

# **SPECIAL EDUCATION ADVOCACY**

Under the Individuals  
with Disabilities  
Education Act (IDEA)

For Children in the Juvenile Delinquency  
System

*Edited by*

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UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)  
FOR CHILDREN IN THE JUVENILE DELINQUENCY SYSTEM**

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**SYMPOSIUM: THE UNNECESSARY DETENTION OF CHILDREN IN THE DISTRICT OF COLUMBIA,**  
produced by the District of Columbia Law Review,  
(with articles applicable to delinquency detention in any U.S. jurisdiction).

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Mary Hynes, a colleague on the faculty of the Juvenile Law Clinic and my principle co-author in this project, wrote much of the text presents and elucidates special education law. An expert in both special education law and child welfare (neglect) law, Mary spends much of her time using special education law on behalf of children and families, including foster parents, who are involved in the child welfare system.

Joyce McGee entered the Juvenile Law Clinic in the Spring of 1997; soon thereafter, in addition to becoming the Editor-in-Chief of the *University of the District of Columbia Law Review*, she became my co-editor of this manual. Displaying an uncanny ability to mince words, turn phrases, and punctuate sentences, she weeded through these pages. Her more profound contribution, however, was turning "dry legal scholarship" into an entertainingly-formatted publication. Joyce knows how to use publishing software. Thank goodness!

Eileen Ordover and Kathleen Boundy of the Center for Law and Education also

joined this project in 1997 in order (1) to include in the manual information from and references to the 1997 amendments to the IDEA, (2) to provide a core version of the chapter on discipline, delinquency, and disability, and (3) to apply their unique expertise in education law to ensure that the presentation of the law in this manual is accurate.

Susan E. Sutler ("Suji"), a colleague on the faculty of the Juvenile Law Clinic, was the principal author of Chapter Nine: The Special Education Process: Individualized Education Program (IEP). Through the decade of the 1990's, Suji has worked with law students in the clinic as she helped to develop strategies for applying special education law and practice to advance the cause of children in the delinquency system and to champion, as well, the interests of the parents of those children.

Milton C. Lee, Jr. ("Tony"), a former colleague on the faculty of the Juvenile Law Clinic, co-authored Chapter Two: Strategies for Using Special Education Law to Improve the Outcome of an Individual Delinquency Case. Tony brought to our clinic unparalleled zeal and irrepressible humor. The consummate public defender, Tony is now "neutralized" as a hearing commissioner on the bench of the District of Columbia Superior Court.

Numerous people have provided assistance in this project, helping us to understand, formulate, and frame the issues, arguments, assertions, and insights that appear in the manual. Particularly, we extend our thanks to Loren Warboys, Susan

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For their support as co-conspirators, collaborators, and confidantes, my thanks go to Mark Soler of the Youth Law Center, Pattie Puritz and Wendy Shang of the American Bar Association Juvenile Justice Center, Vinny Schiraldi of the Justice Policy Institute, Ellen Wayne and Leila Peterson of the Institute for Conflict Analysis and Resolution, and, of course, scores and scores of law students who labored in the Juvenile Law Clinic during the last twenty semesters in which we have experimented with using special education to advocate on behalf of the children in the District of Columbia delinquency system.

For continuing support of our work in the Juvenile Law Clinic, including support for our advocacy on behalf of children with education-related disabilities who are in the child welfare system, we thank The Eugene and Agnes E. Meyer Foundation. We have also received support for our special education/delinquency advocacy work from The Public Welfare Foundation, The Legal Services Corporation, and The Freddie Mac Foundation. For our work to reduce detention rates in the District of Columbia – specifically, to support the organizing, writing, editing, convening, and printing of the symposium “The Unnecessary Detention

of Children in the District of Columbia”, we received support from The Robert F. Kennedy Memorial Foundation and from the Annie E. Casey Foundation.

– **Joe Tulman**

# Introduction

**T**he intended audience for this manual is defense attorneys who represent children in delinquency matters and in status offenses; the intended audience includes also disability rights attorneys and other public interest attorneys with an interest in representing children who are enmeshed in the delinquency system.

Children strive to be productive and to be accepted. Children who are marginalized and considered to be delinquent are, in large proportions, also children with education-related disabilities. Typically, children in the delinquency system "failed" in the education system before entering the delinquency system.

Adults responsible for delinquency systems and educational systems across the country have an opportunity to help make those marginalized, delinquent children productive and accepted.

The advocacy described in this manual revolves around the Individuals with Disabilities Education Act (IDEA), a federal law incorporated into state law in all fifty states and in the District of Columbia. (Other laws are relevant to the enforcement of educational rights for children with disabilities, notably -- in the federal law -- section 504 of the Rehabilitation Act and the Americans with Disabilities Act. With only a few exceptions, however, the authors have not addressed or presented those laws in this manual.) The IDEA protects children with education-related disabilities, affording them a right to a free, appropriate public education. This central right under the IDEA

provides a path to productivity and to acceptance.

Advocates who read and use this manual can be catalysts or change agents who help move children from delinquency systems back into educational systems that, in turn, can lead those children to jobs and, when appropriate, to higher education. This manual is a "how-to" presentation for that effort. Moreover, the IDEA furnishes a financial incentive for advocates to use special education law on behalf of children in the delinquency system: the IDEA provides for attorneys' fees at market rate for those who prevail in asserting special education rights.

Having prepared this manual under the auspices of the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI), the authors focused particularly on case precedent from the Second, Seventh, and Ninth Circuits -- circuits with JDAI sites. Lawyers who use this manual should search, whenever appropriate, for additional binding and persuasive authority.

Faculty and law students in the Juvenile Law Clinic of the D.C. School of Law have been using special education advocacy under the IDEA for the majority of the clinic's delinquency clients since 1990. This manual reflects the experience of those clinicians. The authors present case examples, strategies, and theories with the expectation that they will be useful to advocates throughout the country. At the same time, the authors acknowledge emphasizing some laws and practices peculiar to the District of Columbia, and they trust that this bias will not deter or distract the reader.

# Dedication

## MANUAL LABOR

*Dedicated: CHILD*

Enforcers, executives, and executioners exigently escort . . .  
(against essentially nonexistent resistance)  
. . . adolescents  
into jails and prisons,  
amidst reports that the juvenile courts  
lie dying at the age of one hundred.

Pundits, politicians, and professionals proudly produce . . .  
(while plundering the public's profits and progeny)  
. . . "predators"  
for the minds in manors,  
and the tycoons are reduced to buffoons,  
hands standing in the pens of iniquity.

Mothers, schoolmasters, and youth-managers mustn't misunderstand . . .  
(despite massive media imaginings, imagings)  
. . . minors  
shown on screens and bulk prints  
who, at the start, in the head and the heart,  
need teaching in the stead of constraining.

– JBT '98

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