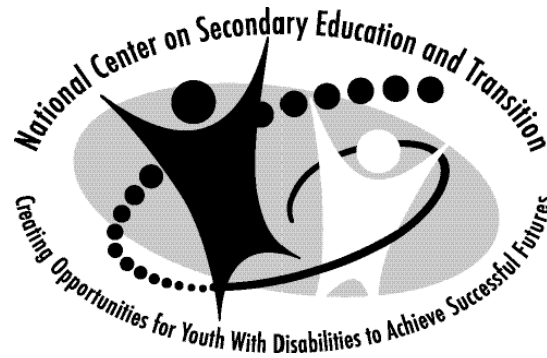


National Center on Secondary Education and Transition

presents a

Capacity Building Institute



Perspectives on Serving Young Offenders with Disabilities: Litigating and Organizing Systemic Change

October 12, 2003
Bloomington, MN

Proceedings

Background

The National Center on Secondary Education and Transition (NCSET) hosted a *Capacity Building Institute on Youth in the Juvenile Justice System: Perspectives on Serving Young Offenders with Disabilities: Litigating and Organizing Systemic Change*, on October 12, 2003, at the Ramada Thunderbird in Bloomington, MN.

NCSET staff designed this institute in response to research and practice wisdom attesting to the dramatic and persistent overrepresentation of youth with disabilities in the juvenile justice system. The institute was designed to promote discussion and innovative methodologies for addressing the individual needs of these young people while also striving for change in social policy to benefit incarcerated youth.

The one-day institute provided an opportunity for key stakeholders in education, juvenile justice, and medicine to examine policies and common practices in the juvenile justice system.

In the following proceedings you will find the institute agenda, an overview of the institute's purpose, a brief summary of the institute, and biographical information for the presenters.

Agenda

- 9:00 **Introduction and welcome**
Pam Stenhjem, NCSET
- 9:15 **Introduction to youth with disabilities in the juvenile justice system**
Lili Garfinkel, PACER Center
- 9:30 **Panel presentation**
Chris Bray, Assistant to the Minnesota Commissioner of Corrections
Megan Hunt, Juvenile Public Defender, Washington County, MN
Heather Lindstrom, Special Education Teacher, Red Wing Correctional Facility
- 11:00 **Participant questions**
- 12:00 **Lunch**
- 1:00–5:00 **Workshop: Systemic impacts on youth with disabilities in the juvenile justice system: Medical systems and litigating change**
Will Dikel, MD
Joe Tulman, JD

Institute Purpose and Goals; Contact Information and Resource Links

Purpose

This institute was designed to provide information, resources, and training regarding the issues, service provision, and alternative methodologies for addressing the needs of youth with disabilities involved with the juvenile justice system.

Goals

- Provide an overview of current issues and problems
- Present perspectives from state, local, and public defense representatives
- Explore special education advocacy as an organizing strategy to shrink the delinquency system and create meaningful services for children
- Explore other system strategies for serving at-risk children outside of the delinquency system
- Explore possible uses of Medicaid and EPSDT for provision of services to youth with disabilities in the juvenile justice system
- Present an overview of clinical issues and aspects of service provision

Contact Information

Pam Stenhjem, NCSET: huntx010@umn.edu

Resource Links

National Center on Secondary Education and Transition (NCSET): www.ncset.org

National Center on Education, Disability, and Juvenile Justice (EDJJ): www.edjj.org

PACER Center: www.pacer.org

District of Columbia Law Review & District of Columbia School of Law Juvenile Law Clinic.

(1995). Symposium: The unnecessary detention of children in the District of Columbia. *District of Columbia Law Review*, 3(2).

Introduction and Welcome

Pam Stenhjem, National Center on Secondary Education and Transition (NCSET), welcomed CBI participants and presenters. Ms. Stenhjem presented a brief overview of the institute's purpose and goals – primarily to create a better understanding and to begin general proactive responses to the circumstances facing young people with disabilities in the juvenile justice system.

In the interest of customizing the institute to the needs of its participants, Ms. Stenhjem invited all in attendance to introduce themselves and state their area of interest or professional practice. Participants included representatives from:

- Juvenile residential treatment facilities
- Educational systems within youth detention centers
- Research institutions seeking responses to the needs of youth with disabilities
- AmeriCorps and other service organizations
- State and local community corrections departments

Ms. Stenhjem concluded her remarks with an outline of the day's agenda and brief introduction of the institute's presenters.

Introduction to Youth with Disabilities in the Juvenile Justice System **Lili Garfinkel, Coordinator, Juvenile Justice Project, PACER Center**

Ms. Garfinkel opened the institute with a summary of key issues and concerns within the juvenile justice system, particularly as they relate to youth with disabilities. Her talk focused largely on the tensions within the juvenile corrections system between encouraging young people to assume responsibility for their behaviors while still providing the advocacy necessary to ensure that their responsibility is approached in an effective and respectful manner. Ms. Garfinkel stressed that her work with the Juvenile Justice Project is oriented toward identifying and enforcing legal consequences that work with young people, with specific attention to the unique issues presented by youth with disabilities.

Ms. Garfinkel outlined recent trends in juvenile justice, including the increased criminalization of school-based problematic behaviors, increased numbers of youth referred to the adult courts, and higher rates of incarceration despite declining overall juvenile crime rates. She also highlighted an increased social reliance on the correctional system for the provision of mental health and special education services, which places young people in need of services into a punitive system merely in order to access these benefits. It was stressed during this introduction that there are no single answers to any of these issues. High-risk behaviors are interrelated, there is an urgent need for early intervention and prevention services, and these interventions, as well as those that occur in later years, must involve sustained collaboration.

Specifically with regard to youth with disabilities, Ms. Garfinkel reviewed the existing research attesting to their dramatic overrepresentation in the correctional system. Youth with disabilities are sentenced for longer periods of time and to more restrictive settings than their non-disabled peers. They have greater difficulty completing correctional programs, largely due to these programs' inattention to the learning needs and existing IEPs of many disabled students. Finally, youth with dis-

abilities often find their negative impulses and behaviors reinforced in the correctional setting; the prison experience is difficult to unlearn, particularly for youth with cognitive disabilities.

Ms. Garfinkel continued with demographic information regarding youth in the juvenile corrections system, including statistics attesting to overrepresentation of youth with disabilities, rates of youth incarcerated in adult facilities, demographics concerning female offenders, and statistics regarding minority confinement and representation in the correctional system.

Lastly, Ms. Garfinkel's introduction concluded with a summary of what interventions have been attempted and found to be lacking. Specifically, Ms. Garfinkel suggested that punishment-based programs, non-specific therapies, medication without education, and programs that fail to address the full range of a young person's environmental interaction are not effective interventions for most youth. For youth with disabilities, these practices are even less helpful. She suggested that programs must be redesigned with attention to helping youth develop pro-social strategies to manage their lives during and following incarceration, emphasizing the development and practice of internal controls rather than impulsive responses.

Panel Presentation

Chris Bray, Assistant to the Minnesota Commissioner of Corrections

Ms. Bray opened her portion of the panel presentation by reading an excerpt from the President's Commission on Mental Health, which highlights the need for reform and improved access to mental health care. She suggested that this need is even greater for youth in the correctional system than it is for other young people. Ms. Bray focused her presentation on the development of a best practice model for juvenile probation departments, including specific attention to issues of mental illness and/or disability among youth in the juvenile corrections systems.

A brief overview of the history of American juvenile corrections since the 1960s was presented, characterizing each decade according to its prevailing trends:

- 1960s Rehabilitation Period
- 1970s Proportional Punishment Period
- 1980s Utilitarian Period
- 1990s Period of Overt Politicization
- 2000s The "What Works" Revolution

As we are now in the "What Works" period, Ms. Bray suggested that the justice systems must come to a better appreciation of those factors contributing to the emergence of criminal behavior in the first place, in order to better anticipate the interventions needed to decrease these behaviors. She suggested that these "criminogenic" needs can be addressed through creative and strategic interventions like social education theory – focusing interventions on changing offenders' patterns of thinking, not merely their behavior.

The first step in developing these interventions, Ms. Bray suggested, is making use of existing effective assessment and screening instruments. She spoke briefly about the Youth Level of Service/Case Management Inventory (YLS/CMI), POSIT, and MAYSI-2 instruments. Legislation has occurred in some parts of the country, including Minnesota, to require that all youth coming into the correctional system must be assessed with one of these instruments for mental health and disability consid-

erations. Individual treatment or intervention programs and organizations must then follow the recommendations of these assessments in service delivery.

Ms. Bray suggested that in addition to these instruments, a shift must occur in the minds of those delivering services, from probation officers to throughout the system. Attention must be focused on medium and high-risk offenders, not low-risk youth. This is problematic, because public perception often demands a response to low-risk offenders, as well. The difficulty arises because by focusing on low-level offenders, these youth become more and more involved in the system. Rather than addressing the emergent need (focusing instead on responding immediately to the problematic behavior), these youth encounter ever-increasing consequences which ultimately drive them to become medium- to high-risk offenders.

To interrupt this trend, Ms. Bray suggested best practice models that are organized around a systems-of-care approach, in which community connections, wraparounds, and attention to young people's individual social contexts are considered. These models exist in pockets around the country, leaving Ms. Bray feeling hopeful about the future of the juvenile correctional system.

Megan Hunt, Juvenile Public Defender, Washington County, Minnesota

Ms. Hunt's presentation focused primarily on her observations from ten years of experience as a juvenile public defender. She began her presentation by suggesting that all youth brought into the juvenile court system have disabilities on some level, whether these are diagnosed or undiagnosed. Ms. Hunt clarified that this does not imply all youth have an IDEA-qualifying diagnosis, but rather that many of these disabilities are social (poverty, disadvantage, racism, etc.), in addition to the more traditional learning, cognitive, behavioral, emotional, or physical disabilities. These must be considered for all youth coming into this system.

Clarifying this statement, Ms. Hunt suggested that youth brought into the correctional system may have a disability along one of three lines:

- Diagnosed disability—These disabilities include ADHD, Conduct Disorder, Anxiety Disorders, Asperger's Syndrome, learning disorders, and other recognized disability categories.
- Non-diagnosed (social) disability—This category includes social factors that contribute to the creation of disabling conditions for young people – poverty, homelessness, social alienation, dysfunctional family systems, and the like. It is important to remember that these factors can be as crippling to youth as those disabilities that are diagnosed.
- Court-related disabilities—Ms. Hunt suggested that the court system itself is disabling. Public defenders have caseloads that are fundamentally unworkable; juvenile defenders in Minnesota alone represented more than 39,000 youth last year. In addition to overworked staff, it must be recognized that many young people with cognitive or learning disabilities fail to understand their rights or their court proceedings, but the proceedings continue nonetheless.

Ms. Hunt concluded her portion of the panel presentation by suggesting that the most effective means toward alleviating the effects of these disabilities on children in the juvenile corrections system is by focusing our attention on advocacy. Youth must be connected to adults who can advocate on their behalf. This requires that parents, teachers, social workers, and others must be willing to call one another and learn to view one another as potential allies, rather than adversaries, in the struggle to meet these youths' needs. She suggested models such as circle sentencing, restorative jus-

tice, and truancy diversion programs as proactive and creative alternatives to the conditions of youth in the correctional system.

Heather Lindstrom, Special Education Teacher, Red Wing Correctional Facility

Ms. Lindstrom spoke primarily about the struggles of transitioning youth from juvenile correctional facilities back into their home communities. This becomes problematic largely in the transition back to their home schools because of the resistance demonstrated by those districts. Districts often attempt to refuse re-entry to students coming from correctional institutions. Particularly with regard to youth with disabilities coming from these facilities, it is the responsibility of the transition counselor to ensure that these districts comply with their obligations to receive and provide educational services for their students. This can be additionally problematic because often, caseworkers and probation officers lack the education and information required in order to navigate disability law and guarantee that youth get the services they need; this is the role of the advocate.

Ms. Lindstrom highlighted some of the lessons she has learned in her many years of experience transitioning incarcerated youth back into their home communities:

- The best strategy for advocates is to know the services that exist in the home community, including the schools and the programs they have to offer. Often, schools attempt to avoid their responsibility by referring advocates from person to person across the district. Being aware of the services available in the district allows the advocate to insist upon being directed to the appropriate person.
- It is essential that advocates take the lead in the transition process. It is not enough to wait for the home schools to contact the correctional institution in anticipation of a student's release. On the contrary, the advocate's responsibility is to make the initial contact and not be satisfied until services are in place.
- It is often helpful to start the community re-integration transition with a small ALC (alternative learning center) to support young people's successes until they build enough to transition to a formal school. Districts often hesitate to do this, based on the additional expense of ALCs. However, this is an entitlement for the student. This illustrates again the importance of knowing the resources in the district.
- Youth must be involved in their own transitions. This can include having them make the phone calls where appropriate, with sufficient modeling so they learn how to work through the systems themselves. This is a significant step in helping youth with disabilities learn to open doors for themselves.
- In working with youth who are incarcerated, make sure that school district representatives are at the table from the very beginning. Invite them to staffings and case planning meetings so that the educators can meet probation officers, parents, social workers, and others early in the process.
- As an advocate, consider the young person's history with his/her school of origin. This includes having deliberate conversations with the youth about whether or not these schools are good places for them to return to. Work with youth to help in creating and recreating their educational history, and then assess that together.
- Compile packets of information for youth to take with them when they leave the facility, including several copies of their transcripts, IEPs, education records, immunization records, and other relevant paperwork. Start teaching youth to ask their staff for those things within the facility as practice for when they need to do those things for themselves back in the community and in unfamiliar settings.

Afternoon Workshop

Joe Tulman, Professor of Law, University of the District of Columbia

Professor Tulman opened his portion of the afternoon workshop by stressing the importance of parents and advocates understanding and feeling comfortable navigating education law, disability law, and basic rights. He agreed that youth with disabilities often find their educational needs and rights ignored in the correctional system. Supporters of youth in the correctional system must be comfortable speaking the languages of these different legal systems and must have allies in positions of power to make necessary changes occur. He suggested that all people concerned with the circumstances facing youth in the correctional system must envision the future of this system and begin to strategically approach that goal.

Professor Tulman spoke extensively about the Individuals with Disabilities Education Act (IDEA), a piece of legislation that sets the stage for many of the legal challenges concerning youth with disabilities in the correctional system. Particularly, he focused his attention on Child Find, a provision in the bill that requires school districts to seek out and identify young people in their jurisdictions who have disabilities or otherwise qualify for special education services. Under Child Find, school districts are obligated to conduct assessments to determine whether young people with significant behavior problems, for instance, qualify for special education. Professor Tulman also spoke about school districts' obligations under IDEA to provide compensatory education in those conditions where they have failed to provide educational services otherwise guaranteed under IDEA. These compensatory services may be either expansions of services or expansions of eligibility.

The next section of the presentation focused on the substantive and procedural rights students with disabilities enjoy under IDEA. These include the right to inclusion (which differs in significant ways from merely mainstreaming youth with disabilities), continuum of care, related services, and transition services. Additionally, Professor Tulman spoke about the school districts' inability to expel or otherwise remove students with disabilities from their jurisdiction once a legal challenge has been undertaken. At this point, and for the duration of the struggle, the district can no longer move the young person out of its responsibility.

One of the most pointed strategic points made during this portion of the presentation related to the importance of generating and maintaining a clear and concise history of the young person whose educational rights are compromised by his or her placement in the correctional system. This history is necessary to justify the claims of violations on the part of the school districts with regard to IDEA. Excavating this history allows advocates to see the violations clearly and in great detail. Such a history allows parents and advocates to explore possible violations of Child Find, to build cases for compensatory education, and even to prevent or interfere in some young peoples' placement in the correctional system. Professor Tulman spoke at length about different legal interventions and remedies for many of these violations.

Will Dikel, MD, Clinical Professor of Psychiatry, University of Minnesota

Dr. Dikel first outlined the four goals of his presentation: 1) to lend some order to the chaos of the mental health system; 2) to identify the overlaps between the mental health system and the educational system; 3) to identify the overlaps between the mental health system and the correctional sys-

tem; and 4) to identify the overlaps between the educational system and the correctional system with regard to mental health issues. He began the presentation with a brief summary of the current condition of mental health diagnosis and treatment, arguing that it is appalling.

The first step toward improving the state of diagnosis and treatment, Dr. Dikel suggested, is basing diagnoses only on complete mental health evaluations. Most often, diagnoses are made on the basis of partial evaluations, at best, particularly for youth in the correctional system. He argued that a full mental health evaluation must include a complete medical history, educational history, family history, developmental and psychological history, social history, assessment of symptoms, discussions with other adults in the child's life, and a full mental status examination. Unfortunately, evaluations are often accepted in spite of the gaps in this list. Dr. Dikel contended that if youth with mental health disabilities were identified properly in the first place, the overall costs for the correctional system would decrease dramatically.

Having established some of the causes of inappropriate mental health diagnoses, Dr. Dikel continued by discussing factors causing mental health problems. He suggested three basic factors: social conditions, medical disorders, and true psychiatric disorders. Treating mental health problems from all three categories in the same way produces little overall benefit despite great social cost. On the contrary, Dr. Dikel suggested that many social conditions that cause mental health distress can be better addressed through alternate means. He recommended addressing these conditions upfront, rather than allowing them to become mental health problems. One of the problems with school systems' and correctional systems' treatment of youth with these conditions is that the underlying issues are not addressed. By placing youth exhibiting behaviors associated with these conditions in special education classrooms or in juvenile facilities, the symptom may be contained but the actual condition remains unchanged. The social costs become unbearable, as is the current situation.

Dr. Dikel concluded with a recommendation for good, accurate, and complete mental health assessments prior to diagnosis. Following these assessments, he suggested community-integrated approaches to the provision of services, where young people are held accountable for their behaviors and schools (and other social institutions) provide the accommodations necessary to support these youth in moving ahead.

Professor Joe Tulman, continued

Professor Tulman's concluding remarks addressed how to use the legal system to push the correctional system in the direction advocates believe is necessary. The answers may be found in a combination of case aggregation, meaningful diversion, and special education organizing.

Speaker Biographies

Chris Bray has spent thirty years in the field of corrections, including work in prisons, halfway houses and group homes, and juvenile probation. She worked with Ramsey County, MN, for 25 years in positions including Director of Domestic Relations, Director of Administration, and Director of the Juvenile Division. Currently, Ms. Bray is the Assistant to the Commissioner of Corrections responsible for juvenile services, research, restorative justice initiatives, and other areas. She is currently a doctoral candidate at the University of Minnesota in Evaluation Studies.

William Dikel, MD, is a child, adolescent, and adult psychiatrist who works solely in the public sector. He provides clinical services at the Pilot City Mental Health Center community mental health clinic. He also consults locally and nationally to professionals in the social services, health, mental health, corrections, and educational systems who provide services to children and adolescents with mental health problems. He has provided consultation to the Minnesota Department of Children, Families, and Learning, Department of Human Services, and State Mental Health Ombudsman's Office, and is the psychiatrist representative on the State Mental Health Advisory Council and the chair of the Council's Prevention/Early Intervention Task Force. He is president-elect of the Minnesota Psychiatric Society. Dr. Dikel is a Clinical Professor of Psychiatry at the University of Minnesota, and is on the faculty of the Hennepin-Regents psychiatry residency training program. He is a professor at the Graduate Liberal Studies departments of Hamline University and the University of Minnesota. He has a certificate in medical administration from St. Thomas University.

Lili Garfinkel is currently the Coordinator of the Juvenile Justice Project at the Parent Advocacy Center for Education Rights (PACER) in Bloomington, Minnesota. Ms. Garfinkel's education includes the University of Manitoba, Canada, and the University of Minnesota. She has been the Associate Director of the National Center on Education, Disability, and Juvenile Justice (EDJJ) at the University of Maryland in College Park from 1999 to the present. Ms. Garfinkel is a parent advocate and facilitator for youth with disabilities across disciplines, has presented at numerous state and national meetings, and has developed curricula and conferences at state and national levels. She is married with three adult daughters and one granddaughter.

Megan Hunt is a 1996 graduate of William Mitchell College of Law. She has been employed by the Minnesota State Public Defender's Office as a law clerk and assistant public defender since 1993, working primarily in juvenile court. Megan has represented children in juvenile court on cases ranging from minor traffic offenses and shoplifting charges to serious assaults, drug possession/sales, and child protection matters. Megan has represented two clients on first-degree murder charges in which the juveniles were certified to stand trial in adult district court and the cases proceeded to jury trial. She represents children who are challenged with mental health, educational, physical and/or emotional disabilities in juvenile court on a daily basis. These challenges create further disadvantages and injustices for them in the school systems, out of home placements, and court systems in which they all too frequently find themselves. In 2001, Megan was appointed by Governor Jesse Ventura to the Juvenile Justice Advisory Committee for Minnesota which makes proposals to the Governor on ways to improve the juvenile justice system in the state. Megan also serves on the statewide Children's Justice Initiative team in Washington County working to improve the service given and status of child protection cases in Minnesota.

Heather Lindstrom works as a special education teacher in emotional/behavioral disorders (EBD) for the Minnesota Correctional Facility in Red Wing, Minnesota. She provides special education services to chronic and serious juvenile male offenders between the ages of 13 and 21. Ms. Lindstrom has also served as a high school social studies summer school teacher, work experience coor-

dinator, high school EBD classroom teacher, and a chemical health specialist. She has a B.S. in Secondary Education Social Studies, an M.S. in Chemical Dependency Studies from Mankato State University, and continues to do post-graduate work and certification. Ms. Lindstrom serves on the Minnesota Department of Children, Families, and Learning's Special Education Transition Work Group and has been a member of the Minnesota Association for Children's Mental Health and the State Special Education Committee.

Pam Stenhjem has been working in the disability field for 15 years and has been at the Institute on Community Integration at the University of Minnesota for ten years. Ms. Stenhjem is currently at the National Center on Secondary Education and Transition, housed within the Institute. She has also worked as a Transition Program Coordinator at the Metropolitan Center for Independent Living, as well as at the University of Minnesota's and University of Georgia's Disability Services Offices. She holds a Master's degree in Rehabilitation Counseling and a Bachelor of Science degree in Child and Adolescent Psychology.

Joe Tulman, Professor of Law at the University of the District of Columbia, David A. Clarke School of Law (UDC-DCSL), directs the law school's juvenile and Special Education Law Clinic. Since 1988, Professor Tulman has been counsel for plaintiffs in *Evans v. Williams*, a class action in behalf of persons with mental retardation. With his colleagues in the law school clinic, Tulman has pioneered the use of special education advocacy for children in the neglect and delinquency systems. His publications include articles regarding the unnecessary detention of children, and he has co-authored and co-edited a comprehensive manual regarding the use of special education advocacy for children in the delinquency system. Professor Tulman has served on the faculty of the National Center on Education, Disability, and Juvenile Justice (EDJJ). Early in his career, Tulman was the Deputy Director of the Equal Justice Foundation. In 1995, Professor Tulman received his law school's distinguished service award. The Criminal Law Section of the American Bar Association Awarded him its 1996 Livingston Hall Juvenile Justice Award. The D.C. Bar Foundation named him the winner of the 2001 Jerrold Scott Prize for sustained, full-time service to underrepresented people in the District of Columbia. Under mayoral appointment, Tulman served from 2001-2003 as chair of the D.C. Juvenile Justice Advisory Group.