

Students with Disabilities Involved with Juvenile Justice or Incarcerated: Legal Issues Under IDEA

Presented by

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Reporting Criminal Behavior to Law Enforcement

- Schools are free to report potential criminal offenses that occur at school (34 CFR §300.535(a))

IDEA does not prevent law enforcement authorities from exercising their responsibilities under Federal and State law with respect to crimes committed by an IDEA student



Reporting Criminal Behavior to Law Enforcement

- Schools that report such a crime must provide copies of special and disciplinary records of the child for consideration by the appropriate authorities (34 CFR §300.535(b))

But, FERPA applies to such disclosures, such that prior parental consent is required (but schools must contact parent to request consent to comply with requirement)



Reporting Criminal Behavior to Law Enforcement

- Schools should study what offenses merit reporting (after dialogue with police)
- **Not** a behavior intervention
- **Clear cases:** serious assaults, drugs, weapons
- Imprudent resort to law enforcement, including campus or district officers, can lead to litigation...



Cases on Schools Resorting to Law Enforcement

- ***K.J. v. Greater Egg Harbor High Sch. Dist.*, 66 IDELR 79 (D.N.J. 2015)**

VP made high school student with ASD show him his drawings of a flame-shooting glove (3 days after Sandy Hook)

VP went to police with the drawings (student spent 17 days in detention and months on house arrest)

School and several employees were sued for constitutional claims (case pending)

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- ***K.J. v. Greater Egg Harbor High Sch. Dist., 66 IDELR 79 (D.N.J. 2015)***

UPDATE—Employees’ motion to dismiss was denied, so case is moving forward to decide whether staff search of student (beyond artwork) was proper under 4th Amendment

Why would 4th Amd. Protections apply?
Search was not for reasons of disciplinary action, but for law enforcement action

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- ***K.J. v. Greater Egg Harbor High Sch. Dist., 66 IDELR 79 (D.N.J. 2015)***

4th Amd. constitutional protections apply to searches, seizures, interrogations undertaken *by law enforcement authorities or their agents*

School administrators should not act as agents of law enforcement, but as school discipline officials, and potential reporters of criminal offenses (can be a fine line...)



- ***Lewis v. Clarksville Sch. Dist.*, 67 IDELR 212 (E.D.Ark. 2016)**

Parents alleged that school conspired with juvenile authorities to have AI student placed at out-of-town Arkansas School for the Deaf (ASD)

Juvenile court ordered the placement

Principal was in contact with juvenile prosecutor about student's behavior and the parents opposition to ASD placement (which would take student out of the family home and community)




- ***Lewis v. Clarksville Sch. Dist.*, 67 IDELR 212 (E.D.Ark. 2016)**

After student stole a teacher's wedding ring, SRO requested FINS petition be opened,

Later, he brought a knife to school and juvenile authorities ordered student enrolled in ASD, so parents sued school

Sp ed director asked ADE whether authorities could order such a placement (ADE confirmed that they could)

Court found insufficient evidence of coordination or conspiracy (after hearing and federal court appeal)



- ***Lewis v. Clarksville Sch. Dist.*, 67 IDELR 212 (E.D.Ark. 2016)**

“The events that precipitated Doe’s transfer to ASD involved a variety of players, including Doe and those trying to obtain help for him.”

Court found the juvenile court “made the call for Doe to transfer schools.”

Court rejected argument that school “painted” parents as neglectful, since staff had reported bugs in his ears and lack of adequate sleep over some time



- ***A.E. v. Grant County BOE, 51 IDELR 3 (6th Cir. 2008)***

7th-grader with ADHD and Bipolar Disorder gave one of her Adderall pills to a classmate at the end of the school year

AP told her a deputy sheriff SRO would be investigating

The SRO couldn't, because he was ill, so nothing happened over the summer



- ***A.E. v. Grant County BOE*, 51 IDELR 3 (6th Cir. 2008)**

At start of year, AP called student in, and had her write a statement of the events, then gave the statement to the SRO

Parents sued, arguing AP colluded with SRO to deprive student of her 4th Amendment rights (rights with respect to searches and seizures, including *Miranda* rights)



- ***A.E. v. Grant County BOE*, 51 IDELR 3 (6th Cir. 2008)**

Court found that AP was not working on behest of law enforcement (SRO testified that AP collects statements for the discipline decisions, then he takes them for the “criminal end”)

AP did not talk to SRO prior to getting statement

Court found no violation, *Miranda* rights not implicated, as student was not being arrested when she gave the statement



- ***A.E. v. Grant County BOE, 51 IDELR 3 (6th Cir. 2008)***


Lessons—Clean process: (1) conduct disciplinary investigation as far as needed for purposes of the school discipline process, ***then*** (2) report crime to law enforcement, and (3) share investigation records with law enforcement or SRO, (4) if parents consent, provide suspended and discipline records to law enforcement or SRO



- ***A.E. v. Grant County BOE, 51 IDELR 3 (6th Cir. 2008)***

Practices to Avoid—

- Advocating prosecution
- Working with SROs prior to investigating a discipline offense
- Administrators involving themselves in juvenile justice hearings unless subpoenaed
- Initiating communications with juvenile prosecutors, POs
- Acting as agents of law enforcement



- ***Z.G. v. Pamlico Co. Pub. Schs.*, 69 IDELR 123 (E.D.N.C. 2017)**

6-year-old with ASD/ADHD was running out of building, so school called sheriff's deputy and instructed him to take him to a hospital, where he remained for 2 days against his parents' wishes

Constitutional claim denied (no pleading of pattern or practice), and parents failed to exhaust IDEA hearing remedies on disabilities claims

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- ***Z.G. v. Pamlico Co. Pub. Schs.*, 69 IDELR 123 (E.D.N.C. 2017)**

What do we think of the campus' actions? The IDEA legal action remains possible—how would the school fare on such an action?...



- ***C.B. v. Sonora Sch. Dist.*, 54 IDELR 293 (S.D.Cal. 2010)**

11-year-old with ADHD and Mood Disorder was arrested during behavior incident, although he did not pose a danger

Student “shut down” and sat on a bench with folded arms not making eye contact

Staffperson threatened to call police, and then police were called

Staff failed to follow behavior plan

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- ***C.B. v. Sonora Sch. Dist.*, 54 IDELR 293 (S.D.Cal. 2010)**

School settled constitutional claims (local police officers were not extended qualified immunity, and had to continue with their defense)

What do we think of the staff's actions in this case? IDEA liability?



- ***C.C. v. Hurst-Eules-Bedford ISD*, 65 IDELR 195 (N.D.Tex. 2015)**

Student with LD/ADHD took pictures of student while on the toilet

School determined this was a felony (“improper photography”), and recommended placement in a disciplinary alternative program

IEP team found behavior was not related to disability



- ***C.C. v. Hurst-Eules-Bedford ISD*, 65 IDELR 195 (N.D.Tex. 2015)**

But, local juvenile authorities ultimately decided not to prosecute student

Parent argued that decision should have required school to reconsider action

Court disagreed, finding that student “presented the court with no legal argument as to how the decision of a criminal justice authority affects any decision actually made by the [IEP team].”



- ***C.C. v. Hurst-Eules-Bedford ISD*, 65 IDELR 195 (N.D.Tex. 2015)**

Lesson—Decisions made by juvenile authorities or police do not necessarily impact schools' disciplinary decisions and determinations

School had right to determine felony occurred on campus, and to take *disciplinary* action based on their finding (prosecutorial decisions are based on a variety of factors that may not have to do with whether there was sufficient evidence to convict)



- ***Spring Branch ISD v. O.W., 72 IDELR 11 (S.D.Tex. 2018)***

5th-grader with ODD and ADHD exhibits really serious behaviors (fleeing, hitting, cursing)

Initially he was in §504, but school eventually qualified as ED and placed him in an adaptive behavior setting with a BIP

BIP called for a calm approach, giving physical space, and avoiding “power struggles.”



- ***Spring Branch ISD v. O.W., 72 IDELR 11 (S.D.Tex. 2018)***

Staff used physical restraints 8 times, and called police 4 times (after last time, he resisted going to school)

Court found staff failed to implement BIP strategies, and that use of restraints and police were not consistent with BIP strategies

Court also noted BIP neither included restraints or police intervention



- ***Spring Branch ISD v. O.W.*, 72 IDELR 11 (S.D.Tex. 2018)**

Court found school “could not handle O.W.’s educational needs” and ordered reimbursement for private placement

Question—Why would BIP include restraint? Is that not an emergency measure? Why would it include police intervention if school has a legal right to report crimes? What if the school had run out of any options whatsoever?

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- ***Spring Branch ISD v. O.W.*, 72 IDELR 11 (S.D.Tex. 2018)**

Lesson—Police intervention is not a behavioral intervention for difficult incidents; it is intended for situations where crimes are committed (drugs, weapons, serious assaults)



- ***Fort Smith Pub Schs., 29 IDELR 399***
(Arkansas SEA 1998)

Student with ID and ADHD had various behavior incidents, culminating in hitting a teacher and coach, who both filed criminal complaints (“filed charges”)

Staff filed complaints to make student realize the seriousness of his behavior, and to provide a more serious consequence



- ***Fort Smith Pub Schs.*, 29 IDELR 399 (Arkansas SEA 1998)**

IEP team found behavior not a manifestation of disability (“knows right from wrong”)

First, ALJ finds that MDR is wrong, because evidence indicated student could not control his behavior when agitated



- ***Fort Smith Pub Schs.*, 29 IDELR 399 (Arkansas SEA 1998)**

Second, ALJ noted filing of charges by staff was not required by law, and was “wholly inappropriate”

Question—Is the District responsible for individual staffpersons’ filing of criminal complaints? Can schools lawfully prevent staff from exercising their right to report that they are the victims of an assault under State law?



- **What about *individual staffpersons'* filing of criminal complaints?**

Unless state law says otherwise, schools cannot limit staff's rights to file criminal complaints if they are victims of a crime (e.g., assault)

But, schools should not direct staff to do so either...

Question—How meaningful are criminal complaints against minors with disabilities?



School Use of School Resource Officers (SROs)

- Increased frequency of use of SRO's post-Columbine (19,000 in US as of 2015, per Nat'l Assn. of SROs)—Now fastest growth area in law enforcement
- SROs roles seem to have expanded, likely due to lack of clear policies and guidelines defining their functions (*Na & Gottfreyson, 2011*)



School Use of School Resource Officers (SROs)

- **Current Areas of Concern:**

SROs used for behavior intervention

Lack of training on disabilities

Promotion of school-to-prison pipeline

Unclear mission

Law enforcement perspective/training

Loss of educator control in incidents

Tendency to over-action



- **Current Areas of Concern:**

Schools with SROs have 5 times as many arrests for disorderly conduct as schools without them (*Justice Policy Institute, 2011*)

Disproportionately high use with ED/BD students (*Fabelo, et al., 2011*)

Employment Point—Should SROs be LEA employees or assigned by contract with outside agency?... Pros and cons of each



- **Thoughts on SROs**

Not for behavior incidents involving sp ed students (staff should handle those)

Should not be used to restrain students

SRO involvement exponentially raises risk of litigation

Train SROs on IDEA/504, and limit their roles for students with disabilities in MOUs



- **School/SRO MOU Resources:**

Advancement Project

Nat'l Assn. of SROs (NASRO) Sample MOUs

Department of Justice MOU Fact Sheet
(See COPS program)

*Safe School-based Enforcement through
Collaboration, Understanding, and Respect
(SECURe) (DOE/DOJ 2016)*



- **FERPA Issues and SROs**

Are SROs school staff with a “legitimate educational interest” who can access student records without parent consent?

Letter re: Blount Co. Schs., 106 LRP 47892 (FPCO 2006)(Yes, as part of schools law enforcement unit, if school indicates in their FERPA policies that SROs are staff with legitimate educational interest)

Check FERPA local policy



- **FERPA Issues and SROs**

What about records disclosures from SRO to outside police departments?

Student's signed statement to SRO about altercation was a law enforcement record that could be shared with the police without parental consent (*Letter to Anonymous*, III LRP 4570 (FPCO 2010))


Law enforcement records of SROs, kept separately from educational records, are not subject to FERPA



- **FERPA Issues and SROs**

Provision of results of threat assessment to police came under “health and safety” FERPA exception (*Letter to Anonymous*, 115 LRP 33141 (FPCO 2015))

Practical Guidance—Make sure local FERPA policies state that SROs are staff with “legitimate educational interest” and thus, can access records without parental consent



Cases on IDEA Students Involved with Juvenile Justice System

- Some of the cases address the issue of whether the student is really IDEA eligible (i.e., ED vs. social maladjustment)
- Other cases, eligibility is clear, but parents want residential or private placement to help address the juvenile justice issues
- At times, courts effect a kind of “mental health rescue” under IDEA, while others recognize the limits of an educational law



- **Emotional Disturbance (ED) (34 CFR §300.8(c)(4):**

Condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance

1. Inability to learn that cannot be explained by other factors;
2. Inability to build or maintain satisfactory interpersonal relationships with peers/teachers;
3. Inappropriate behavior or feelings;
4. Pervasive mood of unhappiness or depression;
5. Physical symptoms associated with personal or school problems



- **Emotional Disturbance (ED)(more):**

Includes schizophrenia

Term does not apply to students who are ***socially maladjusted***, unless they have an ED under this section separately

What is social maladjustment? Not formally defined, but generally, a pattern of willful behavior that violates social norms or laws but gratifies short-term needs, and is not accompanied with depression (until consequences arise)



- **Emotional Disturbance (ED)(more):**

Does term include Conduct Disorder, ODD?

No support for the proposition that these DSM-V conditions are somehow excluded from ED eligibility, as long as regulation's criteria are met

If regulation's criteria are not met, then finding of no ED may be legitimate; but not as a pre-assumption



- ***Johnson v. Metro Davidson* (M.D.Tenn. 2000)**

Teen having serious disputes with parents
(talks to strange men, runs away, risk behavior)

At school, good grades (except when she self-removes)

School psychs found no emotional distress,
indicate social maladjustment

Court found ED, citing need for student to be
in “controlled environment” where attendance
can be compelled and risks removed

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- ***Johnson v. Metro Davidson (M.D.Tenn. 2000)***

Questions:

What is her educational need for private placement? Is her need for a “controlled environment” an educational need?

Is IDEA intended to keep her from the consequences of her risky behavior?

Can her school participation really be ensured in a private or residential facility?



- ***H.M. v. Weakley County BOE, 65 IDELR 68 (W.D.Tenn. 2015)***

High-schooler who was sexually assaulted by an adult exhibited declining grades, diagnoses of PTSD and depression, family conflict, truancy, involvement with juvenile offenders, refusal to do homebound instruction work, other manipulative behavior

Father indicated he was trying to get her placed in a residential facility

School evaluation determined she was not ED, and student ran away with a young man, and she was again sexually assaulted by a cab driver



- ***H.M. v. Weakley County BOE, 65 IDELR 68 (W.D.Tenn. 2015)***

She also exhibited suicidal ideations and cutting

A second psych eval found she “dramatized” feelings and responded to assessments with hyperbole for self-interest and attention-seeking

Father placed her unilaterally in an RTC in Texas (High Frontier)

ALJ decided student was socially maladjusted



- ***H.M. v. Weakley County BOE, 65 IDELR 68 (W.D.Tenn. 2015)***

Court disagreed, finding that even if student was socially maladjusted, it was clear that she was ED also, in that she had longstanding psychological conditions and “a general pervasive mood of unhappiness or depression”

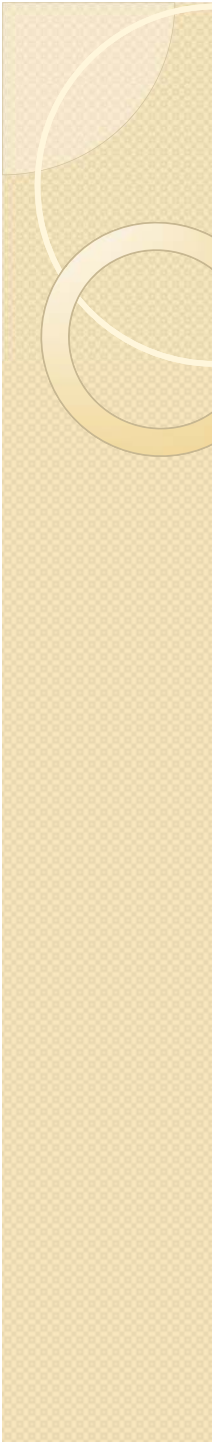
Court noted in a facility that provided her treatment, she improved, graduating with honors

“It is more likely than not that her major depression, nor just her misconduct and manipulation, underlay her difficulties at school.”



- ***H.M. v. Weakley County BOE, 65 IDELR 68 (W.D.Tenn. 2015)***

Comment—Does this not look like a “mental health” rescue of a student with a tragic background and a propensity for risky behavior? Does this student need special education or mental health treatment? Was she really getting special education at the RTC? Was the RTC primarily oriented to providing her an education or meeting her mental health needs in a secure setting?



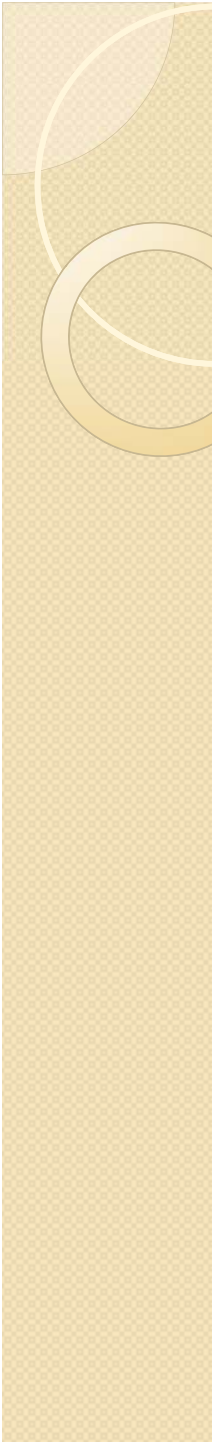
- ***G.R. v. Dallas Sch. Dist. No. 2, 57 IDELR 223 (D.Ore. 2011)***

High school student with LD sexually assaulted a classmate, and he pled guilty to the offense

His court disposition required him to obtain sex offender treatment

Parents placed him in an RTC in Utah that contracted out for sex offender treatment, and they sued to have the district pay for it

Parents refused to share a psychosexual evaluation with district, and withheld information about his therapies or psych diagnoses



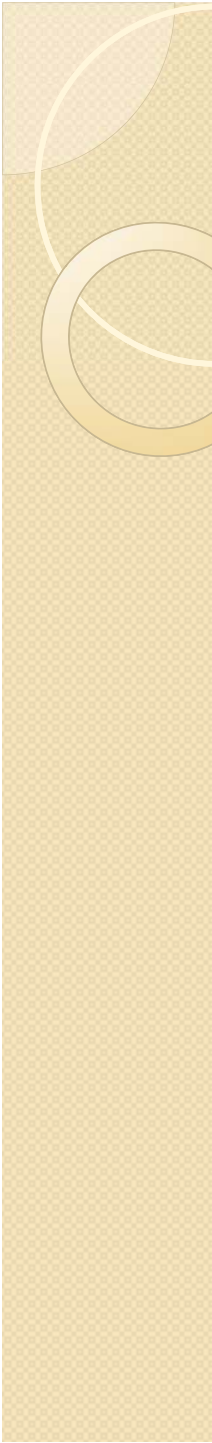
- ***G.R. v. Dallas Sch. Dist. No. 2, 57 IDELR 223 (D.Ore. 2011)***

Court found that he could have remained in the local district and obtained sex offender treatment in the area

School psych testified that Utah program exposed him to students with worse sexual behaviors, and that he engaged in more deviant behavior there

Also, there were no girls in the Utah RTC

Court found RTC was not necessary, and student needed to learn to interact properly with girls



- ***G.R. v. Dallas Sch. Dist. No. 2, 57 IDELR 223 (D.Ore. 2011)***

Question—Why did the parents send him to the Utah program when he could have both received an education and sex offender treatment in his own community?

Why not a “mental health rescue” in this case?...At the RTC, he got both treatment and education, just like in the last case (*Weakley County*)



- ***Frederick Co. v. J.D.* (4th Cir. 2000)**

Teen with ADHD, Bipolar, OCD, fights at school, uses drugs, assaults therapists and police—but, in honors classes, good grades

And, he was using drugs at a facility!

Court says this is social maladjustment, not an “educational disability”—refused to order school to pay for private placement

How do we distinguish this case from the *Weakley County* case?...



- ***Springer v. Fairfax Co. SB (4th Cir. 1998)***

Teen is popular wrestler, but on probation, gets arrested, steals from parents, uses drugs/alcohol, parents want private placement

Court says student suffers from “juvenile delinquency,” disregard of social norms

Court says this is why social maladjustment is excluded from IDEA eligibility—Broad definition of ED could cover lots of teens (“a time of social maladjustment for many people”)




- ***Montgomery Co. v. Brett Y. (4th Cir. 1998)***

Teen with ODD, anxiety, ADHD, in crisis at home (sleeps all day, stays out nights, trouble with law, refuses school or evals, problems with family)

Court refuses reimbursement for private facility

Court says problems at home are separable from school issues (example of “inextricably intertwined” analysis, here leading to finding that problems were not intertwined)

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- In cases where students are deeply troubled, with juvenile justice involvement, family issues, traumatic background, and significant mental health needs, the courts are woefully inconsistent
 - **Deeper issue**—Where does the IDEA's responsibility end and State and local mental health agencies' begin? Should IDEA make schools responsible for mental health treatment in these cases?



Incarcerated Students

- **IDEA Provisions (20 USC §1414(d)(7))**

For students convicted as adults and incarcerated in **adult** prisons, there are some restrictions:

- No participation in state testing
- No transition services if they will age out before their release date
- IEPs can be modified due to “a bona fide security or compelling penological interest”



Incarcerated Students

- **IDEA Provisions (20 USC §1414(d)(7))**

For students convicted as adults and incarcerated in **adult** prisons, there are some restrictions:

- LRE does not apply
- But services still required on an individualized basis

See 34 C.F.R. §300.324(d)



- **IDEA Provisions (20 USC §1414(d)(7))**

For students **not** convicted as adults and **not** incarcerated in adult prisons, the requirements of IDEA apply fully

Whether SEA provides services directly, or through the LEAs, is left up to the States (71 Fed. Reg. 46,686 (2006))

Determination of bona fide security and penological interests depends heavily on policies and practices of prisons



- **IDEA Provisions (20 USC §1414(d)(7))**

For students convicted as adults and in **adult** prisons, States are allowed to terminate parental IDEA rights when student reaches adulthood (34 C.F.R. §300.520(a)(2))

At times, prisons may have their own FAPE obligations under §504, if they receive federal funds

And, OCR says §504 may require FAPE in adult prisons (*Brandywine (DE) SD*, 16 IDELR 327 (OCR 1989))



- ***A.T. v. Harder*, 72 IDELR 43 (N.D.N.Y. 2018)**

County jail (adult facility) was putting juvenile detainees in solitary for up to 23 hrs per day

While in solitary, students got very little in the way of educational services

And, kids were put in solitary for offenses such as water fights or failing to clean their cells

Court ordered no more than 4 hrs of solitary at a time for juveniles



- ***A.T. v. Harder*, 72 IDELR 43 (N.D.N.Y. 2018)**

Court ordered at least 3 hrs/day educational services, including sp ed and related services

Court held that correctional facilities have a joint obligation with school districts to ensure that IDEA student receive FAPE

Even in adult facilities, services must be individualized



- ***V.W. v. Conway*, 69 IDELR 185 (N.D.N.Y. 2017)**

County jail (adult facility) was putting juvenile detainees in solitary for up to 23 hrs per day

IDEA students alleged (1) provision of “cell packets” in solitary did not conform to any IEP, and (2) removals to solitary occurred without MDRs



- ***V.W. v. Conway*, 69 IDELR 185 (N.D.N.Y. 2017)**

Court again found that local school district and jail jointly share obligation to provide a FAPE

School district alleged jail officials refused to allow them access to kids in solitary

Court implied MDR requirement applied to solitary confinement removal

Court ordered sped services be provided

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- ***V.W. v. Conway*, 69 IDELR 185 (N.D.N.Y. 2017)**

How does MDR apply? Who conducts the MDR? (It's supposed to be relevant members of IEP team) What local code of conduct is violated? Does the MDR requirement really apply to the penal actions of jail officials?

School alleges jail did not allow them to provide services, but students want discovery on how much effort the school took to overcome this refusal

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- ***V.W. v. Conway*, 69 IDELR 185 (N.D.N.Y. 2017)**

Lesson—If a local jail or juvenile facility refuses to allow services to be provided, the school should make repeated and documented attempts to work with the facility to overcome the refusal

School may want to involve the SEA

It may not be enough to make one attempt, get a refusal, and sit back