* ECEA Rule 4.03 (4)(a). For an explanation of transition services, *see* 20 U.S.C. § 1401(30).

27. CRS § 22-20-108 addresses the school's determination of a student's disability. In rele-

vant part, it indicates that if a student is determined to have a disability, an IEP should be appropriately developed and reviewed.

28. The existence of a federal law should be noted: Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, 34 C.F.R. Part 99. FERPA was designed to protect the privacy of parents and students. This law addresses privacy, confidentiality, and access to educational records. Theoretically, FERPA could be implicated when the probation officer seeks to obtain a youth's special education history to prepare a presentence investigation for the court or if school personnel testify at a sentencing hearing. For purposes of implementing H.B. 1025, there should be no FERPA concerns, because parents typically address this issue sufficiently when the probation officer initiates his or her presentence investigation.

29. Torbet *et al., State Responses to Serious and Violent Juvenile Crime* (Wash., DC: Office of Juvenile Justice and Delinquency Prevention, 1996); Feld, *supra*, note 3.

30. CRS § 19-2-925(2)(d).

31. The manifestation determination process is part of an IEP meeting. It is not a hearing, but a topic on the agenda for the IEP team to consider. Chapman, *supra*, note 25 at 32. *See also* 34 C.F.R. §§ 300.523 and 300.524.

32. CRS § 19-2-907(1)(e).

33. CRS § 19-2-925(1)(a).

34. *See* CRS §§ 19-2-907 and -925.

35. CRS § 19-2-907(g).

36. CRS § 19-2-102(1).

37. CRS §§ 19-2-907(1)(a) and -921. For a more comprehensive analysis of Colorado's juvenile delinquency process, *see* Bittan, "The Nuts and Bolts of Juvenile Delinquency," 31 *The Colorado Lawyer* 19-23 (Oct. 2002).

38. 20 U.S.C. § 1414(d)(4).

39. Behavioral problems at school are appropriately addressed through a functional behavioral assessment ("FBA"), which is used to prepare a behavioral intervention plan ("BIP"). *See* Chapman, *supra*, note 25 at 32.

40. *See, e.g.*, Wright and Wright, *supra*, note 24.

41. CRS § 19-1-111(2)(a)(III).

42. CRS § 19-2-926.

43. It follows logically that probation officers have a unique responsibility to understand the basics of special education law. They need to understand how to make their written and spoken rules easily understood so that disabled youth do not recommit solely because they could not comprehend what was expected of them. Probation officers also need to be able to identify the specific community facilities and programs that might be most effective for the disabled youth's particular needs.

44. CRS § 22-33-106.

45. Pub.L. 107-110.

46. C.R.J.P. 3.6.

47. C.R.C.P. 32(f)(4).

48. C.R.C.P. 5(a)(2)(I).

49. C.R.C.P. 5(a)(2)(II).

50. C.R.C.P. 5(a)(2)(V).

51. C.R.C.P. 32(f)(3).

52. C.R.C.P. 32(f)(5).

53. This is particularly true at the intake stage. Professionals who make contact with the juvenile at the detention facility should have a firm understanding about the assessment and treatment of disabled youth. *See* Tulman and McGee, *supra*, note 19.

54. For fiscal year 1999, the average daily cost to house one juvenile in a state-operated commitment facility in Colorado was approximately $160, or $58,444 per year. *See* Division of Youth Corrections, 2003, www.cdhs.state.co.us/dyc/stats.htm.

55. Burrell and Warboys, *supra*, note 1; Osher *et al., Addressing Invisible Barriers: Improving Outcomes for Youth with Disabilities in the Juvenile Justice System* (College Park, MD: Center for Effective Collaboration and Practice, American Institutes for Research, 2002). ■