



Volume 42

Issue 4 *The Ben J. Altheimer Symposium:
Blocking the Pathways—Eradicating the School
to Prison Pipelines*

Article 1

2020

Overcoming Barriers to School Reentry for Youth Leaving Juvenile Justice Facilities

Sarah Beebe

Dustin Rynders

Follow this and additional works at: <https://lawrepository.ualr.edu/lawreview>



Part of the [Education Law Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Sarah Beebe and Dustin Rynders, *Overcoming Barriers to School Reentry for Youth Leaving Juvenile Justice Facilities*, 42 U. ARK. LITTLE ROCK L. REV. 689 (2020).

Available at: <https://lawrepository.ualr.edu/lawreview/vol42/iss4/1>

This Article is brought to you for free and open access by Bowen Law Repository: Scholarship & Archives. It has been accepted for inclusion in University of Arkansas at Little Rock Law Review by an authorized editor of Bowen Law Repository: Scholarship & Archives. For more information, please contact mmserfass@ualr.edu.

OVERCOMING BARRIERS TO SCHOOL REENTRY FOR YOUTH LEAVING JUVENILE JUSTICE FACILITIES

Sarah Beebe & Dustin Rynders***

I. INTRODUCTION

In 2017, over 40,000 young people below the age of 21 were confined in juvenile correctional residential placement facilities across the United States.¹ Nationally, 60-70% of youth in the juvenile justice system have a diagnosable mental health condition, almost 30% have a serious disorder that requires immediate, significant treatment, and over 35% have a learning disability.² Once released from these facilities, they face many barriers that prevent them from re-entering their previous public school setting, which is essential for increasing the odds of their long term success, including the likelihood of graduation, and reducing recidivism.³ Currently, after being released from juvenile justice facilities, as many as two-thirds of youth drop

* Sarah Beebe is a supervising attorney with Disability Rights Texas for the Juvenile Probation Education Advocacy Program. Sarah received a B.A. in History from Tulane University, a Masters in Social Work from Tulane School of Social Work, and a J.D. from William and Mary School of Law.

** Dustin Rynders is a supervising attorney of the Education Team at Disability Rights Texas. Dustin received a B.A. from Pepperdine University, an M.P.Aff. from the L.B.J. School of Public Affairs at the University of Texas, and a J.D. from The University of Houston Law Center.

1. *Juveniles in Corrections – Demographics*, OJJDP STATISTICAL BRIEFING BOOK (April 23, 2019), <https://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qaDate=2017>.

2. Meservey and Skowra, *Caring for Youth with Mental Health Needs in the Juvenile Justice System: Improving Knowledge and Skills*, NATIONAL CENTER FOR MENTAL HEALTH AND JUVENILE JUSTICE 2 (2015), https://ncyoj.policyresearchinc.org/img/resources/Caring_for_Youth_With_Mental_Health_Needs-692212.pdf; Elizabeth Lamura, *Our Children, Ourselves: Ensuring the Education of America's At-Risk Youth*, 31 BUFF. PUB. INT. L.J. 117, 120 (2012) (“The majority of youths who have been involved in the juvenile justice system have a ‘diagnosable substance abuse disorder, mental health disorder, or both.’”); Jessica Feierman et al., *The School-to-Prison Pipeline . . . and Back: Obstacles and Remedies for the Re-Enrollment of Adjudicated Youth*, 54 N.Y.L. SCH. L. REV. 1115, 1123 (2009/10).

3. Elizabeth Seigle et al., *Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System* 30, COUNCIL OF ST. GOV'TS JUST. CTR. (2014), <https://csgjusticecenter.org/wp-content/uploads/2014/07/Core-Principles-for-Reducing-Recidivism-and-Improving-Other-Outcomes-for-Youth-in-the-Juvenile-Justice-System.pdf>.

out of school,⁴ and between 50 and 70% return to confinement within two years.⁵

Students transitioning out of juvenile justice facilities face many barriers to reentry into public school. For example, students are counseled by public schools to attend a different school or GED program, automatically enrolled into Disciplinary Alternative Education Programs, or completely prevented from reentry, often because of a delay in receiving academic records from juvenile facilities.⁶ Additionally, many transitioning students are not academically prepared for reentry due to ill-equipped educators in the facilities and lack of individualized instruction, which disproportionately disadvantages youth with disabilities.⁷ These barriers to reentry exist in part because the transition process often lacks sufficient oversight and coordination between the juvenile justice facility, public school, state probation agencies, and other state and local agencies.⁸ Moreover, in the recent past, federal education legislation inadvertently created incentives for states to exclude justice-involved youth from school districts, despite efforts to curb this systemic problem for rehabilitating youth.⁹ The persisting problems surrounding student reentry have left states to supplement federal requirements through a combination of legislation or local efforts, which results in a patchwork of reentry protocols nationwide.¹⁰

The following two experiences of youths reentering public school after confinement in a juvenile justice facility or attendance in an alternative education program illustrate the importance of robust transition planning.¹¹ In letter testimony to Members of the Texas House Committee on Public Education, Sarah Beebe outlined the lived experiences of two justice-involved youths:

In the first, a youth, K.G., who had been in a juvenile justice facility for several months, was reenrolled in school on her first attempt. A meeting

4. *Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems—A Study of Juvenile Justice Schools in the South and the Nation* 18, S. EDUC. FOUND. (2014), <https://files.eric.ed.gov/fulltext/ED555854.pdf>.

5. James Austin et al., *Alternatives to the Secure Detention and Confinement of Juvenile Offenders* 2–3, JUV. JUST. BULL. (Sept. 2005), www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf.

6. Greg Carter, *Repairing the Neglected Prison-to-School Pipeline: Increasing Federal Oversight of Juvenile Justice Education and Re-Entry in the Reauthorization of the Elementary and Secondary Education Act*, 25 GEO. J. ON POVERTY L. & POL'Y 371, 391–93 (2018).

7. *Id.* at 373–74.

8. *Id.* at 385–86.

9. *Id.* at 393.

10. *Id.* at 385–86.

11. See Letter from Sarah Beebe, Supervising Attorney, Disability Rights Texas, to Dan Huberty and Members of the Texas House Committee on Pub. Educ. (Apr. 2, 2019) (on file with author).

was held with her counselor and administrator to discuss her credits to make sure her new schedule aligned with her work while in the juvenile justice facility. Her counselor contacted the juvenile justice facility's school program . . . to obtain a copy of her transcripts and communicated with her Juvenile Probation Officer. Through these conversations, her counselor learned that K.G. had been diagnosed with a learning disability by the facility, and with that information, [the school was] able to put accommodations in place to ensure [K.G.'s] academic success. With this support, K.G. made progress at school and successfully completed the conditions of her probation within just a few months of having returned to the community.

In the second [case], a 16-year-old youth, C.M., who spent time in the district's disciplinary alternative education program and was attempting to reenroll at his home campus, was told that he was too old to enroll in middle school. The school advised him to enroll in a credit recovery program, but that program only enrolled students in 9th grade and above. C.M. was still classified as an 8th grader. [C.M.'s] Juvenile Probation Officer advocated for the district to promote C.M. to the 9th grade so he could enroll in the credit recovery program. The district agreed to do so, but when C.M. attempted to enroll at his zoned high school, he was again turned away for being too old [because he was] now 17 and attempting to enroll in the 9th grade. The Juvenile Probation officer again advocated for C.M. to be enrolled in high school to prove he was a 9th grader . . . [T]he Officer finally persuaded the high school to enroll C.M. and to agree to accompany him and his mother – a native Spanish speaker – to the credit recovery program to [ensure that] he would be able to enroll. The school enrolled C.M. that day and immediately withdrew him the next day, but did not accompany C.M. and his mother to the credit recovery program as promised . . . Alone, C.M. and his mother attempted to enroll in the credit recovery program, but were told the program was full and [that C.M. should] return to his home campus. When he did, the high school refused to reenroll him. C.M. is currently a dropout.¹²

This paper will describe the federal legal framework that regulates the transition of youth between juvenile justice systems and schools, the problems that have arisen in spite of the legal requirements,¹³ actions that states have taken to remedy the problems locally,¹⁴ and education advocacy efforts implemented to combat the barriers to reentry.¹⁵

12. *Id.*

13. *See infra* Part II.

14. *See infra* Part III.

15. *See infra* Part IV.

II. EXISTING FEDERAL LAW

The primary federal laws that affect justice-impacted youth are the Every Student Succeeds Act (ESSA), Title 1, Part D, and the Juvenile Justice and Delinquency Prevention Act (JJDP).¹⁶ The ESSA is the most current reauthorization of the Elementary and Secondary Education Act (ESEA), last reauthorized as No Child Left Behind (NCLB).¹⁷ Both the ESSA and JJDP provide federal grants to state and local juvenile justice programs that impact their operations.¹⁸

A. The Every Student Succeeds Act (ESSA)

Title 1, Part D of the ESSA has the most direct bearing on justice-impacted youth and transition services by providing federal funding to state agencies to implement or improve educational programs for “neglected, delinquent, or ‘at-risk’ children and youth.”¹⁹ As of 2016, all fifty states, Washington D.C., and Puerto Rico received Title I, Part D funding, which conditions funds on compliance with reporting requirements and other provisions of the law.²⁰ Specifically, Title I, Part D requires certain protections for justice-impacted youth and increased coordination between the juvenile justice facilities and school districts to ensure a smooth transition.²¹ Protections under Title I, Part D include educational assessment while in a juvenile facility; transfer of records from the juvenile facility to the local education agency (LEA) upon release; reentry planning between the juvenile facility and LEA; credit transfer from the juvenile facility to the LEA; timely and appropriate reenrollment of youth returning to the LEA from a juvenile facility; and prioritizing attainment of traditional high school diplomas.²²

Title 1, Part A of the ESSA also affects youth reentry by implementing the extended-year- adjusted-cohort-graduation rate.²³ Before the use of this metric, school districts trying to increase their graduation rates were incentivized to “counsel out” at-risk students, who were likely to drop out and

16. Every Student Succeeds Act, 20 U.S.C. §§ 6421–6472 (2018); Juvenile Justice and Delinquency Prevention Act, 34 U.S.C. §§ 11101–11322 (2018).

17. *Every Student Succeeds Act*, U.S. Dep’t of Educ., <https://www.ed.gov/essa?src=rn> (last visited Feb. 18, 2020).

18. 20 U.S.C. §§ 6421–6472; 34 U.S.C. §§ 11101–11322.

19. Juvenile Law Center et al., *What the “Every Student Succeeds Act” Means for Youth in and Returning from the Juvenile Justice System* (Jan. 2016), <https://www.doe.in.gov/sites/default/files/titlei/essajj-factsheet-final-webinar-version-jan262016.pdf>.

20. *Id.*

21. *Id.*

22. *Id.*

23. Every Student Succeeds Act, 20 U.S.C. § 6311(c)(4)(B)(iii) (2018); Carter, *supra* note 6, at 379.

negatively affect the districts' graduation rates.²⁴ The new metric allows LEAs to track students who take a non-traditional route to graduation by including students who graduate from high school in more than four years.²⁵

B. The Juvenile Justice and Delinquency and Prevention Act (JJDPA)

The JJDPA was most recently reauthorized in 2018, and provides four core requirements for states' treatment of justice-impacted youth: deinstitutionalization of truants and other status offenders, removing youth from adult detention facilities, placing youth in facilities in which they have no contact with adult inmates, and reducing racial and ethnic disparities in the juvenile justice system.²⁶ Federal funding is contingent upon states' compliance with the core requirements.²⁷ The reauthorization added several requirements that specifically impact the transition from juvenile justice facilities to schools. For example, states must provide assurances that they are collaborating with the state education agencies to create reentry plans that support timely transfer of education records and award credits for coursework completed in the facilities.²⁸ Mirroring the ESSA, the JJDPA requires states' plans to include provisions to ensure the timely transfer of education records from juvenile facilities to LEAs and that transfer credits from juvenile facilities to LEAs count toward high school graduation.²⁹

Despite these federal regulations, reentry into schools remains difficult because the regulations only require states to submit plans outlining their strategies to facilitate cooperation between residential facilities and school districts during the transition.³⁰ The states are not required to follow through on those plans in order to receive federal funds.³¹ Additionally, many of the transition plans the states submitted to the U.S. Department of Education in 2017 were vague or superficial regarding the transition planning process.³²

24. Carter, *supra* note 6, at 379.

25. 20 U.S.C. § 6311(c)(4)(B)(iii); U.S. DEP'T OF EDUC., EVERY STUDENT SUCCEEDS ACT HIGH SCHOOL GRADUATION RATE NON-REGULATORY GUIDANCE 12 (Jan. 2017), <https://www2.ed.gov/policy/elsec/leg/essa/essagraterateguidance.pdf>.

26. Juvenile Justice and Delinquency Prevention Act, 34 U.S.C. §§ 11101–11322 (2018); *Reauthorization of the JJDPA*, COALITION FOR JUVENILE JUSTICE, <http://www.juvjustice.org/juvenile-justice-and-delinquency-prevention-act/reauthorization-jjdpa> (last visited May 18, 2020).

27. 34 U.S.C. § 11133(a).

28. 34 U.S.C. § 11133(a)(32).

29. 34 U.S.C. § 11133(a)(32)(A)–(C).

30. Carter, *supra* note 6, at 391–92.

31. *Id.* at 391.

32. *Id.*

As of 2015, only eleven states had education transition liaisons dedicated to facilitating transitions.³³

C. The Individuals with Disabilities Education Act (IDEA)

Congress enacted the IDEA in response to a concern that many children with disabilities “were either totally excluded from schools” or were “sitting idly in regular classrooms” until “they were old enough to drop out.”³⁴ The IDEA requires schools to provide a free appropriate public education (FAPE) to students with disabilities, including students whose disabilities may manifest in challenging behaviors.³⁵ The IDEA statute therefore includes “a number of provisions that require school officials to take proactive measures to address the needs of students with behavioral issues.”³⁶ The law applies to children with disabilities with any type of involvement in the juvenile justice system, only excluding adults incarcerated in the adult justice system who were not already receiving special education before incarceration.³⁷ Existing resources detail the applicability of special education protections for youth at risk of referral to law enforcement,³⁸ placed on probation,³⁹ and detained.⁴⁰

For children exiting juvenile detention settings, the IDEA requires schools to take proactive steps to identify children with special education needs, including those who have not been previously identified.⁴¹ Some children obtain mental health diagnoses in their teenage years or may exhibit

33. *Id.*

34. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley, 458 U.S. 176, 179 (1982) (internal quotation and citation marks omitted).

35. *Cf.*, 20 U.S.C. § 1415(k)(4) and 34 C.F.R. § 300.523(a) (requiring a “manifestation determination review” before a disciplinary removal that changes a placement).

36. Letter from Kenneth R. Warlick, Director, Office of Special Education Programs, to David P. Osterhout, 2 (July 25, 2000), <https://www2.ed.gov/policy/speced/guid/idea/letters/2000-3/osterhout72500mdreviewsec.pdf>.

37. 34 C.F.R. § 300.102 (a)(2)(i).

38. Joseph B. Tulman, *Using Special Education Advocacy to Avoid or Resolve Status Offense Charges*, in REPRESENTING JUVENILE STATUS OFFENDERS 89, 107-108 (Sally Small Inada & Claire S. Chiamulera eds., 2010), http://www.americanbar.org/content/dam/aba/administrative/child_law/20100121_RJSO_Book.authcheckdam.pdf.

39. THE UNIVERSITY OF THE DISTRICT OF COLUMBIA SCHOOL OF LAW JUVENILE LAW CLINIC, SPECIAL EDUCATION ADVOCACY UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) FOR CHILDREN IN THE JUVENILE DELINQUENCY SYSTEM, at 2-7 (Joseph B. Tulman & Joyce A. McGee eds., 1998), https://cdn.ymaws.com/www.law.udc.edu/resource/resmgr/facultydocs/tulman_special_ed_manual.pdf.

40. U.S. DEP’T OF EDUC., OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEAR COLLEAGUE LETTER: INDIVIDUALS WITH DISABILITIES EDUCATION ACT FOR STUDENTS WITH DISABILITIES IN CORRECTIONAL FACILITIES 1–2 (2014), <http://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>.

41. 34 C.F.R. § 300.111(a)(1)(i) (2019).

escalating behaviors that could both lead to probation referral and an educational need for special education services that may not have been apparent in their earlier school careers.

The IDEA establishes protocols to improve student behavior. For example, if a student exhibits disruptive behavior, then the Individualized Education Program (IEP) team must consider the use of positive behavioral interventions and supports to address that behavior.⁴² Generally, this involves conducting a Functional Behavioral Assessment to determine the root cause of a behavior and creating interventions to extinguish and replace that behavior.⁴³ The IEP team can use experts in behavior, such as certified behavior analysts or other adequately trained professionals, to identify whether a student needs increased services or different services.⁴⁴

Even though the IDEA does not prohibit schools from reporting a crime committed by a child with a disability,⁴⁵ repeated law enforcement referral and exclusionary discipline can be evidence of inadequate positive behavioral supports.⁴⁶ IDEA also allows parents and public agencies to challenge the adequacy of the educational services, including the adequacy of positive behavior supports and other interventions designed to improve misconduct itself.⁴⁷ Challenging the school's provision of FAPE can often make districts re-think continued law enforcement referral and begin providing more meaningful positive behavior interventions.⁴⁸ As importantly, improved assessment, educational interventions, and related services can also improve a child's motivation to attend school and increase a child's likelihood of success in academic and behavioral goals.⁴⁹ Especially for children who were referred to probation because of chronic behavioral challenges at school, successful reentry typically requires some change to the educational program they left. Additionally, satisfactory completion of terms of probation often requires school attendance, and IDEA evaluations and interventions can be utilized to address truancy and any other behavior that interferes with learning.⁵⁰

Students face additional challenges receiving appropriate special education services during reentry because they were often educated by a differ-

42. 34 C.F.R. § 300.324(a)(2)(i) (2019).

43. 34 C.F.R. § 300.530(f) (2019).

44. Letter from the U.S. Dep't of Educ. to Ylise Janssen (June 5, 2008), <https://www2.ed.gov/policy/speced/guid/idea/letters/2008-2/janssen060508fba2q2008.pdf>; see also *H.D. v. Central Bucks Sch. Dist.*, 902 F. Supp. 2d 614, 628 (E.D. Pa. 2012).

45. 34 C.F.R. § 300.535(a) (2019).

46. See, e.g., *Spring Branch Indep. Sch. Dist. v. O.W.*, No. 4:16-CV-2643, 2018 WL 2335341, at *7 (S.D. Tex. March 29, 2018).

47. 34 C.F.R. § 300.507(a)(1) (2019).

48. Tulman, *supra* note 37, at 107.

49. See *Huron Sch. Dist.*, 68 IDELR 178 (SEA SD 2016).

50. Tulman, *supra* note 37, at 104.

ent school system while in detention. School services in detention often operate under different conditions and frequently remove some interventions that would not make sense in a correctional setting. When a student transfers school districts in the same school year, including when returning from a detention setting, the receiving district must provide services comparable to those described in the previously held IEP until creating a new one.⁵¹ The receiving school must take reasonable steps to promptly obtain student records, and the prior school must take reasonable steps to promptly respond.⁵² Still, the result of the transfer process is that there is often a delay in obtaining appropriate services, and without advocacy services, the transfer process can fail to include previously identified needs in a regular school setting.

Many students returning from detention may also be expelled for the conduct underlying the juvenile offense. IDEA provides requirements to review a student's conduct through the Manifestation Determination Review (MDR) process, and with few exceptions, prohibits long-term expulsion including alternative school placement for conduct that was directly and substantially related to a child's disability or a school's failure to implement the IEP.⁵³ Students receiving special education services are entitled to FAPE even when they are expelled or attending a disciplinary setting.⁵⁴ Some students who would otherwise be placed in a disciplinary setting are not able to receive FAPE in those settings.⁵⁵ Schools have an obligation to provide a continuum of services to meet the needs of every special education student, including everything from positive behavior supports in a regular classroom to residential placement when necessary.⁵⁶

In addition to challenges on the school end, probation conditions themselves can sometimes be a barrier to students receiving FAPE. Courts sometimes order a G.E.D. program or homeschooling for a student who requires educational services beyond those provided by such programs.⁵⁷ These court orders may sometimes be made in response to school pressure to remove a student from the educational environment and can violate special education laws.⁵⁸

51. 20 U.S.C. § 1414(d)(2)(C)(i)(I) (2018); 34 C.F.R. § 300.323(e) (2019).

52. 20 U.S.C. § 1414(d)(2)(C)(ii) (2018); 34 C.F.R. § 300.323(g) (2019).

53. 34 C.F.R. § 300.530(e) (2019).

54. 34 C.F.R. § 300.530(d)(1)(i) (2019).

55. *See, e.g., Mesa County Valley Sch. Dist. 51*, 68 IDELR 294 (SEA CO 2016).

56. *See* 20 U.S.C. § 1412(a)(5) (2018).

57. *See* Texas Education Agency Special Education Investigative Reports (October 30, 2015) The report includes findings against several Houston area school districts for various violations of special education for youth who were court ordered to withdraw for G.E.D.'s or otherwise pushed out of school programs through use of truancy courts.

58. *Id.* at 17.

III. STATE MODELS

Some states have gone beyond simply certifying that reentry plans state an intention for juvenile facilities and LEAs to collaborate with one another to promote smooth transitions for youth exiting facilities. These states have passed legislation more specifically delineating the relationship between the two entities to ensure each understands its role and responsibilities in the transition process. This article will now examine a few of the more robust state-level models to address reentry of juvenile justice-involved youth into the public-school system.

A. California

In 2014, prior to the reauthorization of the JJDPa and passage of the ESSA, California took steps to address concerns over juvenile reentry into the public education system through legislation, specifically Education Code 48647.⁵⁹ This law requires the juvenile justice system and LEAs to develop a joint transition policy that includes communication from the juvenile facility regarding release dates and educational needs of the youth to the receiving school district, coordination of immediate enrollment of the youth in school upon release, transfer of education records and acceptance of course credits by the receiving school district, as well as placement in appropriate courses.⁶⁰ In addition, for youth held more than twenty consecutive days in a juvenile facility, the school district is required to develop an individualized transition plan that will be reviewed and revised as needed to ensure that the youth's academic, behavioral, social, and emotional needs are properly addressed by the LEA and that appropriate programs are identified to facilitate the youth's successful transition out of the juvenile facility.⁶¹ By requiring this joint policy, California law takes a step further than federal law by obligating, rather than merely encouraging, a relationship between the juvenile justice system and LEAs.

B. Florida

Also in 2014, Florida amended its state law to address the need for more appropriate, individualized transition planning for youth being released from juvenile justice facilities.⁶² Florida already placed the majority of responsibility for ensuring youths' academic success while placed in a

59. CAL. CODE REGS. tit. 2 § 48647 (West 2020).

60. *Id.* at (b).

61. *Id.* at (e).

62. FLA. STAT. § 1003.52 (2019).

juvenile facility on the local school district,⁶³ but it sought to reinforce that responsibility by adding provisions to the Florida Education Code that requires LEAs and juvenile facilities to coordinate academic, technical and career training, and postsecondary services to facilitate “successful community reintegration upon release.”⁶⁴ The statute dictates that transition planning must begin as soon as a youth is placed in a juvenile facility, thereby circumventing any possible delay in developing the transition plan.⁶⁵ The transition plan must include assessment of the youth’s educational needs and post-release goals so that services that meet those individualized needs and goals can be provided while the youth is in the facility.⁶⁶ In addition, the statute requires monitoring of the plan to ensure implementation and access to support services.⁶⁷

Florida’s addition of language requiring more robust transition planning for youth being released from juvenile justice facilities demonstrates the state’s recognition that coordination between the juvenile justice and education systems is critical in order to maintain continuity of services and curtail the increased likelihood of school dropout. Particularly noteworthy is the mandate to begin transition planning upon entry into a juvenile facility. Too often, districts are able to detach from a student by having little to no direct involvement with them for what can sometimes be a significant amount of time. By requiring the school district to start the youth’s placement in a juvenile facility with the end outcome in mind—return to school—the statute maintains the district’s responsibility for the youth’s educational progress.

C. Virginia

Virginia may offer the most comprehensive school reentry plan for youth exiting juvenile facilities. Effective as of 2006, Virginia’s Administrative Code outlines the requirements for the Department of Juvenile Justice to coordinate the reentry of youth with local school districts.⁶⁸ The principal for the Department of Correctional Education must be notified at least thirty days prior to a youth’s release so that the transition team can begin to develop a reenrollment plan.⁶⁹ The Department of Correctional Education (DCE) must also notify the receiving school district of the reenrollment process

63. *Id.* at (3), (8)–(12)

64. *Id.* at (10).

65. *Id.* at (10)(a).

66. *Id.* at (10)(a)1–2.

67. *Id.* at (10)(a)3.

68. *See* 8 VA ADMIN. CODE § 20-660-30 (2020).

69. *Id.* at A.1.

within five business days of receiving notification of the pending release.⁷⁰ At least twenty-five days prior to release, the DCE must meet with the youth to develop and review the reenrollment plan so that a copy of the plan can be provided to the reenrollment coordinator for the receiving school district.⁷¹ Within ten business days of receipt of the plan, the school district's reenrollment coordinator must review the plan with the reenrollment team to develop a final plan.⁷² The reenrollment or transition team should include the youth's parents.⁷³ The reenrollment plan should include: the youth's educational placement upon reentry; a timeframe for placement; the names, titles, and contact information of school district staff with the responsibility and authority to promptly enroll the student in the chosen placement; the youth's class schedule and services to support them in their classes; and an approved IEP if the student is eligible for special education services.⁷⁴ The plan must be provided to the student, parents, and all transition team members at least ten days prior to release from the juvenile facility.⁷⁵

The Virginia statute establishes that the intent of the reenrollment plan is to make it possible for the youth to enroll and begin accessing the plan within two days of their release.⁷⁶ Further, it prevents the school district from expelling the student for their offense after it has received notice of the youth's scheduled release from the juvenile facility.⁷⁷ Finally, the statute mandates that the school district provide the youth with counseling services for a determined amount of time.⁷⁸ Providing the intent behind the statute and such a detailed timeframe by which the juvenile justice system and LEA must develop and implement a reentry plan for a youth exiting a juvenile facility serves as a robust school dropout prevention measure.

D. Texas

During its most recent legislative session, Texas responded to concerns of youth failing to reenter the public school system following release from a juvenile facility with the passage of House Bill 2184, which went into effect on June 10, 2019.⁷⁹ Texas took reentry planning a step further than other states by requiring a transition plan not only for youth exiting a juvenile

70. *Id.* at A.2.

71. *Id.* at A.3.

72. *Id.* at A.4.

73. *Id.*

74. 8 VA ADMIN. CODE § 20-660-30 B.1. (2020).

75. *Id.* at B.2.

76. *Id.* at C.1.

77. *Id.* at C.2.

78. *Id.* at C.4.

79. TEX. EDUC. CODE ANN. § 37.023 (2019).

justice facility, but also for youth returning to their neighborhood school from a Juvenile Justice Alternative Education Program (JJAEP) and district Disciplinary Alternative Education Program (DAEP).⁸⁰ The new law requires campus administrators to convene a team that includes school counselors, school social workers, behavior coordinators, campus law enforcement officers, the youth's classroom teachers, and any other relevant school staff and the youth's parents, if possible, to develop a personalized transition plan for the youth within five instructional days of their release from an alternative program.⁸¹ The personalized transition plan must include recommendations for the most appropriate educational placement for the youth.⁸² It may also include recommendations for counseling, behavioral support services, and academic assistance, as well as information about how to access mental health services either through the school district or an outside service provider.⁸³ The plan may also include information to the youth's parents regarding the process to request special education evaluation and a regular review of the youth's progress toward their academic and career goals.⁸⁴

IV. STRATEGY PROPOSAL: LEGAL EDUCATION ADVOCACY

Even in states where specific protocols for collaboration are established, children attempting to reintegrate into an educational setting face challenges and sometimes outright refusals. Probation officers are the primary professionals charged with assisting the youth with navigating their reentry into the community. Juvenile probation officers are increasingly asked to help students with enrollment and educational advocacy, with some communities even adopting school-based probation officers with advocacy duties.⁸⁵

The Harris County Juvenile Probation Department in Houston, Texas has instituted an innovative partnership to address barriers to educational success for the youth involved with their system. The Department contracted with a nonprofit law firm to provide tiered-education-advocacy services that included providing technical assistance to probation officers and direct advocacy for youth and their families to receive appropriate education services. The nonprofit law firm, Disability Rights Texas, is the Texas Protec-

80. *Id.* at (a)(1).

81. *Id.* at (c), (e).

82. *Id.* at (d)(1).

83. *Id.* at (d)(2)(A)–(B).

84. *Id.* at (d)(2)(C)–(D).

85. See ALLEGHENY COUNTY, JUVENILE PROBATION: SCHOOL BASED PROBATION, https://www.alleghecourt.us/family/juvenile/school_based_probation.aspx (last visited March 31, 2020).

tion and Advocacy (P&A) agency Texas authorized under congressional mandate to provide advocacy for persons with disabilities.⁸⁶

Difficulty with reentry is a problem that youth released from Harris County Juvenile Probation facilities are often confronted with.⁸⁷ Disability Rights Texas works closely with probation staff to inform them of the rights of youth to enroll in school immediately following release from a juvenile probation facility.⁸⁸ Harris County probation staff have also been provided with strategies to help them troubleshoot common barriers to enrollment so they are better equipped to address these problems when they arise.⁸⁹ Probation staff are also able to refer youth who have been denied enrollment into their local public school to the Education Advocacy Program for assistance.⁹⁰ The most common service provided for a denial of enrollment referral is individualized technical assistance and advice to juvenile probation officers working with the youth to help them resolve the specific barrier to enrollment.⁹¹ If the advice provided is not enough to resolve the denial of enrollment, advocates step in directly to accompany families to schools to ensure the youth is enrolled immediately and set up with an appropriate educational program.⁹²

When special education students are denied enrollment in school, their right to a FAPE is violated.⁹³ Through the Education Advocacy Program, special-education-eligible youth involved with Harris County Juvenile Probation who are denied enrollment are provided with advocates not only to assist the family with immediate school enrollment but also to accompany them to special education meetings to ensure appropriate services are put in place and that compensatory education services are offered to make up for the time the youth was out of school awaiting enrollment.⁹⁴ Advocates also accompany families to MDRs to prevent youth from being sent to discipli-

86. A P&A is an agency established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001–15009 (2018) (PADD Act); the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act, 42 U.S.C. § 10801–10807 (2018); and the Protection and Advocacy of Individual Rights (PAIR) Program of the Rehabilitation Act, 29 U.S.C. § 794e (2018). Congress, in enacting these Acts, mandated that each state receiving funds under these Acts establish a protection and advocacy (P&A) system to protect the rights and interests of persons with disabilities.

87. NAT'L DISABILITY RIGHTS NETWORK, PROBATION REFERRAL: A MODEL FOR DIVERSION OF CHILDREN AND YOUTH WITH DISABILITIES FROM THE JUVENILE JUSTICE SYSTEM 13–14(2019), https://www.ndrm.org/wp-content/uploads/2019/10/Probation_Referral_Report_FINAL_w_Appendices.pdf.

88. *Id.* app. B at 20.

89. *Id.* at 21–22.

90. *Id.* app. B at 1.

91. *Id.* app. B at 3.

92. *Id.*

93. 20 U.S.C. § 1412 (a)(5)(A) (2018).

94. PROBATION REFERRAL, *supra* note 86, app. B at 3.

nary alternative settings due to their offense where the offense is a manifestation of the youth's disability or the school's failure to properly implement their program of services, as well as when the disciplinary placement will not be able to provide the youth with a FAPE.⁹⁵

In addition to individual advocacy, Disability Rights Texas has helped Harris County Juvenile Probation address systemic problems with delay in or denial of enrollment by serving as a liaison between the Department and local school districts.⁹⁶ Disability Rights Texas has been able to educate districts about how a failure to promptly enroll students returning from juvenile facilities exacerbates the already difficult transition back to the community and increases the likelihood of dropout and return to the juvenile justice system.⁹⁷ As a result of these efforts to raise awareness with school districts about the importance of timely enrollment and appropriate transition planning, the largest school district in the state appointed a Manager for Adjudicated Youth to serve as a liaison to the juvenile probation department and to help facilitate reentry into the school district.⁹⁸ Additionally, the district revised their operating guidelines to address common barriers to school enrollment following a youth's release from a juvenile facility.⁹⁹

Harris County's Executive Director of Juvenile Probation wrote a public letter touting the program's successes and encouraging other departments to seek similar partnerships.¹⁰⁰ The National Disability Rights Network has called on Congress to fund Protection & Advocacy agencies in each state to advocate for children with disabilities in the juvenile justice system.¹⁰¹

V. CONCLUSION

Successful reentry requires improved coordination between juvenile justice agencies and receiving school districts. While ESSA and JJDPa are a start, federal law should mandate that all states develop specific laws or regulations delineating the relationship between schools and juvenile justice agencies. Additionally, more probation departments should consider partnerships with legal service organizations experienced with educational advocacy. Congress should expand funding for P&A agencies to provide education advocacy to children with disabilities during reentry.

95. *Id.*

96. *Id.* at 19.

97. *Id.*

98. HOUS. INDEP. SCH. DISTRICT, STUDENT SUPPORT SERVICES, <https://www.houstonisd.org/Page/150418> (last visited May 18, 2020).

99. PROBATION REFERRAL, *supra* note 86, app. B at 20.

100. *Id.* at app. A (Letter from Thomas Brooks, Executive Director/Chief JPO/Superintendent, Harris County Juvenile Probation Department).

101. *Id.* at 29.