

EDUCATION ADVOCACY IN FAMILY COURT FOR JUVENILE DELINQUENTS CAN
BREAK THE CYCLE
FROM UNTREATED DISABILITY TO INCARCERATION

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ABSTRACT

In the first thirteen months since education advocacy was added to the Family Court in Suffolk County, placements outside the community were reduced by 47 juveniles at a cost saving to the county of \$6,264,000.

It is recognized by researchers that disabilities among incarcerated juveniles far exceed the disabilities found in the general population. Research also supports a causal relationship between untreated disabilities and delinquent behavior. On the assumption that disabilities in the juvenile delinquent (JD) population have been largely undiagnosed and/or untreated at school and that court ordered placement outside the community increases the JD's risk of incarceration, Suffolk County Probation Department funded a new program in December 2006 that provided education advocacy for adjudicated JD's before placement by Family Court. In the first thirteen months of the program, appropriate services were accessed for many juveniles, school performance significantly improved, and court placements outside the community were reduced. The human and financial benefits are noted.

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THE CAUSAL CONNECTION

Researchers are now in agreement that the prevalence of juveniles with disabilities (mental retardation, emotional disturbance, and learning disabilities) in correctional facilities far exceeds the prevalence noted in the general population.¹ “While only 7 percent of all public school students in the United States have been identified as disabled . . . , in the juvenile justice system, the prevalence rate is estimated to be between 12 percent [and] 70 percent.”² In view of the astounding report by the Commissioner of the Office of Children and Family Services (OCFS) in February, 2008, that “as many as 80% of the children who enter the [juvenile justice] system come back to us or go to prison within three years,”³ the fate of the incarcerated juvenile seems all but sealed.

Although the research points to several factors that may contribute to juvenile delinquency, it is generally accepted that a positive correlation exists between undiagnosed/untreated disabilities and juvenile delinquent behavior.⁴ This article will focus on how education advocacy before incarceration can deliver the services that the child needs to improve school performance and thereby alter the grim prognosis for incarceration.

¹ Robinson, T.R. Rapport, Jane K. (1999) Providing Special Education to the Juvenile Justice System. Remedial Education 20(1), 19-26.

² Leone, Peter E., Ph.D., et.al. (1995) Understanding the Over Representation of Youths With Disabilities in Juvenile Detention. 3 D.C.L. Rev.389.

³ Commissioner Gladys Carrion, Esq. “Testimony to the New York State Legislatures Joint Budget Committee,” February 5, 2008.

⁴ Brier, Norman. (1989) The Relationship between Learning Disability and Delinquency: a Review and Reappraisal. Journal of Learning Disabilities 22(9), 546-553.

How does this dismal path seem to wind inexorably from untreated disabilities in children to incarceration? Clearly, a disability that is not appropriately addressed at school is likely to cause academic failure.⁵ School failure causes frustration and that frustration often finds expression in truancy and maladaptive behavior in school.

These behavior patterns frequently lead to court action and, unless the court sees improvement, will lead to placement outside the community. This continuum, often referred to as the “fast track to prison”, is destructive on a human level and costly on a financial level. A juvenile is placed by the court outside the home at a cost between \$90,000 and \$180,000 per year. It seems clear that avoiding incarceration requires an effort to maintain the juvenile delinquent (JD), if possible, in the home school with enhanced services.

HISTORY AND GOAL OF EDUCATION ADVOCACY IN FAMILY COURT

In December, 2006, Suffolk County in New York sponsored several programs aimed at reducing Family Court placements outside the community. For nineteen years, the Long Island Advocacy Center, Inc. (LIAC) had been providing advocacy at the probation department for children who were in Family Court on truancy and/or incorrigibility charges (Persons In Need of Supervision or PINS). The positive impact of advocacy on the child’s performance in school was significant and the probation department, therefore, provided new funding for a Juvenile Delinquency/LIAC (JD/LIAC) program. The program is staffed with two education attorneys and an education advocate. The new funding in the county reflected the “front end”, or preventive approach, to juvenile delinquency as opposed to the more traditional “back end”, or detention, approach to the problem. Education advocacy in Family Court was given a pivotal role in that new approach.

The preferred choice of the professionals in the juvenile justice system is to provide services for the JD while the child remains at home, if at all feasible. Although the incarceration of juveniles is a prison placement, there are many placements that range from the non secure group home for the child whose behavior is less serious to the most secure placement for the child whose behavior is more egregious. However, rehabilitation in the community is

⁵ Grande, Carolyn G. (1988) Delinquency: The Learning Disabled Student’s Reaction to Academic Failure? *Adolescence* 23(89), 209-219.

preferable to a court ordered placement, even one that is non secure, because the negative peer influence at a placement and the loss of the home reduce the child's chance for rehabilitation. LIAC fully embraces the goal of community based services.

Special problems often burden JD's that are beyond our ability to resolve, but the measure of our success is relatively straightforward: on the day of disposition (sentencing if the offender is an adult), we must present compelling evidence to the judge that the school changes now in place (or soon to be in place) offer enough reason to order probation and cooperation with services in the community rather than to order placement outside the community. Because the latter increases the risk of incarceration, the success of the education advocacy program in Family Court is justifiably measured by a reduction of court ordered placements and an increase of juveniles remaining in the home school.

Less prone to measurement are the numbers of juveniles whose maladaptive behavior, while not serious enough to be placed outside the community, might well have escalated to that point were it not for the positive changes we successfully advocated for at school.

THE LIAC STAFF

The presence of an education attorney in Family Court every day whose role is to report on the progress of education advocacy may be unprecedented. Because the education attorney is now part of a team of professionals who provide information to the judge that is relevant to his/her disposition of the case, the responsibility of the school in addressing the child's disability is given a high priority.

The LIAC team, housed at the Suffolk County Probation Department, includes:

- a) an attorney who coordinates the program, screens JD's for school issues, and monitors the progress of each case.
- b) an attorney in court every day to consult with the juvenile's parent, attorney, county attorney, social workers, psychologists and court personnel. She participates in hearings, initiates appeals, and reports to the judge on the progress and prognosis of changes in school.

- c) an education advocate who consults with parent and juvenile, reviews school records, consults with school staff, attends school meetings with the parent and reports progress to the LIAC attorney.

ASSESSING THE NEEDS OF THE JUVENILE DELINQUENT

When a youngster under 16 years of age admits to, or is found guilty of, a JD offense, the youngster and family appear in Family Court and the juvenile is adjudicated (classified) a juvenile delinquent. During the next four to six weeks, a probation officer in Suffolk County conducts interviews with the family and researches the child's history at home and in the community. The child and parent also see a LIAC staff member on the day of the first court appearance (arraignment) when the school history is taken and, if a school issue is part of the child's problem, an appropriate school intervention plan is mutually adopted. This research is done in order to support the recommendation that will be made to the court.

Typically, the JD's have "fallen between the cracks" for many years and swift action becomes a priority if we are to show compelling results to the court. The LIAC staff helps the parent, if appropriate, with a request for a full psycho-educational evaluation followed by a Committee on Special Education (CSE) review to determine if the child has a disability and is therefore eligible for special services. Because probation officers (PO's) have worked closely with LIAC for many years, the juvenile's PO has become an important part of this process. Often a PO will attend a CSE review if the LIAC advocate is unavailable and, after consulting with the LIAC advocate, is able to be effective at the CSE review. The availability of PO's to advocate at the school helps the team in meeting the court deadline for disposition.

Although special education classification and services claim much of our time, other school issues are addressed as well:

- suspension from school
- denial of admission to school
- denial of home tutoring
- denial of special programs
- pressure on parents to withdraw a request for an evaluation

LIAC AIMS FOR A GOOD WORKING RELATIONSHIP WITH PARENT AND SCHOOL

The LIAC staff concentrates on establishing and maintaining good relations with school staff and we are successful more often than not. School staffs have come to accept and, to a large extent, respect our role. They deal with our differences professionally and often cordially. We represent the student and parent and, when the opposing perceptions and demands of the school and the parent are far apart, we expect the exchanges to be “spirited” and try to avoid combativeness in order to remain constructive. When an issue that separates the parent and school remains unresolved, the attorney may represent the parent at a hearing. If the parent does not prevail at that level, the parent and the LIAC attorney consider further appeals.

Parents of JD’s also present unique challenges for the LIAC staff. Whereas parents with some understanding of their legal rights (available in lay language) can advocate successfully for a child, the parent of a court involved child usually does not have the understanding, skill or resources to confront the intimidating school bureaucracy effectively. The experience of the LIAC staff provides valuable support to parents when changes are needed and the parent is unable to be a strong advocate. The contribution of this service has become clear to parents as well as to court personnel.

Because the turnaround time we have to present a well documented recommendation to the judge is relatively short, the LIAC staff must maintain frequent contact with the parent who typically needs a reminder to keep an appointment for a psychiatric evaluation, to sign and submit consent forms to school and to appear at scheduled meetings at the school. Gentle prodding of school staff is equally important because the distractions from other school issues often interfere with timely evaluations and meetings. As we press for expeditious resolutions, consistent and tactful pressure on both parent and school has therefore become part of the job.

IMPACT OF EDUCATION ADVOCACY IS ACKNOWLEDGED

The reduction in placements by 47 juveniles at a cost saving of \$6,264,000 in a thirteen month period suggests that education advocacy for juvenile

delinquents delivers not only financial benefits to the county but human benefits as well.

By providing education advocacy to juvenile delinquents before disposition, services were accessed to many children who had not been previously diagnosed and/or treated for disabilities. Addressing those disabilities appropriately had a positive impact on school performance and, consequently, on the reduction in placements outside the community.

Increasingly, Family Court judges are ordering cooperation with LIAC as a condition of probation and openly acknowledge the effectiveness of the service. Additional funding was provided within one year to expand advocacy to more JD's and there are plans for further expansion.

Although professionals in the juvenile justice system widely recognize that preventive services are pivotal in detouring the JD's "fast track to prison", the appreciation of education advocacy as a part of those services may be less universal. The results we have seen point strongly to the need for education advocacy as a vital part of preventive services programs.

APPENDIX A

Education advocacy addresses a major cause of a child's frustration and failure at school, often the underlying explanation for the child's delinquent behavior. Needed changes generally come only with advocacy because the schools have already failed these children and must be held accountable.

Below are some illustrations of the impact of education advocacy on JD cases.

1. Excerpt from a Family Court judge's response to LIAC progress at school:

When the judge was ready to hear the case, he requested first that the LIAC attorney provide an update on LIAC progress. The LIAC attorney argued that the violation of probation (VOP) could not be substantiated because a) several of the alleged truancies were documented sick days; b) the out-of-school suspensions (OSS) were improperly counted as truancies and the OSS days were subsequently expunged; and c) many of respondent's difficulties needed to be and would be addressed at an upcoming CSE review.

The judge held that the VOP was to be held in abeyance and the probation likely to be modified after the CSE review.

Noteworthy is the parent's comment to the LIAC attorney: "I don't know why I hired a private attorney at a cost of \$2,500.00."

2. An excerpt from a recommendation to the judge from the probation department:

In the interim, this case was discussed with the LIAC advocate and the LIAC attorney who had been working with the school district in an effort to obtain appropriate educational services for the respondent. The respondent's severe stutter and his inability to read, identified since kindergarten, have not been properly addressed by the school district, perhaps resulting in the frustration and embarrassment currently experienced by the respondent who, at the age of 16, still cannot read and continues to stutter.

We therefore respectfully recommend that the respondent be remanded to a non secure facility, making him available for testing by the school district and that this case be adjourned for a period of two weeks.

3. Excerpt from the advocate's summary of four JD cases for the LIAC attorney's report to the judge;
 - a) Danny: Updates at a CSE review about respondent's seriously assaultive behavior revealed a need for an expedited psychiatric evaluation. LIAC and school staff cooperated in scheduling the evaluation and also agreed to reconvene a CSE review to consider the recommendation. Parent, school and advocate all agreed.
 - b) Carol: With the help of the advocate, implementation of a new strategy to address respondent's dyslexia, proposed by parent, was accepted by the school.
 - c) Robert: Classification under IDEA was denied but CSE will reconvene after a scheduled neurological evaluation to consider classification for an ADHD disability.
 - d) James: Respondent is classified learning disabled, has strong ability but poor attitude. Parent, school staff and advocate agreed on placement for next year and the school will create an accelerated schedule to help the child graduate on time.

APPENDIX B

In addition to education advocacy, several preventive services programs that were also funded are noteworthy:

- 1) Thinking Errors, Anger Management Social Skills and Talking Empathy (TASTE)
Early psychological and educational services are provided for Adjourment in Contemplation of Dismissal (ACOD) youngsters.
- 2) Mental Health/Juvenile Justice (MHJJ)
MHJJ has a staff of psychologists and social workers who screen youngsters for early detection and treatment of mental health and substance abuse issues. Referrals are made.
- 3) Home Base
Early case management services are provided for JD's by Family Service League; family intervention explores additional services.
- 4) Restorative Alternative to Placement (RAP)
The RAP program is for JD's at risk of placement. VOP is pending and a Home Base worker is involved. A committee of professionals and the family develop a plan to avoid placement. The plan becomes a condition of probation.

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