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Seal the Gap:

Educational Advocacy is A Missing Piece of Your Defense

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Supplementary Materials

I. Is educational advocacy relevant?

- a. How will my client's educational circumstances impact this case?
 - i. Impact on school setting
 - 1. Because of the client's needs (perceived or real), can the client stay in their school?
 - 2. Or will the client's needs (perceived or real) require a more restrictive setting? (e.g. separate school, homebound, facilities, etc.)
 - ii. Impact on services client currently receiving
 - iii. Impact on the level of protections the client may have
 - iv. Impact on client's home placement
 - v. Impact on prosecutor's impression of client and willingness to make favorable plea offers
 - vi. Impact on judge's impression of client (e.g. competency, transfer factors, etc.)

- 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 the 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 Are they withdrawn or even skipping school?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. Educational advocacy may foster a better understanding of your client
 - i. Ask questions of your client (e.g. favorite/least favorite classes, likes and dislikes about school, friends, discipline issues, etc.)
 - ii. Ask questions of parents/guardians (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.)



- iii. Get better services or support (which, in turn, help with academic success and placement stability)
- d. Collateral Consequences from failing to meet Student's educational needs
 - i. Truancy and/or failing grades
 - ii. Absences can compound mental health issues, feelings of social isolation, and low self-esteem or can increase chances of youth's involvement in delinquency or criminal systems
 - 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. Which cases can trigger educational issues or would benefit from educational advocacy

- a. Alleged incident occurred at school, involved someone from school, or was reported by someone at school
- b. Alleged incident led to suspension, expulsion, or other form of push-out
- c. Client has history of attendance issues or low grades or test scores
- d. Client has an IEP or 504 Plan
- e. Client has ADD/ADHD, a mental health diagnosis, a history of mental health treatment, or a developmental disability diagnosis
- f. Client has experienced trauma
- g. Client has expressed interest in a degree, in a diploma, or in quitting school
- h. Transfer and Direct File cases

III. What laws Impact Clients as Students

- a. Criminal Laws (Title 18)
- b. Children's Code (Title 19 and Volume 7 of Colorado Code of Regulations)
Fostering Connections School Stability
- c. Domestic Relations (Title 14)
- d. Colorado Education Laws (Title 22)



- e. School District Disciplinary Code
 - i. Local control: 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:
 1. Determine if your client should expect the school district to act;
 2. Determine if your client's school district is acting according to its own code;
 3. Determine if the district code or school policy complies with Colorado statute;
 4. Determine procedural rights and requirements
 5. **Pay special attention to deadlines**
- f. Colorado: Exceptional Children's Education Act (ECEA)
- g. Individuals with Disabilities Education Act (IDEA)
 - i. Child Find (20 USC § 1412(a)(3))
 1. Schools have an **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*
 - ii. Qualifying disabilities (i.e. conditions when specialized instruction is needed to access the general education curriculum)
 1. Specific Learning Disability (SLD)
 2. Other Health Impairment (OHI)
 3. Serious Emotional Disability (SED)
 4. Traumatic Brain Injury (TBI)
 5. Autism Spectrum Disorder (ASD)
 6. Speech or Language Impairment
 7. Intellectual Disability
 8. Deafness
 9. Hearing Impairment
 10. Visual Impairment
 11. Deaf-Blindness
 12. Orthopedic Impairment
 13. Multiple Disabilities



iii. 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.

iv. Failure to Reevaluate or Review an IEP (20 USC §§ 1414(a)(2)(B), 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.*

v. 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 do not have disabilities;
 - b. To the maximum extent appropriate, children with disabilities are able to participate in extracurricular activities with children who are do not have disabilities;
 - c. To the maximum extent appropriate, children with disabilities are provided supplementary aids and services to enable them to be educated with children who do not have disabilities.
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.



- vi. Manifestation Determination (20 USC § 1415(k)(I)(E))
 - 1. 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.)
 - 2. 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
 - 3. 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.
 - 4. Also applies to students whom the school knew had a disability before the behavior occurred
 - 5. 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.)

- h. Civil Rights Laws: Race, Origin, Nationality (Title VI)
 - i. Actual or perceived discrimination or harassment
 - ii. Includes protections for English Language Learners

- i. 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.*



- j. Civil Rights Laws: Dis/ability (in addition to IDEA)
 - 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)

- k. Methods to Vindicate Rights
 - i. Educational Advocacy through hearings, negotiations, and meetings
 - ii. Complaint with the U.S. Department of Education Office for Civil Rights
 - iii. Complaint with the Colorado Department of Education
 - iv. 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 to “enter your appearance”—N.B. These hearings are relatively informal, so you are mostly letting opposing counsel know that you are coming and do not need to file anything formal.
 - v. **Buy time**
 - vi. Make sure child is getting work and/or tutoring
 - vii. Contact GAL 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 (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 when advocating for your client at a disciplinary proceeding.*

- 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. Is there a collaborative method available?
 - 1. Compare educational advocacy to any other legal advocacy: Negotiation is often an option—and often the option that can yield the best outcome for your client.
 - 2. Have you spoken with the school district’s attorney? How did you show up in that conversation?
 - ii. 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.” We only have guidance from the Colorado Department of Education.
 - 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 needed for an effective 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. Educational experts associated with agencies and offices
- b. Colorado Juvenile Defender Center
- c. Rocky Mountain Children's Law Center
- d. Disability Law Colorado
- e. Wrightslaw.com
- f. Colorado Department of Education

