

- I. Is educational advocacy relevant?
 - a. How will my client's educational circumstances impact this case?
 - i. Impact school setting
 - 1. Can your client stay in the home school?
 - 2. Or will the client's needs (perceived or real) require a more restrictive setting?
 - a. This can include separate school, homebound, center based programs, etc.
 - ii. Impact services client currently receiving
 - iii. Impact the level of protections your client may have
 - iv. Impact on client's placement (i.e. Can your client remain at home if expelled?)
 - b. How will the case impact my client's educational circumstances?
 - i. A placement change not related to an educational issue requires consideration of whether your client changes schools
 - ii. A charge/plea may impact whether school will impose some type of restriction on attendance
 - iii. Trauma, placement, and moves impact how students react in the school setting
 - 1. Can they concentrate?
 - 2. Are they withdrawn or even skipping school?
 - 3. Do they become more aggressive?
 - c. Consider:
 - i. Educational advocacy may foster a better understanding of your client
 - 1. Ask questions of parents
 - a. e.g. school history, parents' educational history, mental health diagnosis, **strengths** and challenges, favorite classes, any incidents that may have resulted in concussions, any exposures to substances in utero, any discipline issues, etc.
 - 2. Ask questions of your client
 - a. e.g. favorite/least favorite classes, likes and dislikes about school, friends, discipline issues, etc.
 - 3. **Practice Tip:** *Often, parents and students do not know that the meetings they go to relate to a 504 plan or an IEP. Sometimes you have to ask the question in a number of different ways.*
 - ii. Get better services or support (which, in turn, helps with academic success and placement stability)
 - iii. Mitigation/compassion
 - 1. **Practice Tip:** *Accurate and comprehensive documentation can help if/when disciplinary or delinquency issues arise.*
 - iv. Challenge elements of a charge
 - v. Support motions
 - vi. Transfer/Direct file elements

- d. Collateral Consequences from failing to meet Student's educational needs
 - i. Truancy and/or failing grades
 - ii. Absences can compound mental health, feelings of social isolation and low self-esteem, increase chances of youth's involvement in delinquency, etc.
 - iii. Truancy and Delinquency facilitate the School to Prison Pipeline
 - iv. Absences can lead to academic regression
 - v. Absences can lead to school discipline
 - vi. School discipline generates unfavorable records
 - vii. Unfavorable records and school discipline may compound legal issues and increase difficulty to make a "fresh start" at a new school
 - viii. Absences can cause youth to lose their placement
 - ix. High school drop out
 - x. Lack of skills for post secondary success and independent living
- II. What can the front-lines GAL do before anyone else?
 - a. Obtain records
 - b. Include inquiries that impact educational decision-making part of your initial and ongoing investigation
 - c. Consult an educational expert/advocate
 - d. Work with client, parent/guardian, and school/district to ensure continuity and appropriate services
 - e. Contact teachers to get first hand information about how your client is doing, get them on the radar
 - f. Invoke IDEA/ECEA/504 rights (MDR, services, etc.)
 - g. Participate in disciplinary hearings
- III. What laws Impact Clients as Students
 - a. Criminal Code (Title 18)
 - b. Domestic Relations (Title 14)
 - c. Disciplinary Code
 - i. What does local control mean to my advocacy?
 - 1. While most school districts in Colorado (and especially those in the metro area) share similar disciplinary codes, take the time to research the local school district's code:
 - a. Determine if your client should expect the school district to act;
 - b. Determine if your client's school district is acting according to its own code;
 - c. Determine if the district code or school policy complies with Colorado statute;
 - d. Determine procedural rights and requirements
 - e. Pay special attention to deadlines
 - d. Colorado School Laws (Title 22)

- e. Children’s Code (Title 19 and Volume 7 of Colorado Code of Regulations)
Fostering Connections School Stability
- f. Every Student Succeeds Act (ESSA)
- g. Colorado: Exceptional Children’s Education Act (ECEA)
- h. Colorado: Protection of Persons from Restraint Act (1 CCR 301-43)
 - i. **Practice Tip:** *Facility Schools have different rules as they are licensed by the Colorado Department of Human Services*
- i. Individuals with Disabilities Education Act (IDEA)
 - i . Child Find (20 USC 1412(a)(3))
 - 1. Schools have and **affirmative duty** to locate, identify, and evaluate all students suspected of having a disability for all suspected disabilities that may require special education services
 - 2. **Practice Tip:** *Students may be twice-exceptional—they are both gifted and have a disability needing specialized instruction (e.g. social emotional issues, dyslexia, etc.)*
 - ii. Qualifying disabilities (i.e. conditions when specialized instruction is needed to access the general education curriculum)
 - 1. Autism Spectrum Disorder (ASD)
 - 2. Hearing Impairment
 - 3. Serious Emotional Disability (SED)
 - 4. Intellectual Disability
 - 5. Multiple Disabilities
 - 6. Orthopedic Impairment
 - 7. Other Health Impairment (OHI)
 - 8. Specific Learning Disability (SLD)
 - 9. Speech or Language Impairment
 - 10. Traumatic Brain Injury (TBI)
 - 11. Visual Impairment
 - 12. Deaf-Blindness
 - 13. Developmental Delay
 - iii. Definition of Parent (34 CFR 30 (a)(2))
 - iv. Can have both an IEP and 504 Plan

IEP	504 Plan
Accommodations: How a student learns (e.g. preferential seating, extended time, etc.)	Accommodations
Modifications: What a student learns (e.g. curriculum	
Services (e.g. tutoring psych services, etc.)	
Through High School	Through Secondary Ed.

- v. Failure to Reevaluate or Review an IEP (20 USC 1414(a)(2)(B) and 1414(d)(4)(A)(i))

1. Schools must fully reevaluate students on IEPs at least once every 3 years and must review progress made under an IEP at least once every year
 2. **Practice Tip:** *Disability is not stagnant; ability is not stagnant. As students mature and develop, they may not need the supports they once received. As circumstances change, students may need supports they previously did not need.*
- vi. Free and Appropriate Public Education (FAPE) Issues (This list is not exhaustive and the application is nuanced.)
1. Does the IEP make sense?
 2. Are there SMART goals (i.e. specific, measurable, attainable, results-oriented and time-bound) goals that are connected to the disability in the IEP?
 3. Least Restrictive Setting (LRE)
 - a. To the maximum extent appropriate, children with disabilities are educated with children who are nondisabled;
 - b. To the maximum extent appropriate, children with disabilities are able to participate in extracurricular activities with children who are nondisabled;
 - c. To the maximum extent appropriate, children with disabilities are provided supplementary aids and services to enable them to be educated with children who are nondisabled.
 4. Is there a failure to track progress?
 5. Is the IEP being implemented?
 6. IEP teams must consider conducting functional behavioral assessments (FBAs) and developing behavior intervention plans for students with recurring behaviors that impede their learning or the learning of others.
- vii. Manifestation Determination (20 USC 1415(k)(I)(E))
1. **10 days is the magic number.**
 2. Removal: Occurs when a student is removed from his normal setting for disciplinary purposes. Is the removal for more than 10 consecutive days or 10 cumulative days? (Include ½ days, days school calls caregiver to pick student up early, etc.)
 3. If a student has an IEP, schools have 10 days from the time the removal of the student from his/her typical placement to hold a manifestation determination review meeting
 4. If there is a “direct and substantial relationship” between the alleged behavior and “the child’s disability,” behavior is a manifestation of disability
 - a. Also applies to conduct resulting from the school’s failure to implement an IEP

- b. If behavior is found to be a manifestation, certain protections kick in.
 - 5. Also applies to students whom the school knew had a disability before the behavior occurred
 - 6. Exceptions:
 - 1) Possessing a weapon on school premises or at a school function
 - 2) Knowingly possessing, selling, soliciting the sale of, or using illegal drugs or a controlled substance while at school
 - 3) Inflicting serious bodily injury upon another person while at school. (Student can be moved to an interim alternative educational setting for no more than 45 days.)
 - viii. IDEA Transfer Rules (34 CFR 300.323 (e) & (f))
 - 1. Applies when a student moves from one district to another or from out-of-state
 - j . Civil Rights Laws: Race, Origin, Nationality (Title VI)
 - i. Actual or perceived discrimination or harassment
 - ii. Includes protections for English Language Learners
 - k . Civil Rights Laws: Gender (Title IX)
 - i. **Practice Tip:** *It is unclear to what extent this covers sexual orientation in the eyes of the U.S. Department of Education, Congress, or the courts.*
 - l . Civil Rights Laws: Dis/ability
 - i. **Practice Tip:** *Keep in mind the School to Prison Pipeline. Given the demographics of the population with whom we work, the compounding identities mean that we work with some of the most vulnerable and those who have many legal protections that afford us the opportunities to be creative in how we work with and advocate for them*
 - ii. Section 504 of the Rehabilitation Act
 - iii. Americans with Disabilities Act (ADA)
 - m. Methods to Vindicate Rights
 - i. Complaint with the U.S. Department of Education Office for Civil Rights
 - ii. Complaint with the Colorado Department of Education
 - iii. Filing a Due Process Complaint
- IV. Disciplinary Code in Colorado
- a. Steps To Take When Client Facing Discipline/Truancy
 - i. Meet with client
 - ii. Meet with parents/guardians, social workers, education advocates, etc.
 - iii. Review suspension and expulsion paperwork for notice requirements and make sure you comply
 - iv. Call the principal and school lawyer send letter entering your appearance.
 - v. **Buy time**

- vi. Make sure child is getting work and/or tutoring
- vii. Contact child's criminal lawyer to coordinate representation
- viii. Procure schools policies and procedures re discipline
- ix. Get all the records
- b. C.R.S. § 22-33-105 (Procedures for Suspension, Expulsion, and Denial of Admission)
 - i. Yellow Flag: A suspension greater than 5 days
 - ii. Red Flags:
 - 1. Expulsions (especially for longer than 1 year)
 - 2. No notice to student and parent/guardian
 - 3. No hearing for suspension longer than 10 days or for an expulsion
 - 4. No formal suspension or expulsion but a request to stay home or a threat of a trespass ticket
 - iii. **Practice Tip:** *Suspensions can be extended to a maximum of 25 days—this is common before an expulsion.*
 - iv. Schools must offer an “appropriate alternate education program” for students who are suspended or expelled, “including but not limited to an online program or online school . . . or a home-based education program during the period pending the resolution of the juvenile proceedings.”
 - 1. **Practice Tip:** *Guilty pleas can directly lead to expulsions. Is your client ready to continue their education after entering a plea?*
- c. C.R.S. § 22-33-106 (Grounds for Suspension, Expulsion, Denial of Admission)
 - i. Only one mandatory expulsion (that is mandatory at the discretion of a superintendent): Bringing a firearm to school
 - ii. **Practice Tip:** *Many students may face expulsion for “behavior on or off school property that is detrimental to the welfare or safety of other pupils or of school personnel.” Other common grounds for expulsion include “willful disobedience” and students begin “habitually disruptive.”*
 - iii. 22-33-106(1.2)(F): “Each school district is encouraged to consider each of the following factors before suspending or expelling a student . . .”
 - 1. Age
 - 2. Disciplinary history
 - 3. Disability
 - 4. Seriousness of violation
 - 5. Threats to students or staff
 - 6. Lesser interventions that would “properly address the violation”
 - a. **Practice Tip:** *You can invoke this statute to promote restorative justice alternatives.*
- d. C.R.S. § 22-33-106.3 (Parental Presence and Student Statements)
 - i. Cannot use a student's statement about an act they allegedly committed that would lead to an expulsion unless
 - 1. The statement is signed by the student and

2. Parent/guardian is present **or** a reasonable attempt was made to contact them
- ii. **Practice Tip:** *Clients and parents can waive this right and can do so easily if they do not affirmatively invoke it.*
- e. C.R.S. § 22-33-106.5
 - i. Courts and District Attorneys “shall” notify schools of offenses committed by students

V. Cautionary Tales, Practical Tips

- a. Digging the Trenches
 - i. What is in the best interest of your client?
 - ii. Is there a collaborative method available?
 1. Compare educational advocacy to any other legal advocacy: Negotiation is often an option.
 2. Have you spoken with the school district’s attorney? How did you show up in that conversation?
 - iii. How can you ally yourself with parents and schools to support clients through effective IEPs?
- b. Don’t be afraid to try things, monitor the effectiveness and go back to the table. Be creative.
- c. Safety Planning
 - i. Who is being kept safe? Is your client safe under the proposed plan?
 1. Consider: Bullying, discrimination, isolation, etc.
 2. Ensure a timeframe for ending the plan
 - ii. Does the safety plan account for disabilities or special education services?
- d. “Choosing to Misbehave”
 - i. There is no definition under the law for “social maladjustment.”
 - ii. Students can have a serious emotional disability **and** social maladjustment
 - iii. Request a reevaluation or an independent education evaluation (IEE)
 1. Join the IEP Team (But give the school notice that you will be joining as they have a right to bring their attorney to any meeting where you represent your client.)
- e. “Not Enough Data”
 - i. Has your client been in their current placement long enough to yield data on educational ability?
 - ii. Is there an alternative environment that can be used as a juxtaposition for the evaluation being conducted?
 - iii. Are there enough people to provide the input need for the evaluation
 - iv. Be strategic around when you request an IEP or an updated evaluation
- f. “They’re doing fine now”
 - i. Why?
 - ii. What has changed?
 - iii. Request an IEE
- g. Expulsion Hearings

- i. Often Forgone conclusions...try to negotiate
- ii. You can appeal, but that's not usually any more favorable

VI. Resources

- a. Colorado Juvenile Defender Center
- b. Rocky Mountain Children's Law Center
- c. Disability Law Colorado
- d. Educational Experts
- e. Wrightslaw.com
- f. Understood.com
- g. Colorado Department of Education
- h. Colorado Department of Human Services
- i. ARC
- j. Peak Parent Center
- k. PBISworld.com
- l. Parentcenterhub.org
- m. OSEP Letters