SPECIAL REPORT

Improving Education Services for Students in Detention and Confinement Facilities

Peter E. Leone* & Sheri Meisel**

I. Introduction

Approximately 90,000 young people are now in custody in public and private juvenile correctional facilities in the United States. Those incarcerated are disproportionately male, African-American, poor, and have significant learning and/or emotional problems that entitle them to special education services. The most common disabling conditions among juvenile offenders are developmental and learning disabilities as well as emotional or behavioral disorders. Many juveniles with disabilities in detention do not receive the educational services to which they are entitled.

Studies document the failure of juvenile correctional institutions to provide adequate educational services to young people with disabilities. Ineffective governance of education programs in juvenile corrections, the mobility of adjudicated young people, and poorly developed links between public schools and institutional settings contribute to the academic problems of incarcerated young people. In response to inadequate education services for young people in correctional settings, advocates have initiated class action litigation to secure educational rights for them.

This article examines the educational rights of young people in juvenile corrections. It emphasizes the rights of young people with disabilities and how they can obtain their rights and achieve greater access to educational services.

II. Educational Entitlements

All states have compulsory attendance laws and provide educational services through local school districts, private schools, or home schooling. While considerable variability exists from state to state, education statutes and regulations typically specify the length of the school day and year, the minimal
III. Individuals with Disabilities Education Act

In addition to general education entitlements available to all school-aged children within a state, children with disabilities are entitled to special education services through federal legislation and corresponding state statutes or regulations. The Individuals with Disabilities Education Act ("IDEA"), through the spending power of Congress, mandates that states receiving federal support for education of students with disabilities ensure that all eligible students receive a free appropriate public education. The provisions of IDEA have applied to all states receiving federal financial assistance under Part B of this legislation since its passage in 1975. IDEA was landmark legislation because it granted parents of children with disabilities, and those suspected of having disabilities, procedural and substantive rights concerning the assessment, identification, and education of their children. Specifically, IDEA requires that public schools and state-operated programs, such as juvenile correctional facilities, provide each eligible child with a free appropriate public education in the least restrictive environment. The education program must use a nondiscriminatory evaluation process to identify youth who are eligible for services. Parents must consent to the assessment process and have the opportunity to contribute to decisions concerning the development of an individualized education program. While the scope and specificity of IDEA represented unprecedented federal involvement in state and local education, it also provided statutory guarantees of education for all disabled children, ages five to 21. After IDEA was passed, when schools failed to provide appropriate services to children with disabilities, advocates no longer had to rely on constitutional due process or equal protection claims to secure educational opportunities for these children. The law provides local and state-level mechanisms to appeal the decisions of school districts and opportunities to seek redress in court.

Re authorizations of IDEA have broadened the eligibility to children from three to 22 years of age in most states and have emphasized the transition of young people from school programs to the community. In 1986, the passage of the Handicapped Children's Protection Act guaranteed reimbursement of attorneys' fees to parents who prevail in litigation brought under IDEA. In many states, litigation before passage of IDEA in 1975 was initiated to secure the right to education and related services for children with disabilities. In subsequent years, much of the litigation has sought to define and clarify the nature of that right. While most cases involving claims under IDEA have been heard by U.S. District Courts and Circuit Courts of Appeal, a few cases have reached the United States Supreme Court. The Court has addressed issues such as the meaning of "appropriate education," clarifying whether specific services are medical or educational in nature and whether they are covered under IDEA. The Court has also addressed: payment of attorney's fees and costs when parents prevail in disputes with local school districts concerning services; classification of children with communicable diseases as disabled for educational purposes; and, disciplinary exclusion of students with emotional or behavioral disorders. Despite regulations governing the education of school-aged youths and specific entitlements for students with disabilities, detention and confinement facilities often fail to meet minimal state standards and frequently provide an education that is substantially inferior to public school programs. During the past few years, advocates have challenged the quality and availability of education for young people in
detention and confinement and have used special education entitlements to advance their claims. While many of these cases are currently being litigated, some suits have been settled. Before reviewing the litigation concerning educating young people with disabilities in juvenile correctional facilities, a discussion of the prevalence and overrepresentation of disabling conditions in corrections is necessary to place the litigation review in context.

IV. Prevalence of Disabilities in Juvenile Corrections
While a few studies have attempted to determine the prevalence of young people with disabilities in correctional institutions, methodological problems and variability in policies across jurisdictions have made it extremely difficult to come up with reliable figures. Studies have identified 42% of all juvenile offenders in Arizona as disabled and as many as 60% of all juvenile offenders in Florida and Maine. To address this problem, Casey and Keilitz conducted a meta-analysis of all of the prevalence studies of developmentally and learning disabled juvenile offenders. They reported that approximately 12.6% of juvenile offenders had developmental disabilities and 35.6% of juvenile offenders had learning disabilities. Casey and Keilitz also reported that the quality and number of studies of young people with emotional disturbance in juvenile corrections was not sufficient to conduct a meta-analysis of studies for this population. In contrast, a recent analysis of studies on the prevalence of mental disorders among young people in the juvenile justice system estimates that approximately 22% of those incarcerated have significant mental health problems. Whether one accepts 30%, 60%, or a higher percentage as a reliable estimate for the prevalence of disabling conditions in juvenile corrections is beyond the focus of this discussion. What we do know is that the percentage of young people in juvenile correctional facilities who were previously identified and served in special education programs before their incarceration is at least three to five times the percentage of the public school population identified as disabled.

V. Litigation
Advocates have used IDEA and Section 504 to litigate on behalf of incarcerated youths with disabilities in a number of states. Since 1975, more than 20 class actions involving special education services in juvenile corrections have been filed. With few exceptions, the cases that have been settled never went to trial, and very few published judicial opinions exist. Most of these suits have been settled through consent decrees or settlement agreements that respond to nearly all of the claims made by plaintiffs, typically after years of procedural delays. Table 1 displays cases involving special education claims in juvenile corrections litigation. A quick review of the table reveals that the cases come from many regions of the United States and that complaints involved special education issues in isolation as well as with other claims. In addition, for suits that have been settled, the length of time between the initial complaint and settlement ranged from about two to seven years. A review of three cases illustrates some of the problems associated with educational services in juvenile corrections.

A. Andre H. v. Sobol
This suit, initiated in May 1984, was brought on behalf of juveniles eligible for special education services
at New York City’s Spofford Juvenile Detention Center. Plaintiffs’ attorneys claimed that Spofford, a detention and holding facility, (1) conducted no screening or child-find activities to identify young people with disabling conditions, (2) held no multidisciplinary team meetings to determine eligibility and plan appropriate education, and (3) made no attempt to obtain records from schools that young people had previously attended. As a result of these and other practices, no special education services were provided to detained young people at Spofford. In January 1991, seven years after the initiation of the suit, a settlement was signed by attorneys for the plaintiffs and attorneys for the defendants, New York City Department of Juvenile Justice and the New York City Board of Education. The settlement required Spofford to develop a multidisciplinary team at the detention center and fully implement the provisions of the Individuals with Disabilities Education Act. The agreement also required the parties to jointly appoint a monitor to visit the facilities semi-annually for three years and determine the extent of compliance with the agreement. At the conclusion of the monitoring period, Spofford was found in compliance.

B. Johnson v. Upchurch

In contrast to Andre H., which only addressed special education issues, this case addressed a broad range of issues in juvenile corrections in addition to education services for students with disabilities. In 1986, Matthew Johnson, a youngster confined to Catalina Mountain Juvenile Institution near Tucson, filed a complaint on his own behalf concerning his treatment at the juvenile correctional facility. A subsequent class action suit claimed that the Arizona Department of Corrections failed to provide special education services. Additionally, plaintiffs claimed that the conditions of confinement were unsanitary, hazardous, and punitive. In the spring of 1988, when there were no special education services at the facility, the plaintiffs requested an injunction requiring the Department of Corrections to fill a vacant teaching position and provide appropriate services. The Court appointed a special master to help resolve educational complaints and evaluate special education services. After long negotiations, Johnson was settled in May 1993 through a consent decree that required broad reforms in juvenile corrections throughout Arizona. The consent decree also specified that a committee of consultants oversee and monitor the implementation of the agreement. Now, the Arizona Department of Juvenile Corrections is in compliance with all education components of the consent decree and with most other provisions.

C. Smith v. Wheaton

In contrast to the two cases just discussed, Wheaton, filed in U.S. District Court in Connecticut in 1987, has not been settled. Like Andre H., the complaint in Wheaton focused only on education of incarcerated young people with disabilities. In contrast to Andre H., the plaintiffs in Wheaton were incarcerated in a long-term confinement facility rather than in detention. The plaintiffs in this case complained that the Long Lane School, a juvenile correctional facility operated by the Connecticut Department of Children and Youth Services, failed to meet minimum timelines for evaluation of young people and implementation of special education services. Plaintiffs also alleged that parents were not involved in education decisionmaking for their children with disabling conditions, and that no related services such as counseling and occupational therapy were available. In addition, plaintiffs alleged that Long Lane failed to develop individualized education programs as required by IDEA, and that the school failed to develop adequate transition plans for young people leaving the facility. Although plaintiffs and
defendants in Wheaton have held settlement discussions during the past five years, the case is still unresolved, though a trial date has been set. These three cases are somewhat representative of the litigation in this area and the problems associated with education services in juvenile corrections in many jurisdictions. In each case, plaintiffs alleged violations of IDEA. In the two cases that were settled, defendants responded by providing educational services that met the requirements of the law and were comparable to services available for young people in the public schools. Beyond the additional educational costs associated with having provided inadequate services, the defendants were required to pay litigation costs. In Arizona, the state paid more than $1.8 million in plaintiffs' attorney's fees and more than $180,000 to two named plaintiffs; the cost of private attorneys defending the state added to the total cost of this litigation.35

VI. Implications

This litigation raises a number of issues for administrators, policy makers, and advocates. First, litigation in several jurisdictions has been a tool, albeit an expensive one, to reform juvenile correctional programs.36 Given the current political climate, reforming juvenile corrections is not a task that politicians individually, or as members of legislative bodies, are willing to tackle. In some instances, litigation has led to the establishment of special education services that did not exist previously in spite of the plain, inclusive language of federal statutes and corresponding state regulations. In Arizona, the litigation enabled advocates to work with legislative leaders to create a Department of Youth Treatment and Rehabilitation37 and create a school board for the new department. Before the current reforms, the education programs in Arizona’s juvenile confinement facilities did not meet state guidelines for the minimum amount of instruction each week. Among other things, the Johnson v. Upchurch consent decree required the state to pay teachers in juvenile correctional facilities salaries comparable to those paid to the public schools, and become accredited by the North Central Association of Colleges and Secondary Schools. A second related issue involves the role of state departments of education in providing oversight and consultation to juvenile correctional programs. Each department of education guarantees that all schools and state-operated programs will provide special education and related services to eligible young people as a condition to receive federal funds. In reality, the U.S. Department of Education has only recently withheld funds from a state that failed to provide appropriate special education services to students who were excluded from school.38 The Department of Education has never withheld funds from states that fail to provide adequate special education programs in their juvenile correctional facilities. Until monitors at the U.S. Department of Education and their counterparts in state departments of education take seriously mandates to ensure that all young people with disabilities receive appropriate education services, advocates and parents appear to have no other recourse than litigation. Presumably, incarcerated young people with disabilities and their parents have the same due process protections in education as public schools. However, a number of family factors, the distance of young people from their home communities and schools, and the lack of administrative mechanisms in some juvenile systems make it unlikely that parents and their children will have access to those services. A third issue raised by the litigation involves the competing purposes of juvenile corrections. While rehabilitation is often cited as one of the purposes of juvenile corrections, incapacitation and punishment are frequently higher priorities. In many facilities and state agencies, the organization and administrative structure do not support rehabilitation as an outcome for juvenile clients. Often, education must compete with security, maintenance of the physical plant, and new construction for limited fiscal resources. In Arizona, for instance, before the reforms associated with Johnson v. Upchurch, there was no annual budget for education other than for teachers’ salaries. Education program managers had to go
“hat in hand” to the superintendent of their facility to obtain books, pencils, paper, and other consumable materials associated with operating a school.

VII. Improving the Quality of and Access to Educational Services
How can advocates and others interested in ensuring that incarcerated young people receive appropriate services respond to these problems? The difficulties associated with providing special education services to disabled young people in juvenile corrections are intertwined with the quality of educational services in juvenile corrections in general. Comprehensive federal statutes for special education services and corresponding state statutes and regulations have not ensured appropriate education for the estimated 30 to 50 percent of all incarcerated young people with disabilities. Typically, education services in juvenile corrections, whether operated by the juvenile corrections agency, the state department of education, or a local school district, are a low priority for many correctional administrators. To provide education services for young people with disabilities, juvenile corrections programs must meet minimum standards associated with public school programs. Under current arrangements, the infrastructure needed to support quality education programs is missing in many jurisdictions. Correctional education programs, with some exceptions, often do not have the autonomy, administrative arrangements, and fiscal resources necessary to provide quality education to incarcerated young people. To strengthen programs and ensure that eligible young people receive special education services, correctional education programs need to: (1) develop stronger ties to public school programs; (2) have fiscal and administrative autonomy from the correctional agency; and (3) meet standards associated with public school programs.

A. Stronger Links Between Public School Programs and Correctional Programs
A complaint raised in many of the lawsuits listed in Table 1 was the inability of the correctional education program to obtain prior school records for their students. Correctional education programs often wait months to receive grades, test scores, Individualized Education Programs (“IEPs”), and other information that would assist educators in juvenile corrections to provide appropriate services. This information, routinely passed between public school districts, is often delayed when the request for records originates in a correctional facility. Hiding behind the “rhetoric of rights,” public schools decline to send materials to a correctional facility without parental signature or notification. Compounding matters is that many incarcerated young people had quite mobile school careers and, in some instances, were truant or expelled from school for a period of time before their incarceration. Even in those states where special school districts for correctional education exist, such as Connecticut (Smith v. Wheaton39) and South Carolina (Alexander v. Boyd40), obtaining prior school records has been a problem. Creating stronger links between correctional programs and the public school could involve having local school districts operate correctional education programs for juvenile corrections. In Florida (Bobby M. v. Childs41), a local school district operates the state’s two secure confinement facilities for juveniles. Another way to forge stronger links would be to have the juvenile corrections agencies assess average per pupil costs for each student. Juvenile correctional agencies could bill local school districts for the time that young people are in custody or confinement. While this remedy would certainly be unpopular with local education agencies, this arrangement, in addition to promoting exchange of student records, would create incentives for local school districts to more adequately serve young people at risk.
B. Fiscal and Administrative Autonomy

Without budget and administrative autonomy, decisions about use of educational resources, assignment of staff, and curriculum are made in response to noneducational concerns. Educational administrators in juvenile correctional settings need to cooperate with institutional and agency administrators, treatment, security, and directcare staff. However, decisions about education programs need to be driven by professional standards, state guidelines for public school programs, and youth's needs. Without fiscal autonomy, education administrators cannot develop long-range plans, incorporate new instructional technology, or respond to the demands of the changing job market that young people will face. Fiscal autonomy can be achieved through establishing a per pupil cost in juvenile corrections upon which annual budget allocations are based. In the correctional budget, education should have an independent cost center or budget category. If correctional facilities contract with local school districts for services, minimal per pupil costs could be charged to the correctional agency based on an average quarterly count of students in the correctional education program.

C. Professional Standards

One factor hampering the development of more effective correctional education programs and, subsequently, appropriate education services to young people with disabilities, is the lack of widely adopted professional standards for correctional education programs. The Correctional Education Association has developed standards for correctional education programs in juvenile and adult facilities, but these standards are broad and not widely adopted. Several correctional programs have sought accreditation from professional associations and colleges. This is a promising avenue for improving services. Los Angeles County Court and Community Schools, serving more than 5,000 adjudicated young people in community-based and correctional facilities, achieved accreditation during the 1980's. The process requires basic minimum standards for correctional school programs, including ample space, an articulated curriculum, professional development, and adequate compensation for staff. As a result of litigation, juvenile correction programs in Arizona (Johnson v. Upchurch) and Delaware (John A. v. Castle) are in the process of obtaining accreditation from professional associations in their areas.

VIII. Recommendations

Improving educational services for young people with disabilities in correctional facilities will require a multifaceted approach that involves state and local administrators of correctional facilities and programs, advocates for children, and correctional educators. Coordinated efforts by federal agencies concerned with education and juvenile justice can provide leadership and expertise to states and local jurisdictions as they attempt to improve their programs. A first step in the process of correctional education reform would be requiring minimum standards for educational programs in juvenile detention and confinement facilities that approximate those in public school programs. Federal agencies could propose incentives for states and local jurisdictions that achieve and maintain minimum standards for the operation of correctional educational programs. Agencies could develop a pilot program that involves technical assistance and support as states apply for and meet the accreditation standards of professional
associations such as the Middle States Association of Schools and Colleges.\textsuperscript{47} Over time, the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Education and other federal agencies could provide preferential treatment in grant competitions to agencies whose educational programs are accredited or have applied for accreditation.

**IX. Conclusion**

The record suggests that advocates for incarcerated youths have been very successful in using IDEA to obtain appropriate education services. Class actions are one way to obtain appropriate services and improve the conditions of confinement for young people in juvenile corrections.\textsuperscript{48} However, lengthy procedural delays can cause years between the filing of a complaint and the settlement of a case. An alternative strategy, available to parents, guardians, advocates, and others concerned about the educational welfare of incarcerated youth, is to press correctional institutions for appropriate services for young people on an individual basis. This process can begin with a careful examination of a young person's prior school history. A record of school failure, unexcused absences, chronic disciplinary problems, and grade retention may be associated with a disabling condition that has not been detected. Vision or auditory problems, learning disabilities, and emotional disorders can all contribute to poor school performance and school failure. Family mobility, other family concerns, and poverty can cause schools to overlook serious learning problems. If a parent, guardian, or advocate suspects that a disabling condition may contribute to a child or adolescent's poor educational performance, he or she should make a referral to the education program of the correctional facilities for an evaluation.\textsuperscript{49}

Detained and confined youth with disabilities in correctional facilities have very specific rights to educational services. Programs in juvenile corrections should promote the academic and social competence of their students and ensure that they reenter their communities better prepared to assume roles as students, workers and citizens.

**Table 1.**

*Recent Class Action Litigation Involving Educational Claims for Students with Disabilities in Juvenile Correctional Facilities*

<table>
<thead>
<tr>
<th>Case Name, Case Number, Court of Origin</th>
<th>Date Filed</th>
<th>Status</th>
<th>Institutions</th>
<th>Right to Treatment</th>
<th>Disciplinary Practices</th>
<th>General Conditions</th>
<th>IDEA/5041 Claims</th>
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<td>A. C. v. McDonnell CIV-95 WY 1838 U.S. Dist. Ct., Dist. of CO</td>
<td>7/21/95</td>
<td>No Settlement</td>
<td>Confinement and Evaluation</td>
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<td>IDEA</td>
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<td>Andre H. v. Sobol 84 Cir. 3114, U.S. Dist. Ct. of S. Dist. of NY</td>
<td>5/84</td>
<td>Stipulation &amp; Order of Settlement</td>
<td>Detention</td>
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<td>Bobby M. v. Childs TCA-83-7003, U.S. Dist. Ct. of No. Dist. of FL</td>
<td>1/83</td>
<td>Settlement Agreement 5/7/87</td>
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<td>James O. v. Marston C-86-6-L, U.S. Dist. Ct. Dist. of NH</td>
<td>1/7/93</td>
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<td>Consent Decree 7/10/86</td>
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<td>Francisco CIV 915763, Sup. Ct. of CA, San Francisco</td>
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<td>Smith v. Wheaton H-87-190, U.S. Dist. Ct. for Dist. of CT</td>
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<td>Tl. v. Delia 90-2-16125-1 Sup. Ct. of WA for King Co.</td>
<td>8/10/90</td>
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<td>Detention and Confinement</td>
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</table>

1 IDEA - Individuals with Disabilities Education Act
2 Section 504 of the Vocational Rehabilitation Act of 1973 is civil rights law for persons with disabilities. It prohibits discrimination against persons with disabilities by programs receiving Federal financial assistance. Although Section 504 defines handicaps or disabilities more broadly than IDEA, education regulations implementing Section 5(W 134 CFR 104 ct seq.1 are very similar to those for IDEA.
3 Court found for plaintiffs on most issues raised in the complaint,
4 Educational claims based on Nth and 14th Amendments of the U.S. Constitution.
5 Educational claims based on due process clause of 14th Amendment of U.S. Constitution

**Endnotes**

The authors would like to thank the staff at the Youth Law Center, the National Center for Youth Law, Columbia Legal Services, and the Center for Law and Education for their assistance in tracking litigation and obtaining documents. An earlier version of this paper was developed with support from the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Education and the American Bar...
Association and published in Advocacy Strategies: Resources for Improving Conditions of Confinement for Detained and Committed Youth by the American Bar Association in 1996.

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** Sheri Meisel is Acting Director of the Center for the Study of Troubling Behavior at the University of Maryland, College Park, and a consultant in the area of special education in the juvenile justice system. She taught youths with emotional and behavioral disorders in the public schools, and in the community-based day and residential treatment centers for over 10 years. After working in school administration, teacher training, and juvenile corrections, she received her doctorate in special education from the University of Maryland in 1994.


2. Donna Murphy, The Prevalence of Handicapping Conditions Among Juvenile Delinquents, 7:3 REMEDIAL AND SPECIAL EDUCATION 7-17(1986), for a review of studies of disabilities among adjudicated youths.
6. IDEA, 20 U.S.C. 33, the Education for All Handicapped Children's Act, was passed in 1975 and went into effect in 1977. Among other things and as a condition of receiving federal funds, states guarantee that all children with disabilities will receive a free appropriate public education in the least restrictive environment. Additionally, IDEA provides a number of procedural rights to parents and requires that schools use nondiscriminatory procedures to assess children suspected of having a disability. For a detailed discussion of the original law and the forces that precipitated its passage, see Levine & Wexler, PL 94-142: AN ACT OF CONGRESS (1981).
7. All states and the District of Columbia currently receive funding under IDEA. At one time, New Mexico declined to participate in this program.
9. Id.
11. The reauthorization of the Education of the Handicapped Act CEHA") in 1990 renamed the law the Individuals with Disabilities Education Act ("IDEA"). The age of eligibility varies slightly from state to state.
13. The Handicapped Children's Protection Act of 1986 was passed in response to a 6-3 Supreme Court decision in Smith v. Robinson, 468 U.S. 992 (1984), that denied reimbursement of attorney's fees to parents who sued under IDEA (at that time, The Education of All Handicapped Children Act of 1975). For additional information about this law, see J.E. West, The Handicapped Children's Protection Act: A Case Study of Policy Formation (1988) (unpublished Ph.D. dissertation, Special Education, University of Maryland (College Park). 14. An exception to the trend was Timothy W. et al. v. Rochester et al., 875 F.2d 954 (1st Cir. 1989), reversing a U.S. District Court decision and affirming that Congress did not intend to exclude from the protection of IDEA, students that the school district did not consider educable. For a discussion of special education legislation and litigation, see Rothstein, SPECIAL EDUCATION LAW (1990).
21. Pamela Casey and Ingo Keilitz, Estimating the Prevalence of Learning Disabled and Mentally Retarded Juvenile Offenders: A Meta-Analysis, in UNDERSTANDING TROUBLED AND TROUBLING YOUTH 82-101 (P.E. Leone ed. 1990). Casey and Keilitz reported that a sufficient number of studies of young people with emotional disabilities was not available to conduct an metaanalysis for that population.
22. Id. at 89-94.
23. Id.
25. According to the U.S. DEPARTMENT OF EDUCATION'S 15TH ANNUAL REPORT TO CONGRESS ON IM PLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (1993), the percentage of school-aged children identified as disabled during the 1991-92 school year was 10.1%.
26. Section 504 of the Vocational Rehabilitation Act of 1973, 34 C.F.R. §104 et seq., is civil rights legislation for persons with disabilities. It prohibits discrimination against persons with disabilities by
programs receiving federal financial assistance. Although Section 504 defines handicaps or disabilities more broadly than IDEA, regulations implementing Section 504 for education purpose are very similar to those for IDEA.

28. Id.
29. Id.
31. Id.
34. Id.
37. Juvenile corrections were part of the adult correctional system before the juvenile agency was created. Initially, the new state agency was called the Arizona Department of Youth Treatment and Rehabilitation.
38. See Commonwealth of Virginia Dept. of Ed. v. Riley, 86 F.3d 1337 (4th Cir. 1996) The U.S. Department of Education threatened to withhold Virginia's FY 94 and FY 95 allocation under IDEA for permitting local school districts to deprive students with disabilities all education services when they are expelled or suspended for behavior unrelated to their disability. The U.S. Court of Appeals recently upheld a Department of Education hearing decision that permitted withholding Virginia's IDEA funds.
42. Ohio requires local school districts to assume part of the costs of educating incarcerated youth from their home districts through a School Foundation Program. For a full discussion of the funding mechanism, see OHIO DEPT. OF YOUTH SERVICES, Special Education Resources and Funding; and OHIO DEPT. OF EDUCATION, Ohio Law for State Support of Public Schools (1994-95).
45. In several states, including Delaware and Arizona, juvenile justice reforms and improving correctional education services were delayed for political reasons unrelated to the operation of correctional programs. Delaying the reforms were costly to students who failed to receive education services to which they were entitled and to taxpayers as states were required to pay attorneys' fees when plaintiffs prevailed in litigation.
46. Providing special education services to large numbers of incarcerated young people in correction facilities is an administrative challenge. In addition to meeting due process requirements of IDEA, correctional education programs are required to retrieve prior school records for young people with disabilities, and to develop and/or modify individualized education programs for them. An alternative approach which might be attempted on a pilot basis, would be one in which all incarcerated young people in juvenile corrections are guaranteed an individualized education program. This does not imply tutorial services to all incarcerated young people, but rather, that instructional decisions and services are based on each young person's individual needs.
47. The Commission on Secondary Schools of the Middle States Association of Colleges and Schools has materials on the evaluation and accreditation process. The Middle States Association is located at 3624 Market Street, Philadelphia, PA 19104.
49. At the Juvenile Law Clinic at the District of Columbia School of Law, a special education advocacy project attempts to improve outcomes for juvenile clients in delinquency proceedings by linking underlying educational problems of young people to delinquency proceedings. The Clinic trains law students to work proactively with juvenile clients by posing alternative treatments and strategies related to special education needs of the young person. The Clinic also trains attorneys in the community who represent juvenile clients in delinquency proceedings to use special education law proactively. See J. B. Tulman, The Best Defense is a Good Offense: Incorporating Special Education Law into Delinquency Representation in the Juvenile Law Clinic, 42 J. URB. & CONTEMP. L. 223-247 (1992).