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American  
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*Children with  
Disabilities in  
Juvenile Court*

IDEA and the  
Juvenile Prosecutor

**American Prosecutors Research Institute**

99 Canal Center Plaza, Suite 510  
Alexandria, VA 22314  
[www.ndaa-apri.org](http://www.ndaa-apri.org)

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# *Children with Disabilities in Juvenile Court*

IDEA and the  
Juvenile Prosecutor

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C. Kevin Morrison  
Senior Attorney  
National Juvenile Justice Prosecution Center  
American Prosecutors Research Institute

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# INTRODUCTION

Imagine you are a juvenile court prosecutor doing routine intake. You are reviewing police reports to determine which cases are appropriate for new delinquency filings, and you come across the following facts:

- *Joseph.* Joseph is 14 years old and has been adjudicated delinquent for assaults against his peers and for arson. He has been incarcerated in a state juvenile detention facility as a result of those adjudications, though he has been living at home with his mother for a few months. You now have before you a police report containing conclusive evidence that Joseph has recently set fire to his school's cafeteria during school hours.
- *Nathaniel.* A teacher spotted Nathaniel, a high school student, and another student engaged in activity on campus that appeared to be a drug transaction. The teacher reported the incident to the principal and the principal interviewed the other student, who said he bought marijuana from Nathaniel. The principal called police who came to the school, and Nathaniel was brought to the principal's office. A legal search of Nathaniel's person revealed two pipes and two packages of marijuana similar to the package the other student says he bought from Nathaniel.
- *Trent.* Trent is a student at your local junior high school. A year ago he was adjudicated delinquent on two counts, one for battery when he struck another student, and one for arson when he threw a lit match into a school locker. He has been on probation since that adjudication. Recently Trent was involved in an incident at school that meets the elements of disorderly conduct, an offense that is a violation of Trent's probation.

Clearly, each of these is a likely candidate for a new delinquency filing. But, now consider the following additional facts: Joseph was diagnosed as emotionally disturbed nine months ago, and has been in special education classes since that time;<sup>1</sup> Nathaniel has a long history of disruptive

<sup>1</sup> See *Joseph M. v. Southeast Delco School Dist.*, 2001 U.S. Dist LEXIS 2994 (E.D. Pa. 2001).

behavior at school and at home, and three years ago a psychologist stated that he should be in “a program for students with behavioral and emotional disturbances”;<sup>2</sup> and Trent was diagnosed as emotionally disturbed when he was three years old and has been in a special education program his entire school career.<sup>3</sup> With these additional facts, the nature of the juvenile delinquency case you are considering has changed dramatically. You now must consider the impact on your case of the complex scheme of Federal statutes and regulations known as the Individuals with Disabilities Education Act, or “IDEA.”<sup>4</sup>

<sup>2</sup> See *Commonwealth v. Nathaniel N.*, 54 Mass. App. Ct. 200, 764 N.E.2d 883 (2002).

<sup>3</sup> See *In re Trent N.*, 212 Wis.2d 728, 569 N.W.2d 719 (Wis. Ct. App. 1997).

<sup>4</sup> 20 U.S.C. § 1400 *et seq.* While this monograph focuses on the IDEA, similar issues can arise under § 504 of the Rehabilitation Act, which prohibits exclusion of any person with a disability from any federally funded program, 29 U.S.C. § 794, and under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

# THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Proclaiming that “Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society,”<sup>5</sup> Congress enacted the Education of All Handicapped Children’s Act in 1975.<sup>6</sup> The statute was later renamed the “Individuals with Disabilities Education Act,”<sup>7</sup> and in 1997, Congress reauthorized and substantially amended the IDEA.<sup>8</sup> Under those statutes, local public schools that receive federal financial assistance are required to provide education to physically, mentally, and emotionally disabled children in the public school system.

In enacting the IDEA, Congress intended to address the problem of an estimated 2.5 million disabled children who were “either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’”<sup>9</sup> The United States Supreme Court first examined IDEA in *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, and found that Congress intended that disabled children receive the same quality of education of their non-disabled peers, which requires:

... personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State’s educational standards, must approximate the grade levels used in the State’s regular education, and must comport with the child’s [individual education program]. In addition, ... if the child is being educated in the regular classrooms of the public education system, [the program] should be reasonably calculated to

<sup>5</sup> 20 U.S.C. § 1400(c)(1).

<sup>6</sup> Pub. L. No. 94–142, 89 Stat. 773 (1975).

<sup>7</sup> Pub. L. No. 102–119, 105 Stat. 587 (1991). For simplicity, this monograph uses the abbreviation “IDEA” to refer to the statute as it existed before and after 1991.

<sup>8</sup> Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105–17, 111 Stat. 37 (1997).

<sup>9</sup> *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 191 (1982) (quoting the legislative history of the Education of All Handicapped Children’s Act).

enable the child to achieve passing marks and advance from grade to grade.<sup>10</sup>

The IDEA says nothing about juvenile prosecution—except to say expressly that it is not intended to say anything about juvenile prosecution.<sup>11</sup> Nevertheless, the fact that a juvenile has been found to have a mental or emotional learning disability might be important to a juvenile delinquency case at many levels: at the intake or filing decision, as evidence of mitigation or explanation at trial, or as a factor at disposition after adjudication. The IDEA even has been asserted as a bar to the juvenile court’s jurisdiction, and at least one court has accepted that argument. Hence, it is essential for juvenile prosecutors to understand the IDEA and how it could affect the prosecution of juvenile offenders who happen also to be disabled and subject to the protections of the IDEA.

### **IDEA’s Essential Elements**

The core requirement of the IDEA is that every participating school system receiving federal funds must provide for every eligible disabled child between the ages of three and twenty-one a “free appropriate public education” or “FAPE.”<sup>12</sup> The IDEA provides an elaborate set of procedural and substantive requirements with which schools must comply in planning and implementing an FAPE for each eligible child, referred to in the statutes as an “individualized educational program” or “IEP.”<sup>13</sup> Further, the IDEA establishes equally elaborate “due process procedures,” which the states must follow, allowing for participation by parents, or in some instances disabled students themselves, throughout the planning process, and to challenge the program adopted by the school if it does not meet the parents’ or student’s approval.<sup>14</sup> Finally, the statutes allow

<sup>10</sup> 458 U.S. 176, 203–04 (1982).

<sup>11</sup> 20 U.S.C. 1415(k)(9)(A) (“Nothing in this subchapter shall be construed to ... prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability”).

<sup>12</sup> 20 U.S.C. § 1412(a)(1).

<sup>13</sup> 20 U.S.C. § 1414(d); 30 C.F.R. § 300.340 *et seq.* (2002).

<sup>14</sup> 20 U.S.C. § 1415(b); 30 C.F.R. § 300.500 *et seq.* (2002). The statute calls these requirements the “procedural safeguards,” but the Department of Education, and many of the courts discussing the IDEA, refer to them as the “due process procedures.”

parents to challenge in federal court any action by school officials that they believe is contrary to the statute or an IEP.<sup>15</sup> These complex statutes are supplemented by a long and more complex set of regulations promulgated by the U.S. Department of Education to implement the IDEA.<sup>16</sup>

### **Identification of Children with Disabilities**

To effectuate the goal of providing every disabled child an FAPE, the IDEA first imposes a “child find” obligation on school systems to locate and identify students who qualify for services under IDEA. Most students are identified by parents or guardians, by teachers observing the child’s progress and behavior in the classroom, or by health professionals informing the school of the special needs of children they treat. When a child who may fall under the IDEA is “found,” the child must be evaluated, with the parent’s consent, to determine whether the child has a qualifying disability, and that evaluation must be updated periodically. It is at this point of identifying and diagnosing disabilities that the first issue that may be pertinent for juvenile prosecutors arises, *i.e.* precisely which impairments constitute a disability under the act.

The definition of a child with a disability includes the sort of physical impairments that might be expected, such as hearing or visual impairments, including deafness and blindness, “orthopedic impairments,” traumatic brain injuries, and other mental impairments like mental retardation and learning disabilities.<sup>17</sup> The definition of “disability,” however, also includes the far less specific expression, “serious emotional disturbance.”<sup>18</sup> The Department of Education has attempted to provide further guidance

<sup>15</sup> 20 U.S.C. § 1415(i)(2).

<sup>16</sup> 30 C.F.R. Part 300 (2002). The text of the 1997 IDEA Amendments Act requires 33 pages of the Congressional Record to reproduce, *see* 143 Cong. Rec. H2498 (daily ed. May 13, 1997), and the more than 250 sections of Department of Education regulations occupy some 55 pages in the Federal Register, not counting the accompanying commentary. *See Assistance to the States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities; Final Rule*, 64 Fed. Reg. 12406, 12418 (1999).

<sup>17</sup> 20 U.S.C. § 1401(2)(A)(i).

<sup>18</sup> *Id.*

on what constitutes an “emotional disturbance” under the statute, but its regulation uses equally vague language, such as “an inability to build or maintain satisfactory interpersonal relationships,” and “inappropriate types of behavior or feelings under normal circumstances.”<sup>19</sup>

The principal diagnostic reference work used by mental health practitioners in diagnosing mental illness or “emotional disturbance” is the Fourth Edition of the *Diagnostic and Statistical Manual of Mental Disorders*, generally abbreviated “DSM-IV.”<sup>20</sup> The DSM-IV describes numerous “mood disorders” including “major depressive disorder” and “bipolar disorder” (formerly known as manic-depression.)<sup>21</sup> It also includes several “anxiety disorders” including the “phobias,” “obsessive-compulsive disorder,” and a “generalized anxiety disorder.”<sup>22</sup> A diagnosis of any one or more of these DSM-IV disorders might qualify a child for the protections and procedures available under the IDEA.

As helpful as these diagnostic labels and tools might be to mental health practitioners, they can be troublesome to the juvenile prosecutor. For example, two disorders identified in the DSM-IV—“conduct disorder”

<sup>19</sup> 34 C.F.R. § 300.7(4). The full regulation provides the following definition of “emotional disturbance”:

- (i) The term means 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 or teachers.
  - (C) Inappropriate types of behavior or feelings under normal circumstances.
  - (D) A general pervasive mood of unhappiness or depression.
  - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

<sup>20</sup> American Psychiatric Association (APA), *Diagnostic and Statistical Manual of Mental Disorders*, 4th Ed. (Washington, D.C.: American Psychiatric Association 1994). The abbreviation “DSM-IV” is a trademark of the APA.

<sup>21</sup> *Id.* at 317–391. A “major depressive disorder” is one in which the subject experiences a “major depressive episode” for a period of two or more weeks, and includes the symptoms “depressed mood most of the day,” “diminished interest or pleasure in all or almost all activities,” “feelings of worthlessness,” and “diminished ability to think or concentrate.” *Id.* at 327.

<sup>22</sup> *Id.* at 393–444.

and “oppositional defiant disorder”—are fairly commonly seen in the evaluations of juvenile delinquents. Conduct disorder is described as a combination of the presence of three or more of a list of 15 behaviors often present in delinquents,<sup>23</sup> and a finding of a “clinically significant impairment in social, academic, or occupational functioning” as a result of the presence of the listed behaviors. “Oppositional defiant disorder” is described as a “pattern of negativistic, hostile, and defiant behavior” for six or more months. The specific behaviors listed include frequent loss of temper, frequent arguments with adults, active defiance or refusal to comply with adults’ requests, blaming others for misbehavior, frequently being touchy or angry or vindictive; again, a list of behaviors and traits applicable to a great many juvenile delinquents.

The Department of Education clarified the issue a little by excluding “children who are socially maladjusted” from the definition of “serious emotional disturbance.”<sup>24</sup> Some courts have held that the “socially maladjusted” exclusion rules out finding that children are disabled under the IDEA when their only symptoms are those of a conduct disorder as defined in the DSM-IV:

Courts and special education authorities have routinely declined, however, to equate conduct disorders or social maladjustment with serious emotional disturbance.... Indeed, the regulatory framework under IDEA pointedly carves out “socially maladjusted” behavior from the definition of serious emotional disturbance. This exclusion makes perfect sense when one considers the population targeted by the statute. Teenagers, for instance, can be a wild and unruly bunch. Adolescence is, almost by definition, a time of social maladjustment for many people. Thus a “bad conduct” definition of serious emotional disturbance might include almost as many people in special education as it excluded.<sup>25</sup>

<sup>23</sup> The behaviors include bullying, threatening or intimidating others, using a weapon to cause physical harm to another person, physical cruelty to another person or to an animal, deliberately setting fires or destroying others’ property, breaking into someone else’s home, stealing, running away from home, and truancy. DSM-IV at p. 90.

<sup>24</sup> 34 C.F.R. § 399.7(4)(ii).

<sup>25</sup> *Springer v. Fairfax Co. School Bd.*, 134 F.3d 659 (4th Cir. 1998).

Other courts, however, particularly when considering whether a child's specific conduct is a "manifestation of disability," have included a broad range of behaviors within the definition of "disability."<sup>26</sup> Thus, a careful examination of the diagnosis and behavior at issue is required at the outset to determine whether the IDEA is applicable.

### **Formation and Implementation of an IEP**

Once a child has been identified as disabled and eligible for special education programs under the IDEA, that child's education will be provided in accordance with an "Individualized Education Program" or "IEP," which must be in place at the beginning of each school year.<sup>27</sup> The statute requires that the IEP be developed by an "IEP team" that includes the child's parents (and "where appropriate" the child), a regular education teacher, a special education teacher, a school system representative who is knowledgeable about the system's programs for disabled children, a person who can interpret the results of the child's evaluation (who can be another qualified team member), and any person with special knowledge of the child and his or her needs (if requested by the parent or the school system).<sup>28</sup>

The IEP must include detailed statements of numerous elements of the child's assessment and education, including the following:<sup>29</sup>

1. A statement of the child's current level of education, and how the disability has affected the child's progress in the "general curriculum";
2. A statement of the child's "measurable annual goals" and "benchmarks or short-term objectives";
3. A statement of the aids, special education services, and other programs the child will receive;

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<sup>26</sup> See the discussion of the "manifestation" determination beginning at page 12, *infra*.

<sup>27</sup> 20 U.S.C. § 1414(d). "The *modus operandi* of the Act is the ... 'individualized educational program.'" *Burlington School Comm. v. Mass. Dept. of Educ.*, 471 U.S. 359 (1985).

<sup>28</sup> 20 U.S.C. § 1414(d)(1)(B).

<sup>29</sup> 20 U.S.C. § 1414(d)(1)(A).

4. An explanation of whether and how the child will be educated in a regular classroom or “mainstreamed,” and if not, why not;
5. Any modifications in the regular State- or District-wide assessments which will be required for the child, and why;
6. A statement of how the child’s progress in the program will be measured, and how the parents will be informed of the results of that measurement; and
7. Beginning when the child turns 14, a statement of “transition services” the child will need, such as vocational education programs.

The IEP must be reviewed, and modified as necessary, at least once per school year, and more often at the request of parents or teachers or administrators to accommodate the need for changes during the school year.

The IEP must provide for the child’s placement<sup>30</sup> in the “least restrictive environment,” sometimes referred to as “mainstreaming.” Under that requirement, an IEP must provide that “to the maximum extent appropriate,” a disabled child must be “educated with children who are not disabled,” and can be placed in “special classes” or other separate facilities “only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”<sup>31</sup> This requirement becomes more important if the child’s behavior becomes disruptive, as it may limit the ability of the school to remove the child from the regular classroom, even after discipline such as suspension or expulsion has been imposed.

<sup>30</sup> The term “placement” in the IDEA context refers to the place and environment in which educational services are provided, not the meaning more common to juvenile court practice of the place where the child lives.

<sup>31</sup> 20 U.S.C. § 1412(a)(2)(5). On the other hand, where placement in a private school is necessary “as a means of carrying out the requirements” of the IDEA, the school district is required to pay the cost of that private school, 20 U.S.C. § 1412(a)(10), and a federal court can order the school district to reimburse parents for private school tuition when the school initially refuses to pay, but the refusal is later found to be improper. *Burlington School Comm. v. Mass. Dept. of Educ.*, 471 U.S. 359 (1985) (reimbursement of private school tuition may be “appropriate relief” under judicial review statute).

Special provisions relate to formulation of IEPs for youth with behavioral problems. These provisions may play a role later if the school wants to discipline a child for that behavior, and could affect a juvenile prosecution for that behavior. Specifically, the 1997 IDEA Amendments require schools, under the heading of “special factors,” to address behavior problems in the IEP when they become known:

The IEP team shall ... in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.<sup>32</sup>

Those “interventions, strategies, and supports” will become important later if the school wishes to impose discipline on the child, since deviation from those plans could constitute a change in the IEP triggering due process protections and procedures.<sup>33</sup>

### Due Process Requirements

The IDEA includes elaborate procedural requirements throughout the process of identification and assessment of children with disabilities, and the formulation, implementation, and revision of an IEP.<sup>34</sup> A primary theme throughout these requirements is parental involvement; at virtually every step along the way parents must receive notice and an explanation of their rights and the child’s rights, and the statute encourages most decisions to be made with the concurrence of the parents. The IDEA also provides for administrative appeals within the local and/or state school system, referred to in the statute as an “impartial due process hearing.”<sup>35</sup> A parent or a school system “aggrieved” by an administrative order arising out of a due process hearing can file an action in federal court, and the court can “grant such relief as the court determines is appropriate,” including an award of attorneys’ fees to a prevailing parent.<sup>36</sup>

<sup>32</sup> 20 U.S.C. § 1414(D)(3)(b). *See also* 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.346(a)(2).

<sup>33</sup> *See* page 12, *infra*.

<sup>34</sup> 20 U.S.C. § 1415. That statute, entitled “Procedural Safeguards,” contains almost 5,000 words spelling out in great detail the procedures which school systems and state education agencies must follow in implementing the IDEA.

<sup>35</sup> 20 U.S.C. § 1415(f)–1415(i).

<sup>36</sup> 20 U.S.C. § 1415(i)(2).

One procedural innovation implemented by the 1997 IDEA Amendments was the requirement that states establish a mediation program to resolve parental objections to any action taken under the IDEA.<sup>37</sup> The mediation must be voluntary and may not require waiver of any right, including the right to bring a federal court action, as a condition of mediation.<sup>38</sup> The state or local educational agency is required to bear the entire cost of any mediation.<sup>39</sup> Finally, and perhaps most importantly to the juvenile prosecutor, everything said during the mediation is confidential and cannot be used as evidence in any subsequent proceeding; in fact, the statute provides that the parties may be required to sign confidentiality agreements prior to any mediation proceeding.<sup>40</sup> That provision might well prohibit any evidence arising out of the mediation at a subsequent delinquency proceeding.

The procedures described thus far do not directly involve the juvenile prosecutor, and likely would not even come to the prosecutor's attention except by way of background information if the child later commits a delinquent act. Another set of procedural requirements in the IDEA—those governing discipline of disabled children—could have a significant effect on the juvenile prosecutor, and warrant more in-depth discussion.

### ***Discipline Under the IDEA***

Understanding the limitations the IDEA imposes on a school's discipline of disabled children for their behavior is a necessary prerequisite to understanding some of the arguments that have been asserted against juvenile court prosecution of those children for the same behavior. Over the first twenty years of the IDEA and its predecessor, the statutes were interpreted by the courts to limit significantly the ability of school administrators to discipline children covered by the Act. When discipline of the disabled child constitutes a change in the child's educational placement,<sup>41</sup> or makes any other substantive change in the child's IEP, the child's and parent's full due process rights arise. Hence, under ordinary circumstances, a school would be unable to suspend a student with an

<sup>37</sup> 20 U.S.C. § 1415(e).

<sup>38</sup> 20 U.S.C. § 1415(e)(2)(A)(ii).

<sup>39</sup> 20 U.S.C. § 1415(e)(2)(D).

<sup>40</sup> 20 U.S.C. § 1415(e)(2)(G).

<sup>41</sup> See note 30, *supra*, for definition of "placement" in the IDEA context.

IEP unless the IEP already permitted that action under a “behavioral intervention plan,” or the IEP was amended to reflect the suspension. A complete expulsion of a disabled student was normally not permitted, as it would constitute the denial of educational services to a disabled child prohibited by the IDEA.

The Department of Education and the courts had recognized a limited exception to this broad rule allowing discipline of the child, including suspension and expulsion, when it has been determined that the conduct was not a “manifestation” of the child’s disability, but rather was the result of some other cause (such as delinquency). Although not expressly provided for in the original IDEA statutes, the principle had been implicitly accepted at least as early as 1981 in *S-1 v. Turlington*.<sup>42</sup>

The court cases considering the “manifestation” question, however, have interpreted it in such a way that few incidents of misconduct would not be considered a manifestation of disability. For example, in *School Bd. of Prince William Co. v. Malone*,<sup>43</sup> the court held that the 14-year-old juvenile’s drug dealing charges were related to his learning disability because “a direct result of [his] learning disability is a loss of self image” and ostracism and ridicule by his peers, thereby making him “susceptible to peer pressure” and “a ready ‘stooge’ to be set up by peers engaged in drug trafficking.”<sup>44</sup> As a result, the court held that drug dealing was a manifestation of the juvenile’s learning disability, and therefore he could not be expelled under the IDEA. Numerous other cases reached similar conclusions.<sup>45</sup>

Another IDEA provision that further complicates a school’s discipline of disabled children, and which many believe compromises school safety, is a

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<sup>42</sup> 635 F.2d 342 (5th Cir. 1981). The Court in *S-1 v. Turlington* also held that the determination of whether the misbehavior was a manifestation of the disability must be made under the due process procedures of the IDEA. *Id.* at 348.

<sup>43</sup> 662 F. Supp. 978 (E.D.Va. 1984).

<sup>44</sup> *Id.* at 980–81.

<sup>45</sup> *E.g.*, in *Magyar v. Tucson Unified School Dist.*, 958 F. Supp. 1423, 1445 (D.Ariz. 1997) the Court held that the juvenile’s bringing a knife on campus, for which he was found to be delinquent, was a manifestation of his emotional disability because “[c]hildren with emotional disabilities are impulsive and may have little physical control over their actions.”

provision commonly called the “stay-put” provision.<sup>46</sup> Under that statute, absent consent by the child’s parent, a disabled student must be permitted to remain in his or her current educational placement—often a regular classroom under the mainstreaming requirement—while proceedings to amend the IEP or take other action against the student are pending. In 1988, the United States Supreme Court held that statute had no exception for dangerous students in *Honig v. Doe*.<sup>47</sup> In that case the San Francisco school system had expelled two students, “Jack Smith” for disruptive behavior “which included stealing, extorting money from fellow students, and making sexual comments to female classmates,” and “John Doe” for “choking [another] student with sufficient force to leave abrasions on the child’s neck, and kick[ing] out a school window...”<sup>48</sup> In both cases the incidents leading to the expulsions were the latest events in a long history of similar violent behavior.

The Supreme Court rejected the school district’s request to imply a “dangerous child” exception to the statute, and held that the expulsions were not permitted under the IDEA’s stay-put provision:

We think it clear, however, that Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school. In so doing, Congress did not leave school administrators powerless to deal with dangerous students; it did, however, deny school officials their former right to “self-help,” and directed that in the future the removal of disabled students could be accomplished only with the permission of the parents or, as a last resort, the courts.<sup>49</sup>

<sup>46</sup> 20 U.S.C. § 1415(j).

<sup>47</sup> 484 U.S. 305 (1988).

<sup>48</sup> 484 U.S. at 312–314.

<sup>49</sup> *Id.* at 323–324. The Court did provide some room to protect schools from dangerous but disabled students by endorsing the Department of Education’s interpretation of IDEA that a ten-day suspension was not a change of placement, thereby allowing at least short-term suspensions, and by holding that a school administrator could apply to the federal court under the IDEA review provisions for an equitable order to exclude a dangerous child for periods longer than ten days. See, e.g., *Light v. Parkway C-2 School Dist.*, 41 F.3d 1223 (8th Cir. 1994) (upholding the district court’s injunction removing a child due to risk of injury to staff and other children from the child’s aggressive behavior; “we emphatically reject the contention that an ‘injury’ is inflicted only when blood is drawn or the emergency room visited”).

Thus, under *Honig v. Doe*, school districts were significantly limited in their ability to discipline disabled children subject to the IDEA's protection.<sup>50</sup>

After *Honig*, a line of cases developed in the federal appeals courts which recognized an exception to *Honig* for cases in which schools expelled students after the manifestation determination found that the juvenile's conduct had nothing to do with the student's disability.<sup>51</sup> For example, in *Doe v. Bd. of Educ.*, a student with a learning disability was expelled for bringing marijuana and paraphernalia onto the school campus. The Court upheld the child's expulsion on the ground that the marijuana possession had nothing to do with his learning disability.<sup>52</sup> In *Commonwealth v. Riley*,<sup>53</sup> the Fourth Circuit struck down the Department of Education's attempt to condition Virginia's receipt of federal funds on the State providing tutoring services to disabled students expelled from public schools for reasons unrelated to their disability. The Court held that students who commit misconduct not a manifestation of their disability forfeit their right to an education, including the FAPE provided under the IDEA, and therefore can be expelled as any other student can be.<sup>54</sup> That exception to the stay-put rule was codified in the 1997 IDEA Amendments.<sup>55</sup>

<sup>50</sup> The Court pointed out that one of the reasons given for the original Education for All Handicapped Children Act in 1975 was the evidence before Congress that schools had completely excluded one out of every eight disabled children on the ground that they had "behavior problems." Hence, the Court held, it was reasonable for Congress to eliminate outright expulsion for disabled children to reduce the chance that schools will use discipline for the child's "behavior problems" to avoid their obligations under the IDEA. 484 U.S. at 324.

<sup>51</sup> E.g., *Doe v. Bd. of Educ.*, 115 F.3d 1273 (7th Cir. 1997); *Commonwealth v. Riley*, 106 F.3d 559 (4th Cir. 1997); *Doe v. Maher*, 793 F.2d 1470 (9th Cir. 1986), *aff'd as modified sub nom.*, *Honig v. Doe*, 484 U.S. 305 (1988) (the portion of the Ninth Circuit's decision relevant here was not reviewed by the Supreme Court in its *Honig* decision).

<sup>52</sup> *Doe v. Bd. of Educ.*, 115 F.3d 1273 (7th Cir. 1997).

<sup>53</sup> 106 F.3d 559 (4th Cir. 1997).

<sup>54</sup> *Id.* at 563–66. Judge Luttig's original "dissenting" opinion was adopted as the *en banc* majority opinion.

<sup>55</sup> 20 U.S.C. § 1415(k)(4).

The 1997 IDEA Amendments also codified the 10-day exception to the suspension prohibition previously implemented by the Department of Education and expressly endorsed by the Supreme Court in *Honig*.<sup>56</sup> The new statute expressly authorizes temporary placement in an “interim alternative educational setting, another setting, or suspension” for up to 10 days, to the same extent such suspension would be applied to non-disabled students.<sup>57</sup> In addition, school administrators may now impose longer suspensions up to 45 days for possession of weapons on school grounds or for possession, use, or sale of drugs at school without regard to the stay-put requirement.<sup>58</sup> The amended statute also authorizes administrative hearing officers, at the request of school officials, to suspend a disabled student if the school demonstrates by “substantial evidence” that leaving the child in school “is substantially likely to result in injury to the child or to others.”<sup>59</sup>

<sup>56</sup> See note 49, *supra*.

<sup>57</sup> 20 U.S.C. § 1415(k)(1)(A)(i).

<sup>58</sup> 20 U.S.C. § 1415(k)(1)(A)(ii). The provision permitting 45-day suspensions for possession of guns on campus was previously enacted by the Jeffords Amendment to the Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3937 (1994). It was expanded in the 1997 IDEA Amendments to include drug possession within the provision for immediate 45-day suspension.

<sup>59</sup> 20 U.S.C. § 1415(k)(2).

# IDEA'S IMPACT ON JUVENILE COURT

The limitations the IDEA imposes on schools' ability to discipline disabled youth have led many defense attorneys to argue that juvenile proceedings initiated by school districts or based on crime reports by school districts are barred as improper discipline under the IDEA. The most-discussed case in which this argument was advanced is *Morgan v. Chris L.*<sup>60</sup> In that case the federal courts found that the juvenile's school district had violated the IDEA by filing a juvenile delinquency petition arising out of an act of vandalism at the school, and even upheld an administrative law judge's order that the school seek to have the delinquency proceeding dismissed.

Subsequent cases have criticized *Chris L.* or limited its holding to its facts. It also appears to have been overruled by the 1997 IDEA Amendments. Nevertheless, the case continues to be cited as authority, and the argument based on it continues to be presented by attorneys representing juveniles. Hence, a more detailed analysis of *Chris L.* and the cases that follow is necessary.

## ***Morgan v. Chris L.***

In *Chris L.* the child was diagnosed with ADHD in May, 1992, and his school was notified of the diagnosis at that time. The school did not act promptly on that information as required by the IDEA, however, and by May 11, 1993, the date on which Chris vandalized a school bathroom leading to the juvenile delinquency proceeding, the school still had not completed an IEP for Chris. The school initiated disciplinary proceedings, and the school's resource officer filed a petition in juvenile court<sup>61</sup> asking

<sup>60</sup> *Morgan v. Chris L.*, 927 F.Supp. 267 (E.D.Tenn. 1994), *aff'd mem.*, 106 F.3d 401 (6th Cir. 1997), *cert. denied*, 520 U.S. 1271 (U.S. 1997). *Chris L.* was a federal court challenge to school action under the IDEA, not an appeal of a juvenile court adjudication.

<sup>61</sup> In Tennessee, prosecutors do not control the filing of juvenile court petitions; rather, a petition "may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true." Tenn. Code Ann. § 371120.

that Chris be found to be an “unruly” child, Tennessee’s term for a status offender.<sup>62</sup>

Chris’s father challenged the school’s action and an Administrative Law Judge (ALJ) determined that the school had violated the IDEA; specifically, he held that filing a petition in juvenile court constituted a “change in placement” under the IDEA, the same as if the school had tried to expel Chris. Therefore, the ALJ held, the school should have initiated the due process procedures under the IDEA before filing the action at juvenile court. As a remedy the ALJ ordered the school system to seek the dismissal of the juvenile court petition. The school district challenged the ALJ’s decision, but the federal court affirmed.

The court rejected the school district’s argument that the ALJ had no authority over the juvenile court matter, relying in part on an unpublished Tennessee state court decision:<sup>63</sup>

Contrary to the plaintiff’s argument, this case does not involve overreaching by the ALJ past the limits of his jurisdiction to interfere with the juvenile court’s exercise of its Jurisdiction. For one thing, the ALJ did not order the juvenile court to do anything; instead, it ordered the plaintiff, a litigant in the proceeding before the ALJ, to seek dismissal of the proceeding on the unruly petition. . . . What makes the filing of an unruly petition a change in placement for IDEA’s purposes, however, is the potential that juvenile court proceedings have for changing a child’s educational placement in a significant manner.<sup>64</sup>

<sup>62</sup> Tennessee statutes presently define “unruly” as follows: “‘Unruly child’ means a child in need of treatment and rehabilitation who: (i) Habitually and without justification is truant from school while subject to compulsory school attendance under § 49-6-3007; or (ii) Habitually is disobedient of the reasonable and lawful commands of the child’s parent(s), guardian or other legal custodian to the degree that such child’s health and safety are endangered; or (iii) Commits an offense which is applicable only to a child; or (iv) Is away from the home, residence or any other residential placement of the child’s parent(s), guardian or other legal custodian without their consent.” Tenn. Code Ann § 371102(b)(23).

<sup>63</sup> *In re McCann*, 1990 Tenn. App. LEXIS 125.

<sup>64</sup> 927 F. Supp. at 271.

Thus, while not expressly holding that the juvenile court lacked jurisdiction because of the IDEA, the federal court did hold that the school could not initiate a juvenile court action, and that as a remedy, the school could be ordered to withdraw the juvenile court petition.

### **Other Cases and Statutes**

Several courts after *Chris L.* have considered the interaction between the IDEA and juvenile delinquency proceedings, and all have rejected *Chris L.* by name or its reasoning.<sup>65</sup> In addition, shortly after the *Chris L.* decision, Congress passed the 1997 IDEA Amendments adding the following provision:

Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.<sup>66</sup>

Some commentators have suggested the purpose of that amendment was to overrule *Morgan v. Chris L.*<sup>67</sup>

In *In re Beau II*,<sup>68</sup> the juvenile who had been diagnosed with attention deficit disorder was chronically tardy and had become increasingly disruptive and aggressive, including at least one incident of bringing a weapon to school. As a result, school officials filed a petition alleging that the juvenile was a person in need of supervision (“PINS”), and the Family Court adjudicated him to be a PINS. The New York Court of

<sup>65</sup> In one earlier case, the court followed a line of reasoning similar to *Chris L.* and held that IDEA principles prevented the prosecution of juveniles with disabilities for offenses committed at school. *Flint Bd. of Educ. v. Williams*, 88 Mich. App. 8, 276 N.W.2d 499 (1979). The court’s analysis was based principally on the state statutes and regulations implementing IDEA rather than the federal statutes themselves.

<sup>66</sup> 20 U.S.C. § 1415(k)(9)(A).

<sup>67</sup> Terry J. Seligmann, *Not as Simple as ABC: Disciplining Children with Disabilities Under the 1997 IDEA Amendments*, 42 ARIZ. L. REV. 77, at 115, n.211 (2000). See also *Joseph M. v. Southeast Delco School Dist.*, 2001 U.S. Dist. LEXIS 2994 (E.D. Pa. 2001).

<sup>68</sup> 95 N.Y.S.2d 234, 738 N.E.2d 1167 (N.Y. 2000).

Appeals considered the *Chris L.* decision and rejected it, at least in part, stating “We cannot condone a blanket rule that all PINS proceedings are barred by the IDEA, which [*Chris L.*] suggests.”<sup>69</sup> The Court of Appeals did, however, leave open the door that the IDEA might, in an appropriate case, bar a PINS or delinquency proceeding.<sup>70</sup>

The Wisconsin Court of Appeals was stronger in its rejection of *Chris L.*, holding in *In re Trent N.* that there was nothing about proceeding with a delinquency action that was inconsistent with the IDEA.<sup>71</sup> In that case, the trial court had dismissed the juvenile delinquency petition as “premature” since the school had not yet completed all the administrative procedures under the IDEA for imposing school discipline on Trent. The appellate court distinguished *Chris L.* on the fact that the school district actually filed the delinquency petition in *Chris L.*, while in Wisconsin, only district attorneys can file delinquency petitions: “the IDEA is targeted at school action, not the statutory authority of the State to file a delinquency petition, nor the jurisdiction of the juvenile court.”<sup>72</sup>

In *Joseph M. v. Southeast Delco School Dist.*,<sup>73</sup> the federal district court granted summary judgment against a complaint alleging the school district violated the IDEA by reporting criminal behavior that later became the subject of a delinquency petition. The court held that the 1997 IDEA Amendments effectively overruled the holding of *Chris L.*, noting that the specific amendment relating to juvenile proceedings may have been enacted specifically to reverse *Chris L.*<sup>74</sup>

<sup>69</sup> *Id.*, 738 N.E.2d at 1171.

<sup>70</sup> The Court of Appeals did not mention the 1997 IDEA Amendments or consider their applicability to the case.

<sup>71</sup> 212 Wis. 2d 728, 569 N.W.2d 719 (Wis. Ct. App. 1997). The facts of *Trent N.* are the basis for Trent’s case discussed at the beginning of this monograph.

<sup>72</sup> 569 N.W.2d at 74041. The *Trent N.* Court did not consider the effect of the 1997 IDEA Amendments on its holding.

<sup>73</sup> 2001 U.S. Dist. LEXIS 2994 (E.D. Pa. 2001). The facts of *Joseph M.* are the basis for Joseph’s story at the beginning of this monograph.

<sup>74</sup> 2001 U.S. Dist. LEXIS 2994, n.7. The Court even went so far as to hold that the school district could not be held liable for a “change in placement” since Joseph’s educational placement change was the result of the juvenile court’s incarceration of Joseph, not school action.

More recently the court in *Commonwealth v. Nathaniel N.*<sup>75</sup> held that the 1997 IDEA Amendments “implicitly rejected” the reasoning of *Chris L.* The Massachusetts court held that the 1997 IDEA Amendments clearly permitted schools to report activity like Nathaniel’s to the police, and there was no evidence in the case to suggest that the school was attempting to avoid its responsibilities under the IDEA.

Thus, *Chris L.* appears to be an isolated holding, probably limited by the fact that the school, not a prosecutor, filed the delinquency petition. No other court has upheld its reasoning, and several have expressly rejected it. Indeed, as some courts have held, the 1997 IDEA Amendments are probably decisive on the issue. Nevertheless, a number of commentators and others continue to advocate that the IDEA limits a juvenile court’s ability to proceed in a delinquency action.<sup>76</sup> One author in large measure distinguishes away the 1997 IDEA Amendments by arguing that the amended statute allows reports only to “appropriate authorities,” meaning only those authorities that are “appropriate in light of the purpose of IDEA.”<sup>77</sup> Therefore, so the argument goes, “reporting behavior to police (or using the behavior as a basis for a delinquency petition) may not be appropriate in light of the purposes of IDEA, and so would not constitute the reporting to ‘appropriate’ authorities.”<sup>78</sup>

<sup>75</sup> 54 Mass. App. Ct. 200, 764 N.E.2d 883 (2002). The facts of *Nathaniel N.* are Nathaniel’s story at the beginning of this monograph.

<sup>76</sup> See, e.g., Kim Brooks et al., *The Special Needs of Youth in the Juvenile Justice System: Implications for Effective Practice*, ed. Kimberely J. Adams, Kim Brooks, and Joshua Rose (Covington, Kentucky: Children’s Law Center, Inc. 2001); Mark Peikin, Note, *Alternative Sentencing: Using the 1997 Amendments to the Individuals with Disabilities Education Act to Keep Children in School and Out of Juvenile Detention*, 6 SUFFOLK J. TRIAL & APP. ADVOC. 139 (2001); Joseph Tulman and Joyce McGee, eds., *Special Education Advocacy Under the Individuals with Disabilities Education Act (IDEA) for Children in the Juvenile Justice System* (Washington, D.C.: University of the District of Columbia, School of Law, Juvenile Law Clinic, 1998).

<sup>77</sup> Brooks, et al., *supra* note 76 at 76–77, seems to argue that a statement by Senator Harkin (“The bill also authorizes...proper referrals to police and appropriate authorities when disabled children commit crimes, so long as the referrals do not circumvent the school’s responsibilities under IDEA”) supports the view that the legislative history limits the meaning of “appropriate.” Arguably, Senator Harkin’s language, at most, means that the statute does not allow schools to ignore their other obligations under the IDEA, such as the rules pertaining to suspensions and expulsions, and the rules pertaining to alternative educational placements for children who are under suspension, while delinquency proceedings are pending.

<sup>78</sup> *Id.* at 77.

### ***Other Applications***

Demonstrating that the IDEA does not deprive a juvenile court of jurisdiction to consider a delinquency action duly filed by a prosecutor does not mean that the IDEA is irrelevant to the juvenile prosecutor. On the contrary, the IDEA may be relevant at many stages in the juvenile court process. First, the IDEA may be germane at the very earliest stages of a case, including the filing decision. While the 1997 IDEA Amendments expressly permit juvenile court actions, they strongly imply that the child's disabilities should be considered by the "appropriate authorities" to whom criminal conduct is reported:

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.<sup>79</sup>

The statute does not specify how the information coming with a school referral is supposed to be used, leaving that to the prosecutor's discretion in each case, but implicit in the requirement that the information be provided is the suggestion that it be used in some way.

There are, of course, many ways that a prosecutor might use that information. It certainly will be informative on the filing-versus-diversion decision. For example, the information might reveal that the juvenile with disabilities is already involved in many of the therapeutic or other interventions which would be a part of a probation plan if he were adjudicated delinquent, thus making the case appropriate for diversion or some other alternative to filing. The information might also be useful in deciding what offenses to charge if a case is filed, particularly if a specific intent offense is being contemplated.

Even when a delinquency case is filed, information about a juvenile's disability and the interventions that have been used in the past will certainly be pertinent to the eventual disposition. Some juvenile defenders have argued that even when the IDEA does not prohibit a delinquency proceeding, it limits the types of dispositions a court can enter. Specifically

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<sup>79</sup> 20 U.S.C. § 1415(k)(9)(b).

they have argued that the IDEA precludes incarceration or other secure placements because they would interrupt the juvenile's special education.<sup>80</sup> That argument, however, has been rejected by the court in *In re C.S.*<sup>81</sup> In that case the court had ordered that an IEP be prepared as part of the juvenile's pre-disposition evaluation. When the IEP was not available on time for the disposition, the court proceeded without it, placing the juvenile in a secure residential placement. The appellate court held that the trial court was well within its discretion by entering the disposition order without waiting for the IEP.<sup>82</sup>

Finally, the most important application of the IDEA to the juvenile prosecutor's work might well be as a tool for implementing a successful disposition with a particular juvenile by vigorous enforcement of the IDEA. There certainly will be cases in which the most effective manner of balancing the need for public safety, accountability, and offender competency development is through enlisting the juvenile court's assistance to require that an appropriate IEP be implemented and followed. In such a case, the juvenile prosecutor may choose to advocate for the juvenile court to strictly enforce the IDEA requirements imposed upon the school system, the juvenile's parents, and the juvenile as part of the juvenile's probation plan.<sup>83</sup>

<sup>80</sup> "Attorneys can enforce a juvenile offender's right to a free, appropriate public education and receive for him or her a special education and related services that can substitute for or negate the need for detention or incarceration." Mark Peikin, Note, *Alternative Sentencing: Using the 1997 Amendments to the Individuals with Disabilities Education Act to Keep Children in School and Out of Juvenile Detention*, 6 SUFFOLK J. TRIAL & APP. ADVOC. 139 (2001).

<sup>81</sup> 804 A.2d 307 (D.C. App. 2002).

<sup>82</sup> *Id.* at 311–12. The court specifically noted that the IEP process is notoriously long, and that such a delay would be contrary to the purposes of juvenile proceedings of protecting the public safety and providing prompt accountability and services for the juvenile.

<sup>83</sup> For example, if the juvenile's IEP includes counseling, tutoring, or other specific services for the juvenile, the prosecutor might advocate for inclusion in the juvenile's disposition plan a requirement that he or she comply with all services provided under the IEP.

## CONCLUSION

Remembering that the problem Congress intended to address when it enacted the IDEA and its predecessor statutes was the wholesale expulsion of disabled children from the education system by labeling them as behavior problems or delinquents, a certain level of sensitivity by juvenile prosecutors to the goals of the IDEA is appropriate—maybe required. That statute, however, particularly after the 1997 IDEA Amendments, does not exempt a child with disabilities from state laws governing juvenile delinquency or from the jurisdiction of the juvenile courts. Nothing in the IDEA says that disabled youths who commit crimes should not be held accountable for their actions; it only requires that their education not be interrupted when their conduct is a manifestation of a disability. From the perspective of a juvenile prosecutor, there should be no conflict between a statutory and regulatory scheme that seeks to maximize educational opportunities for disabled youths and a juvenile justice system that seeks to balance the need for community safety, offender accountability, and competency development.



American Prosecutors Research Institute  
99 Canal Center Plaza, Suite 510  
Alexandria, Virginia 22314  
Phone: (703) 549-4253  
Fax: (703) 836-3195  
<http://www.ndaa-apri.org>

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