

Education and Juvenile Justice Training Project

Module Seven

Transition:

‘Helping students move toward
adult lives as contributing and
engaged members of their
communities’

Presented as a Statewide Training Module by:

Texas Juvenile Justice Department (TJJD):

Juvenile Justice Alternative Education Program (JJAEP)

Education Department

Juvenile Probation Department JJAEP Facilitator

In future 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 be able to identify:
 - The legislative intent for providing this series of webinars
 - Transition and transition skills, related to students with special education needs
 - The process by which a student is identified as eligible for special education
 - Special education: definitions, rights, descriptions, and responsibilities

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
- Starting with the End in Mind: **TRANSITION**

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.

Beginning with the End in Mind: Council for Exceptional Children

Transition

- Research: Effective transition services are directly linked to better post-secondary outcomes for students with disabilities
- Research also tells us that to flourish in the workplace youth with disabilities must...

Have the opportunity to develop leadership skills



Engage in Self-Determination

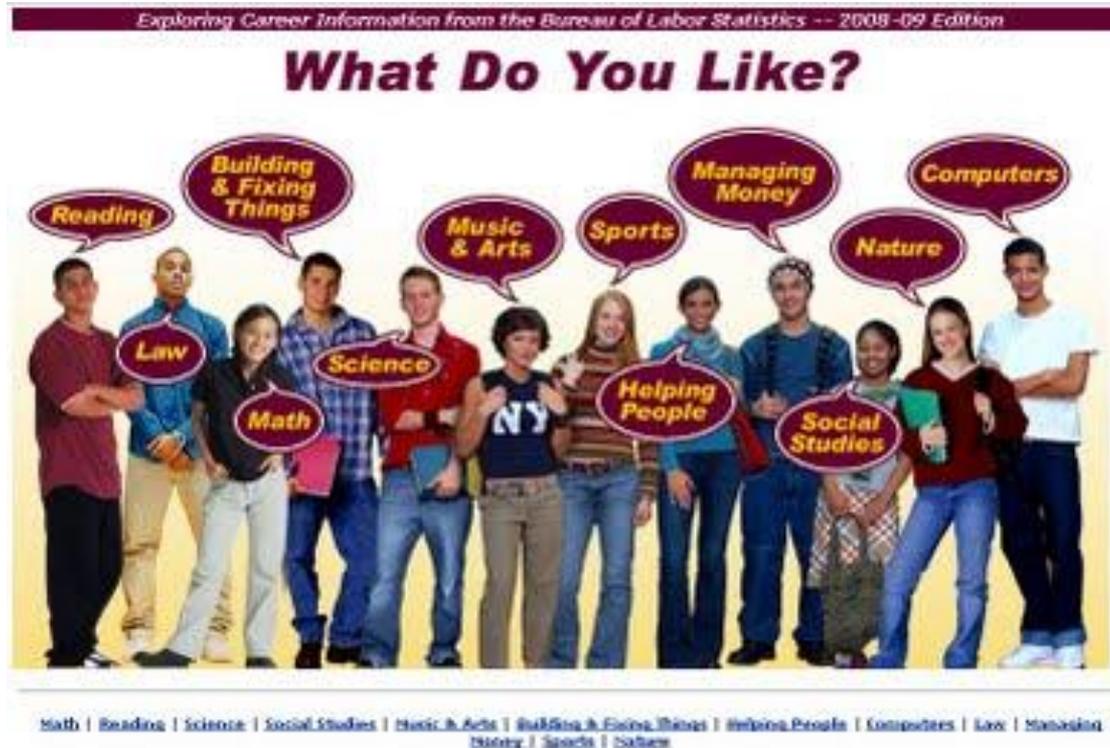


Polling Question

To What Degree can students learn to be their own advocates?

- Little or not at all
- Educationally
- In Work Situations
- Social situations
- In all situations, ultimately

Engage in career exploration



Participate in paid work-based experiences while in high school



But wait...

- They are in the juvenile justice system
- A student may not read on grade level
- **Maybe he/she can't**
 - do math,
 - identify their own strengths,
 - identify their own disability and what helps them be successful...
 - self advocate....

TRANSITION

The time when the changes in the lives of students create specific needs...

How are we helping
students get ready ahead
of time?



Help comes in different forms:

- Administrative
- Teacher supported
- Student Centered
- Family Centered
- Case management and Counseling



Help...

Administrative- a conduit of information and support

- Paperwork: transcripts, grades
- Behavior summary
- Suggestions for placement
- Attendance information



Help...

Teacher supported
Academic



- Individualized instruction
- Accelerated instruction
- Self-Paced instruction
- Character Building
Components



Student Transition Skills

Student Centered

- Participation in their own success
- Peers

Learning:

- Self Advocacy
- Social skills
- Work skills



Transition Skills:



- **What is Self-Advocacy?**
- “Self-advocacy is a process of speaking up for oneself and being empowered to express one’s own needs, goals, and desires. Moving beyond that, it is learning how to speak up for others.”
- ~Megan Hart, Tennessee Advocate for Self Advocacy Co-Chair

Help...

Learning to Participate in:

- Case management and Counseling
- Social Skills Training
- Character Building

Skills Essential to Self-Advocacy

- Information seeking
- Communication
- Decision making
- Problem solving
- Negotiation
- Standing up for one's rights

—Clark and Stovall (1996)

—Cancer Survival Toolbox (1998)

Help...

- Family Centered
 - Determine family resources
 - Resiliency factors
 - Attending parenting classes
 - Visiting school



Polling Question

Do you consider yourself as:

- Experienced in Special Education Requirements
- Learning about Special Education Requirements
- Other

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 Decisionmaking 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.



Thanks to Ian Spechler
Disability Rights Texas
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Polling Question

Do you consider your education program a:

- More Restrictive Environment
- Less Restrictive Environment
- What is restrictive?

In Summary:

- **Participants have discussed:**
 - The legislative intent for providing this series of webinars
 - Transition and transition skills, related to students with special education needs
 - The process by which a student is identified as eligible for special education
 - Special education: definitions, rights, descriptions, and responsibilities

Wrapping it Up...

- **Questions?**
- **Comments?**

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