

# Education and Juvenile Justice Training Project

## Module Eight:

### Special Education 101: **Understanding the Rights of Youth with Special Education Needs in Juvenile Justice Facilities**

# Presented as a Statewide Training Module by:

Texas Juvenile Justice Department (TJJD):

Juvenile Justice Alternative Education Program (JJAEP)

Juvenile Probation Department JJAEP Facilitator

In some of the modules, additional support may be provided by:

Disability Rights Texas

Hogg Foundation

Texas Education Agency

Texas Appleseed

Texas School Safety Center

& Other Selected Speakers



# Training Objectives

Participants will

- Describe the legislative intent for providing this series of webinars
- Describe the requirements for the MOU among state agencies and residential facilities
- Define the rights of students with special education needs
- Describe required special education services
- Describe the challenges and protections for students with special education needs

# Project Overview

Assist local probation departments and community based juvenile facilities (secure and non-secure) to fully understand and implement all responsibilities and requirements related to education of youth in our facilities and reintegration of youth back into community education settings

# Agency Mandate: Texas Human Resources Code, Title 12 provides:

Section 221.005. TRAINING AND ASSISTANCE TO LOCAL AUTHORITIES.

(a) The department shall provide educational training and technical assistance to counties, juvenile boards, and probation offices to:

(1) promote compliance with the standards required under this chapter and

(2) assist the local authorities in improving the operation of probation, parole, and detention services.

# Agency Mandate: (Continued)

(b) The Department **shall encourage** compliance with educational service standards and rights prescribed by state or federal law by:

(1) facilitating interagency coordination and collaboration among juvenile probation departments, school districts, and the Texas Education Agency, and

(2) developing and supporting a plan to ensure continuity of educational services to juvenile offenders, including special educational services for juveniles with disabilities.

# Polling Question 1

Are you a:

Texas Juvenile Justice Correctional Employee?

Texas Juvenile Justice Educator?

A Juvenile Justice Correctional Employee who works outside of Texas?

A Juvenile Justice Educator who works outside of Texas?

# Coordination of Local Education Agencies and TJJD

Information provided by Judy Struve  
Texas Education Agency

The mission of the TEA is to provide leadership, guidance and resources to help schools meet the educational needs of all students.

# Texas Administrative Code §89.1115

## Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities

# Purpose of MOU

- Establish the respective responsibilities of local education agencies (LEAs--**includes school districts and charter schools**) and of residential facilities for the provision of a Free Appropriate Public Education (FAPE) as required by IDEA
- Coordinate regulatory and planning functions of the parties
- Provide for appropriate educational space when education services will be provided at the RF

- Establish measures designed to ensure the safety of students and teachers; and
- Provide for binding arbitration consistent with Texas Government code, Chapter 2009---  
*a way to come to agreement when conflict arises*

# Definition of RF

- Facility operated by a state agency or political subdivision that provides 24-hour custody or care of a person 22 years of age or younger, if person resides in facility for detention, treatment, foster care, or non-education purpose
  - Juvenile pre-adjudication detention facilities
  - Juvenile post adjudication secure correctional facilities
  - TJJD halfway houses and contract facilities

# Terms of MOU (Rules Established)

1. LEAs must provide or ensure the provision of a free appropriate public education (FAPE) to students with disabilities residing in RFs.
2. No later than the 3<sup>rd</sup> day after the date a person (22 years or younger) enters, RF must notify LEA.

3. LEAs and RF will share, within a reasonable period of time and to the extent permitted by applicable statutes and regulations, all appropriate records and relevant information relating to a student with disabilities:

- Documents that proves student's age;
- Medical history and records;
- Social history;
- Evaluation reports;
- Education history
- Relevant court orders
- Information regarding a student's movement from an RF to subsequent residence
- Name and phone number of contact persons representing the RF and LEA

4. Coordinate a student's individualized education program (IEP) and treatment plan of care of service
  
5. If student requires the assignment of a surrogate parent, LEAs will provide the name and phone number of contact person representing the RF to the surrogate parent, as well as the name and phone number of surrogate parent to RF

6. LEAs will provide a FAPE to all eligible students with disabilities, in the least restrictive environment (LRE) to the maximum extent appropriate, to meet the individual educational needs of students as determined by a duly-constituted Admission, Review, and Dismissal (ARD) committees (IEP Team Meeting).

7. ARD committees must determine appropriate educational placements for students, including the non-educational needs that may restrict ability of LEAs to serve students on a public school campus . Determinations must be individualized based on students' needs and not made on a categorical basis, such as students' disabilities or residence in an RF,

OR

what is most convenient to LEAs or RFs.

“Individualized”

No

ONE-SIZE-FITS ALL

decision making/  
programming

8. If educational services are provided at site of facility, RF is required to provide appropriate space so that individual student's needs are met.
  
9. RFs and LEAs will agree in writing to staffing levels that will be maintained by both the RF and LEA to ensure safety of students and teachers while education services are provided at an RF.

# Disputes

- If resolutions can not be reached after first attempting to do so at the local level, the LEA shall refer the dispute to TEA for further negotiations toward a mutually agreeable resolution.

## TAC §89.1801

# Commissioner's Rules Concerning Education in a Juvenile Residential Facility

- LEA providing education services in a pre-adjudication secure detention facility shall, on the first school day after the student's arrival at the facility, unless it is confirmed that the student will return to a different district within ten school days. The LEA that maintains a student's enrollment is responsible for ensuring appropriate education services are provided to each of its students while in facility.

- LEA will coordinate with student's previous locally-assigned campus/district to ensure appropriate academic records are received within 10 school days of student's enrollment.
- LEAs shall, at a minimum provide students with subjects and courses necessary to complete the minimum high school program.
- LEAs will provide a curriculum that is aligned with the Texas Essential Knowledge and Skills

- LEAs will grant credits for coursework completed.
- LEAs will, at a minimum, provide a 7 hour school day.
- LEA will provide at least 180 days of instruction for students.

# Other Requirements

- LEAs will provide students with disabilities special education and related services to ensure FAPE.
- Students will be provided instruction by certified/highly qualified teachers.

# Collaboration



LEAs have their rules and regulations with which they must comply.



TJJD has its rules and regulations with which they must comply.



Together they work together, think outside the box, to meet both agencies needs!



Judy Struve

Texas Education Agency

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## Polling Question 2

Are you working in/with a residential facility with \_\_\_\_\_ youth who have special education issues?

A few

Some

Many

# SPECIAL EDUCATION IN JUVENILE JUSTICE FACILITIES

Ian Spechler

Disability Rights Texas

***Disability Rights Texas is the federally designated legal protection and advocacy agency for people with disabilities in Texas***

# The Importance of Special Education for Incarcerated Students with Disabilities

- Providing special education to incarcerated students with disabilities is good public policy.
- Studies of the benefits of prison education programs have shown that education has a positive effect on reducing recidivism and a positive effect on post-release employment success.

## The Importance of Special Education for Incarcerated Students with Disabilities

- Nationwide, the literacy of prisoners is very low. Prisoners lack the ability to perform simple job-related tasks such as using a bus schedule or completing a job application.
- Incarcerated youth with disabilities are among the least likely to have the skills they need to be able to hold a job. For them, education is probably the only opportunity they have to become productive, independent members of society.

*Letter to Anonymous, 30 IDELR 607 (OSEP 1998).*

# Special Education Law and Purpose

- Sources of Special Education Law:
  - IDEA 20 U.S.C. § 1400 et. seq. (34 CFR Part 300)
  - Texas Education Code, Chapters 29 (Special Ed) and Chapter 37 (Discipline)
  - 19 TAC § 89.1001 et. seq. (Commissioner of Education’s Rules and State Board of Education Rules)
- To ensure that all children with disabilities have available to them a free appropriate public education (“FAPE”) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 42 U.S.C. § 1400(d)(1)(A).
- To ensure that the rights of children with disabilities and parents of such children are protected. 42 U.S.C. § 1400(d)(1)(B).

# Eligibility

- To be eligible, the student must meet the definition of one of several enumerated disabilities and, “by reason thereof,” need special education and related services. 42 U.S.C. § 1401(3).
- These disabilities include:
  - Intellectual disability
  - Hearing impairments, including deafness
  - Speech or language impairments
  - Visual impairments, including blindness
  - Serious emotional disturbance
  - Orthopedic impairments
  - Autism
  - Traumatic brain injury
  - Other health impairments, such as a terminal or chronic disorder or ADHD
  - Specific learning disabilities, such as dyslexia

# Entitlement and FAPE

- IDEA guarantees that all students with disabilities age 3 through 21 have the right to a “free and appropriate public education” (FAPE). 21 means 21 at the beginning of a school year. Thus, 22 year olds can often be served in a district.
- The right to a FAPE ends when a student graduates with a regular high school diploma. 34 C.F.R. § 300.102(a)(3)(i). This does not include students who have received a certificate of attendance or a certificate of graduation that is not a regular high school diploma. *Id.* § 300.102(a)(3)(ii).
- School districts deliver FAPE by providing “**special education services**” and “**related services.**”

# Services Standards

- *Board of Ed. Of the Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).
  - The IEP must confer “meaningful benefit,” which means that it must provide for “significant learning.”
  - IEP reasonably calculated to enable the child to benefit.
  - **NOT** a maximization of child’s potential.

**KEY ISSUES IN SPECIAL EDUCATION  
FOR YOUTH IN JUVENILE JUSTICE  
FACILITIES**

# Parent under IDEA

- Biological or adoptive parent
- Foster parent *unless prohibited by state law*
- Guardian generally authorized to act as the child's parent or to make educational decisions for the child
- Person acting in place of a parent and who the child lives with (can be non-relative)
- Person legally responsible for the child
- Surrogate parent

34 C.F.R. § 300.30(a)

# Educational Decision-making in Juvenile Justice Facility

- Parent retains all rights to continue to serve as educational decisionmaker for their child who is incarcerated
- Youth who are 18 or older in juvenile facilities are able to serve as their own educational decisionmaker
- If foster child, school must appoint surrogate parent

# Surrogate Parent

- District must make “reasonable efforts” to ensure assignment of a surrogate parent not more than 30 days after the need arises
  - Criteria for selection:
    - NOT a school district employee or any agency involved in care or education of the child (NOT an employee of juvenile justice facility or child protection agency)
    - No personal or professional interest that conflicts with the interests of the child
    - Has knowledge and skills to ensure adequate representation of the child
  - Represents the child in all matters relating to:
    - Identification, evaluation, and placement
    - Provision of FAPE to the child
- 20 U.S.C. § 1415(b)(2)(A) & (B); 34 C.F.R. § 300.519

# Removals

- IDEA provides protection for students with disabilities who are removed from the classroom for longer periods of time
  - Removal from class for more than 10 consecutive school days;  
OR
  - Removals form a pattern (because they total 10 or more days a year, the behavior is substantially similar, and removals are close in time)

# Removals in Juvenile Justice System

- Behaviors outside of the classroom/school environment can result in missing school time
- Continuity of campus
- Correctional Decisions impact education, for every removal over 10 days (or pattern of removals)
  - “Unique circumstances” 34 CFR 300.530(a)
  - Manifestation Determination Review: 34 CFR 300.530(e)
    - Conduct caused by, or had direct and substantial relationship to disability, or
    - Conduct was caused by direct result of district’s failure to implement IEP

# If manifestation...

- 1) Conduct a Functional Behavioral Assessment and create a behavior intervention plan, or
- 2) Update an existing Functional Behavioral Assessment and behavioral plan to prevent a recurrence of misconduct
- 3) Return student to placement

# Functional Behavioral Assessments

- Evaluations used to develop positive behavioral supports and a Behavior Intervention Plan (BIP)
  - An FBA must not simply describe a behavior. Needs to address the biological, social, affective, and environmental factors that initiate, sustain, or end the behavior in question
  - If school's FBA is inadequate, parent can disagree and request an independent
  - Can evaluate any behavior that impedes the learning of the student or others
  - Ex. D.B.

# Security School

- Often in isolation, review laws of seclusion in state
- If removed: 34 CFR 300.530(d)
  - Must continue to receive educational services so student is able to participate in general education curriculum and to make progress towards goals in IEP
  - Receive an FBA and behavioral services and modifications

# Security School

- Monitor for:
  - Isolation
  - Worksheets not relevant or applicable to curriculum
  - Lack of direct instruction
  - Work being graded
- Remedies:
  - Compensatory Education

# Positive Behavioral Interventions and Supports

- Should be used campus wide
- BUT be cautious of unintended consequences
  - Texas Education Code 30.106
    - (c) To increase the positive social behaviors of students in Texas Youth Commission educational programs and to create an educational environment that facilitates learning, the commission shall:
      - (1) adopt system-wide classroom and individual positive behavior supports that incorporate a continuum of prevention and intervention strategies that:
        - (A) are based on current behavioral research; and
        - (B) are systematically and individually applied to students consistent with the demonstrated level of need;
    - (e) A student in a Texas Juvenile Justice Department educational program may not be released on parole from the commission unless the student participates, to the extent required by commission rule, in the positive behavior support system under Subsection (c).

# Became...

- Participation in the PBIS system means: TJJG GAP Rule 380.9155(f)
  - during the most recent six-month period, a youth has responded to PBIS prevention and/or intervention strategies to the extent that:
    - the youth has no more than a total of three:
      - days on which he/she was removed from a designated education location for a disciplinary reason; and/or
      - written refusals to attend class in the designated education location; **or**
    - the youth has:
      - missed no more than ten percent of available instructional minutes due to removal from a designated education location for a disciplinary reason and/or written refusal to attend class in the designated education location; and
      - demonstrated a pattern of increased time spent in class; **or**

- the youth has responded to PBIS prevention and/or intervention strategies to the extent that:
  - the youth possesses the behavioral skills necessary to transition to his/her future academic, vocational, or vocational training placement; or
  - appropriate transition supports are in place to promote the youth’s transition to his/her future academic, vocational, or vocational training placement.
- A member of the IEP committee shall participate in determining if student meets participation requirements

# SPECIAL EDUCATION LAW IN ADULT FACILITIES

- All eligible children ages 3-21 are entitled to FAPE at all times. 20 U.S.C. 1412(a)(1)(A).
- Two limitations listed
- Relevant limitation is that there is no child find requirement for students ages 18-21 who are in adult facilities. 20 U.S.C. 1412(a)(1)(B)(ii).

# SPECIAL EDUCATION LAW IN ADULT FACILITIES

- There is no requirement for children in adult prisons to participate in state assessments. 20 U.S.C. 1414(d)(7)(A)(i).
- There is no requirement to do transition planning for a child whose special education eligibility will run out before release date. 20 U.S.C. 1414(d)(7)(A)(ii).

# SPECIAL EDUCATION LAW IN ADULT FACILITIES

- Notwithstanding least restrictive environment requirements, an IEP team can modify a child's IEP if “the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.” 20 U.S.C. 1412(d)(7)(B).

# SPECIAL EDUCATION LAW IN ADULT FACILITIES

- What does that mean?
- *Only* an IEP team can change the IEP.
- Burden is on the state to demonstrate the penological interest.

# CASE LAW

- *Handberry v. Thompson*, 92 F.Supp.2d 244
- Class action by inmates in various Rikers Island jails for inadequate general and special education services.
- “entitlement to special education services is not trumped by incarceration.” at 248.
- Court held that failure to provide education services was actionable. Didn’t distinguish among various city defendants.

# CASE LAW

- *New Hampshire Department of Education and New Hampshire Department of Corrections v. City of Manchester, New Hampshire School District; and Adams*, 23 IDELR 1057 (D.N.H. 1996).
- Plaintiff Adams was denied education once his security level was raised.
- Adams “is clearly” entitled to FAPE while incarcerated at all times. At 7.
- State prison system was a proper party to the case. At 9-10.

# SOVEREIGN IMMUNITY

- Specifically abrogated by IDEA. 20 U.S.C. 1403; *M.A. ex rel. E.S. v. State-Operated Sch. Dist. of the City of Newark*, 344 F.3d. 335, 347 (3rd Cir. 2003).
- Cannot be used to prevent a state actor from being a defendant in a prison suit.



Ian Spechler

Disability Rights Texas

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## Polling Question 3:

Your experience in special education:

1-3 years

4-7 years

8-10 years

11+ years



TEXAS  
JUVENILE JUSTICE  
DEPARTMENT

# Providing Special Education Services in a Juvenile Justice Facility (Practical Tips)

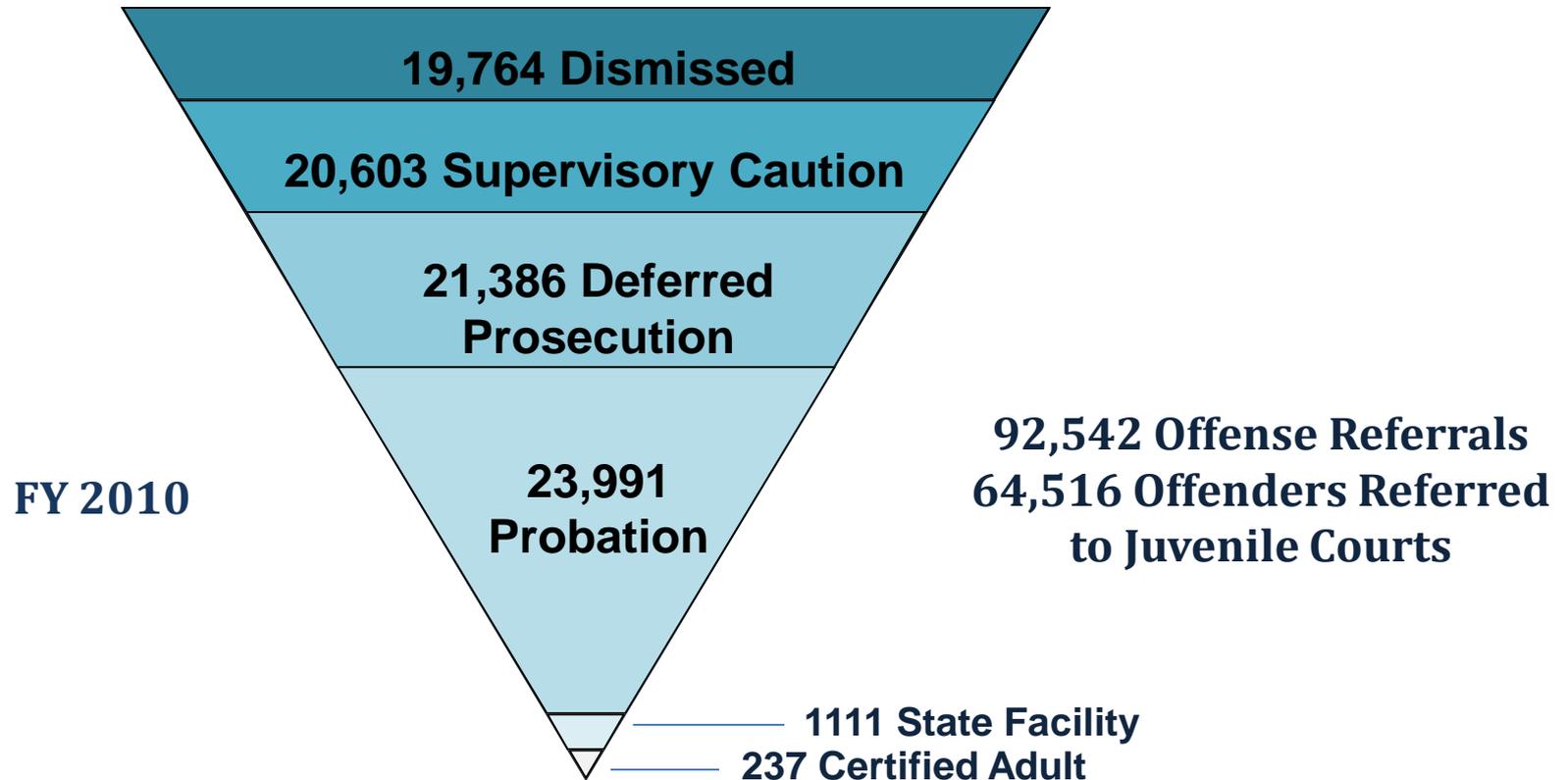
**Karol H. Davidson**

The mission of the Texas Juvenile Justice Department is to create a safer Texas through the establishment of a continuum of services that promotes positive youth outcomes...

## **Types of Juvenile Justice Facilities**

- Residential Treatment Center
- Group Home/Halfway House
- Shelter
- Detention Center
- Training Center (Secure or Non-Secure Correctional Facility)

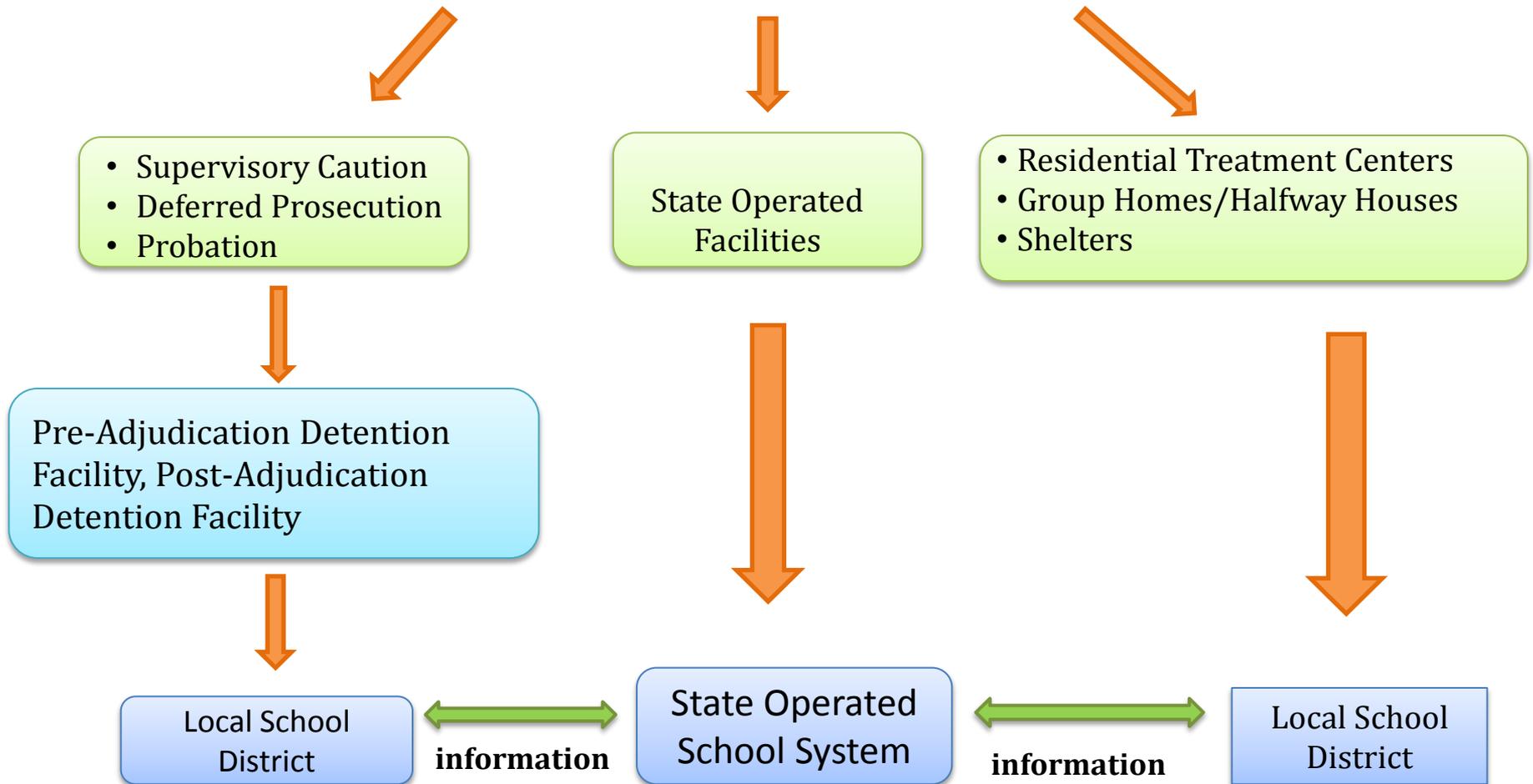
# Disposition of Cases in the Texas Juvenile System



Source: TJPC

\*Many youth offenders have multiple referrals

# Who Is the LEA for Educational Services in a Juvenile Justice Residential Facility?



# Entitlement to FAPE in Juvenile Justice Facilities

- Student with disabilities who reside in a juvenile justice facility have the same right to services as any other student no matter where they are placed.
- Students with disabilities who reside in a juvenile justice facility are entitled to special education and related services pursuant to their IEPs.
- Who is responsible for doing what to provide special education services depends on whether the facility directly provides the educational service or a local school district/charter school provides the educational service.

# *Case scenario 1*

BB, a 15 year old boy, was placed in a post-adjudication secure correctional facility after having been adjudicated for aggravated assault and placed on probation. BB has a specific learning disability, emotional disability, and ADHD. BB's IEP includes behavioral strategies to address his aggressive conduct.

During one of his special education classes, BB begins to act out to the point where the special education teacher cannot calm him down. BB becomes aggressive and pushes the special education teacher causing her to fall. Facility staff remove BB from the classroom and place him in seclusion. This is the third time in two weeks that BB has been removed from class for similar conduct. BB's behavior remained non-complaint and he does not return to class for three days.

# *Case scenario 1*

## ***1.1 Question:***

Does BB's placement in seclusion constitute a change in placement?

# *Case scenario 1*

## ***1.2 Question:***

What, if any, services must be provided to BB while he is in seclusion?

# *Case scenario 1*

## ***1.3 Question:***

What are the responsibilities of the facility to provide educational services while BB is in seclusion?

## *Case scenario 2*

After assaulting facility staff numerous times, BB's probation was revoked and he was committed to the State Correctional Facility. BB's pattern of assaultive and aggressive behavior continues after his placement at the state facility.

On a weekend, BB hit and pushed a facility staff person causing the staff to fall and sprain his ankle. BB was placed in security where he remained for 3 days pending a disciplinary hearing. Subsequent to the disciplinary hearing BB was assigned to a behavior dorm where all services must be provided on that dorm.

# *Case scenario 2*

## ***2.1 Question:***

What educational services must be provided to BB while he is in security?

## *Case scenario 2*

### **2.2 Question:**

Is the placement in security a change in placement pursuant to IDEA? Is the placement on the behavior dorm a change in placement pursuant to IDEA?

## *Case scenario 2*

### ***2.3 Question:***

What educational services must be provided to BB while he is on the behavior dorm?

# Practice Tips

- Educational planning begins at Intake.
- The school and residential staff should share information regarding youth behavior, services or case planning that can be utilized in setting.
- Special Education plans can be utilized even when not required by IDEA.
- School removals should be minimized as much as possible.
- Sharing of information from placement to placement reduces gaps in services.



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# Checklist for Using IDEA

- From: Educational Advocacy for Youth With Disabilities

<http://www.ojjdp.gov/pubs/walls/sect-03.html>

- If you have knowledge of a youth in custody who has disabilities and is not receiving appropriate educational services, you can:

- Verify if the youth has been identified as having a disability either before or after incarceration.
- Find out about the status of the youth's IEP if the youth has been identified as having a disability.
- Monitor signs of a disability by a youth who has not been identified as disabled and share your findings with an authority who has the ability to do an initial screening and obtain a more thorough evaluation.

Discuss the need for appropriate services at the facility with:

- Teachers and tutors at the facility
- A facility administrator
- A special education attorney in the area or a law school clinical program
- A professor of education
- Parents

- Obtain the Correctional Education Association standards on correctional education programs.
- Review the facility's educational standards.

Establish a committee of educators, advocates, and administrators to:

- Ensure that IEP's are conducted in a timely fashion by qualified personnel.
- Revise the educational standards of the facility.
- Simplify the eligibility determination for special education services.
- Ensure that the facility has qualified teachers.
- Involve local advocacy groups that support children and persons with disabilities.

- Also, IDEA establishes a framework within which parents and advocates can present their special education concerns to correctional facilities in the interest of avoiding litigation.
- Contact an attorney who can assist you in bringing litigation against the facility if education services do not improve.

# Stay Current with Federal and State Law

US Publishing Office: (34 CFR 300-399)

<http://www.gpo.gov/>

Federal Office of Special Education

<http://www.ed.gov/about/offices/list/osep/osep>

Texas Rules and Regulations:

<https://framework.esc18.net/display/Webforms/LandingPage.aspx>

My take-aways...

Thanks to all of you for sharing your time and expertise with our audience.

A graphic of the words "thank you!" in a playful, multi-colored font. The word "thank" is on the top line, and "you!" is on the bottom line. The letters are in various colors: 't' is yellow, 'h' is green, 'a' is light blue, 'n' is red, 'k' is yellow, 'y' is orange, 'o' is yellow, and 'u!' is light blue. The letters are slightly overlapping and have a soft shadow effect.

Texas Juvenile Justice Department Module Eight  
Special Education 101:  
**Understanding the Rights of Youth with Special  
Education Needs in Juvenile Justice Facilities**

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