

Students with Disabilities & the Juvenile Justice System: What Parents Need to Know



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Introduction

Youth with disabilities are at a higher risk for involvement in the juvenile justice system. Numerous studies show that special education students and those with emotional or behavioral disorders or learning disabilities are arrested and incarcerated at a higher rate than their nondisabled peers.¹ A 2005 national survey of education services in juvenile corrections found that on average, 33 percent of youth in the education programs were receiving special education services.² The study also found that almost 20 percent of the youth with emotional and behavioral disorders were arrested while in secondary school, approximately 13 percent of juvenile offenders had developmental disabilities, and 36 percent had learning disabilities.³ Many of these young people are referred to the corrections system directly from school.

While many factors may play a role in students becoming involved in corrections, parents should know that school failure is a strong risk factor. There are several school-related factors that make an arrest more likely for inappropriate, nonviolent behaviors that are often typical of a student's disability. These factors include:

- inadequate training for educators in special education, especially training related to student behavior
- zero-tolerance discipline policies in school
- few school-wide positive behavior interventions and supports,⁴ which are proven to improve student behavior

Without the appropriate diagnosis of a disability and the services that must be legally provided at school, some students are referred to court simply because their disabilities have not been adequately addressed. In addition, students with disabilities who are involved in multiple systems, such as the foster care system, are at even higher risk for ending up in court.

Why is this true, and what should parents and caregivers know about this issue? These briefs are designed to answer those questions and provide parents with steps for protecting their children's rights in school and in court.

PACER's Juvenile Justice Project helps parents and professionals identify the needs of youth whose disabilities may place them at risk for involvement in the justice system. To learn more about juvenile justice and students with disabilities, visit PACER.org/jj or call 952-838-9000.

¹ Linares-Orama, N. 2005. Language-learning disorders and youth incarceration. *Journal of Communication Disorders* 38: 311-9. Quinn, M.M., R.B. Rutherford, P.E. Leone, D.M. Osher, and J.M. Poirier, 2005. Youth with disabilities in juvenile corrections; A national survey. *Exceptional Children* 71: 339-45. Rutherford, R.B., and C. M. Nelson, 2005. Disability and involvement with the juvenile justice system: Knowing versus doing. *Exceptionality* 13 (2): 65-67.

² Wagner, M. 1991. Secondary school programs. In *Youth with disabilities: How are they doing? The first comprehensive report from the National Longitudinal Transition Study*, ed. M. Wagner, L. Newman, R. D'Amico, E.D. Jay, P. Butler-Nalin, C. Marder, and R Cox, 3-1-3-54. Menlo Park, CA: SRI International.

³ Ibid.

⁴ PACER's resources on School-wide Positive Behavioral Interventions and Supports in Minnesota can be found at PACER.org/pbis/.

The School-to-Prison Pipeline: What Parents of Children and Youth with Disabilities Need to Know

Jake is in 10th grade and has had an Individualized Education Program (IEP) since he was diagnosed with attention deficit hyperactivity disorder (ADHD) in third grade. In fifth grade, he was diagnosed with a processing disorder. Because of this disability, Jake has to work hard to stay on task and complete all of his school work.

Since middle school, Jake has been suspended twice for swearing and for leaving class without permission. His grades have slipped from solid Bs and Cs to Ds and Fs. Recently he became upset in class and yelled at a teacher who was trying to keep him from leaving the room. The police liaison officer removed him from the class, and he was later charged with making terroristic threats and disorderly conduct.

The presence of a disability is never an excuse to break a law, but without the appropriate diagnosis and interventions, students with disabilities can become frustrated and angry. This can place them at a higher risk for involvement with the juvenile justice system and what is called the “School-to-Prison Pipeline.”

For example, certain disabilities can affect how a person thinks, processes information, and reacts to certain situations. In Jake’s case, his learning disability interfered with his ability to follow more than one instruction at a time, and he needed more time to process information he heard or wrote. He also became upset and frustrated more easily, especially when he couldn’t understand something, or when teachers said he wasn’t trying or he was defiant.

Parents are often unaware that children with disabilities have rights in school if their child engages in behaviors that could lead to charges. Parents can use the IEP process to help protect their child’s rights in school.

What should parents do to prevent involvement in juvenile justice if their child’s disability includes behavior issues?

- If you are concerned about your child’s behaviors and there are repeated behavior issues, request a special education evaluation in writing.
- If you do not agree with the school’s evaluation, request an independent education evaluation.
- Ask if your child is experiencing bullying, harassment, or exclusion that might be impacting his or her behavior.
- Double-check your child’s IEP, and compare each identified need with the services provided. If there are not services listed that address each need, request an IEP team meeting to revise the IEP.
- Request job placement or unique educational opportunities in high school, where your child may find success and resolve behaviors.
- Ask for a functional behavioral assessment¹.
- Write into the IEP that your child may not be interviewed by the police or the school’s police liaison officer without a parent present.

Schools have different policies for dealing with students’ behavior, and it is important for parents of children with disabilities to understand the school’s practices. Below are some additional questions parents may ask at school to learn more about school practices and policies related to challenging behaviors.

Questions to ask if you are concerned that the police may be called

- Does your child recognize the signs when he or she is becoming more anxious, afraid, or very angry?
- Does your son’s IEP include permission to go to an agreed-upon place to calm down or have

¹ A functional behavioral assessment is a process that seeks to identify the problem behavior a child or adolescent may exhibit, particularly in school, to determine the function or purpose of the behavior, and to develop interventions to teach acceptable alternatives to the behavior.

some quiet time if he is feeling upset? Is your daughter allowed to call you if she feels afraid of losing control of her emotions?

- Are teachers trained to recognize the signs that your child's behaviors are leading to a loss of control?
- Are instructions included in the IEP so teachers know how to de-escalate behaviors so that your child doesn't lose control or "have a meltdown?"
- Are school liaison police officers aware that your child has a disability?
- Are the goals in your child's IEP instructive and positive?
 - ◊ Here is an example of a positive goal that will help build skills: *Jake will signal the teacher when he feels upset or anxious.*
 - ◊ Here is an example of a goal that punishes the behavior but does not help build skills: *If Jake swears he will be suspended for the day.*
- Will the school call me if the police are called to school because of my child's behavior?

Sometimes parents become upset if they feel the school is not responsive to their child's behavior needs. They may keep their child at home and hope to find a solution themselves. Parents should never remove their child from school without first having a meeting with the school. The meeting will help plan for the child's move to a different school. If parents remove their child from school without a meeting, in some cases schools can refer the family to the child protection system, which may file charges of educational neglect against the parents in addition to charging a child with truancy. It is always best to work within the special education system.

If the police become involved at school because of your child's behavior, it is important to collect information about the situation. You may need to provide information to the court.

Questions to ask the police and the school if your child is charged with a crime that occurred at school

- What were the circumstances of the offense?
- What triggered the behavior?
- What are the charges? (i.e. disorderly conduct, assault)
- Has this happened before? Has your child faced similar disciplinary actions in the past at school or in court?
- Does he or she receive services under an IEP or 504² plan?
- Was there a behavior plan or crisis plan in the IEP? If so, was it followed?
- According to federal law, if he or she was suspended for 10 days or more in a row or 10 cumulative days within the school year for the same behavior, was a manifestation meeting³ held? What was the outcome?
- Was my child questioned alone by police? Did he or she sign any documents?

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² A 504 plan is a documented plan the school and parents develop together for providing reasonable accommodations and other services so a child with a disability may participate fully in the school setting.

³ A manifestation meeting is a process in which members of the IEP team who are familiar with your child and the behavior in question, school district representatives, and the parent review all relevant information in a child's file. They then decide if the child's misconduct was caused by or had a direct and substantial relationship to his or her disability. They must also determine whether the misconduct was the direct result of the district's failure to implement the IEP.

Zero-Tolerance Policies at School: What Parents of Students with Disabilities Need to Know

Zach is a 15-year-old student in eighth grade. He has been in a level 4 setting (a separate-site program) since he was 11 because of emotional and behavioral disorders. Zach has depression, anxiety, and an adjustment disorder. He also has some cognitive disabilities that interfere with his ability to read and process information. When he was 5, he was abused by a male. When he was 11, his dad left and his mom moved. Zach has many fears, real and imaginary. He is afraid of most men and police officers and becomes anxious when there are changes in his routine.

Zach has an Individualized Education Program (IEP) and a behavior plan, and his mother works closely with his teachers and case manager. The same paraprofessional has worked with him for two years, but she recently took a medical leave. Not only was this unsettling for Zach, but the process for getting another paraprofessional took months, and by then his behaviors had escalated considerably. He received several in-school suspensions for not doing his work, disturbing others, and “staring inappropriately.” He was also suspended from school for defiance, throwing a pencil at another student, and for using profanity with classmates and the teacher.

The new paraprofessional was a retired male police officer. It was not a good match, and Zach’s behaviors became more aggressive. He tried running away. In his last attempt, the paraprofessional chased and grabbed him. Zach hit and kicked him. The police were called, and Zach was charged with fifth-degree assault.

Many schools have “zero-tolerance policies” for some behaviors. A zero-tolerance policy in schools is a policy of punishing any violation of a rule, regardless of accidental mistakes or unique situations. When first used, zero tolerance was defined as consistently enforced suspension and expulsion policies in response to weapons, drugs, and violent acts in the school setting. In recent years, these types of policies have resulted in harsh responses to nonviolent acts as well as an increase in arrests of students for inappropriate but not criminally violent behavior. These policies most often affect children of color and those with disabilities. Youth with disabilities like

Zach are disproportionately referred to court from school. In fact, these charges are often closely linked to behaviors that are typical of their disabilities.

Zero-tolerance “policies” were developed because of concerns about rising student violence. They were meant to address serious crime such as possession of drugs, weapons, aggressive behaviors, or gang violence. Zero-tolerance policies stem from the Gun Free Schools Act passed by Congress in 1994, requiring a one-year expulsion for any student found with a firearm at school. After the Columbine school shooting in 1999, many states and school districts strengthened zero-tolerance policies. In some states, zero-tolerance policies are required and can include such behavior as possessing drugs of any kind, fighting, and possessing anything that can be used as a “dangerous weapon.” They result in mandatory suspension or expulsion. In Minnesota, zero-tolerance policies are not required, but school districts may adopt these policies.

What does a zero-tolerance school policy look like?

Here’s a sample policy:

The school district and the school take a position of “Zero Tolerance” in regard to the possession, use, or distribution of weapons by students. Consequently, the minimum consequence for students possessing, using, or distributing weapons shall include:

- 1. immediate out-of-school suspension;*
- 2. confiscation of the weapon;*
- 3. immediate notification of police;*
- 4. parent or guardian notification; and*
- 5. recommendation to the superintendent of dismissal for not to exceed one year.*

This example shows the typical consequences for students when they violate a zero-tolerance policy, often including frequent and long suspensions or even expulsion. Over time, zero tolerance in some schools has become a “one-size-fits-all” response to nonviolent and other behavior offenses, including defiance, bad language, not handing in work, or poor attendance.

In 2006, more than 3.3 million students in the U.S. (one in 14) were suspended or expelled;¹ less than 10 percent of these cases were for violent offenses.² Students with Individualized Education Programs (IEPs) for special education have some protections against suspensions and expulsions, but still can be impacted by zero-tolerance policies.

Having a disability is not an excuse to break the law, and schools should not allow dangerous behaviors to continue without consequences. Zero-tolerance policies are not effective in preventing inappropriate behavior, however, and they often exclude the very students who need to be in school. They also can have the unintended consequence of criminalizing or excluding students for behaviors that are related to their disability. There are effective alternatives to preventing inappropriate behaviors, such as positive behavioral interventions and supports, and functional behavior assessments³ in special education.

Why are students with disabilities at greater risk when zero-tolerance policies are applied?

- Students who are expelled or suspended must learn outside of the educational setting, do not have access to the supports and teachers who understand their disability, and often have a harder time catching up with the curriculum.
- Students who have learning challenges and are struggling cannot afford to miss school because of suspensions and become even more discouraged about school following a long suspension or expulsion.
- Students with disabilities that include behavior issues may use provocative behaviors as a means of getting suspended because they find school so

frustrating. They may then spend unsupervised time at home or in petty criminal behavior.

What are the protections for students with disabilities?

According to federal law, if a student on an IEP is suspended for more than 10 consecutive days or 10 or more cumulative days within the school year for the same behavior, the school must have a manifestation meeting⁴ to determine whether the behavior was a manifestation of the disability. If a student's misconduct is caused by the disability or the school's failure to provide appropriate services and supports for the disability, the student cannot be punished for the misconduct.

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¹ National Center for Education Statistics (2009). Contexts of Elementary and Secondary Education. <http://nces.ed.gov/programs/coe/2009/section4/indicator28.asp>

² M. K. Rausch and R. Skiba. (2004). "Unplanned Outcomes: Suspensions and Expulsions in Indiana." Education Policy Briefs, 2 (2).

³ A functional behavioral assessment is a process that seeks to identify the problem behavior a child or adolescent may exhibit, particularly in school, to determine the function or purpose of the behavior, and to develop interventions to teach acceptable alternatives to the behavior.

⁴ A manifestation meeting is a process in which members of the IEP team who are familiar with your child and the behavior in question, school district representatives, and the parent review all relevant information in a child's file. They then decide if the child's misconduct was caused by or had a direct and substantial relationship to his or her disability. They must also determine whether the misconduct was the direct result of the district's failure to implement the IEP.

How Bullying Can Lead Youth with Disabilities into the Juvenile Justice System

Ahmad is a sixth grader who has always struggled with reading and was diagnosed with a specific learning disability and mild depression. Once Ahmad had a 504 plan¹ with accommodations for his disability, he was much happier. He worked hard in school, had many friends, and excelled in sports. So when he didn't want to go to school and complained of headaches and stomachaches, his parents couldn't understand why. There was nothing physically wrong with him, but his grades were slipping, he wasn't doing his work, he wanted to quit sports, and he wasn't inviting friends home.

One day the school called Ahmad's mother. Ahmad and another boy had started fighting in the bathroom. Ahmad had punched the other boy in the eye so badly that he was taken to the hospital. Because of this, Ahmad was suspended for 10 days and charged with assault. He finally admitted that his two best friends had been ignoring him and teasing him since school began six months earlier. Most of the time, it happened at recess or at lunch. They would point and laugh at his glasses, "accidentally" bump into him or push him, or call him "gay." The last straw was when the coach laughed when they called him gay.

Research shows that children with disabilities experience significant bullying. Several studies have found that children with disabilities are two to three times more likely to be bullied than their nondisabled peers. If no one intervenes and youth try to end the harassment by themselves, it can sometimes lead them into involvement with the juvenile justice system. As in Ahmad's story, students with disabilities who have been routinely targeted by bullying may one day fight back if no one is acting on their behalf to stop the bullying. They might then find themselves being disciplined at school, suspended, and arrested before parents even know that their child has been a target of bullying.

When a child with a disability has been a target of

bullying, fights back, and then is in trouble, parents should work with the school to ensure that the consequences are fair. Ahmad's charges could be reduced or dropped and replaced with an approach that prevents bullying in the future. Additionally, Ahmad should be encouraged to learn skills in asking for help and recognizing his feelings. Parents and caregivers of students with disabilities can make themselves and school officials aware of the issues and take steps to prevent bullying².

Questions Parents Can Ask at School

As a parent, you can be proactive and work to avoid bullying problems in several ways. Parents can ask the Individualized Education Program (IEP) or 504 team and schools officials the following questions:

1. How can we use my child's IEP as a tool to prevent bullying?

Every child receiving special education is entitled to a free, appropriate public education (FAPE), and bullying can sometimes become an obstacle to receiving that education.

The IEP team, which includes the parent, can identify strategies that can be written into the IEP to help stop or prevent bullying. It may be helpful to involve the child, when appropriate, in the decision-making process. Ask your child's IEP team about possible strategies such as:

- Identifying an adult in the school whom the child can report to or go to for assistance when they feel anxious or afraid
- Determining how school staff will document and report incidents
- Allowing the child to leave class early to avoid hallway incidents
- Educating peers about school district policies on bullying behavior

¹ A 504 plan is a documented plan the school and parents develop together for providing reasonable accommodations and other services so a child with a disability may participate fully in the school setting.

² To learn more about programs and resources to prevent bullying, call PACER's National Bullying Prevention Center at 952-838-9000 visit us online at PACER.org/publications/bullying.asp.

- Having the school staff provide reassurance to the student that he or she has a right to be safe and that the bullying is not his or her fault
- Shadowing by school staff of the student who has been bullied; shadowing can be done in hallways, classrooms, and playgrounds

2. What are the school's policies concerning bullying?

It's important for families to know the laws concerning bullying and the rights their children have. Ask for a written copy of the school's policy for responding to bullying situations, and find out if your state has a law addressing bullying by visiting Olweus.org.

While there is currently no federal law directly addressing bullying, parents have federal legal rights if their child with a disability is the target of bullying or disability harassment. Under federal civil rights laws enforced by the U.S. Department of Education and the U.S. Department of Justice, federally funded schools must address harassment that is based on a student's disability. Students with a 504 plan or an Individualized Education Program (IEP) qualify for protections if the harassment denies a student with a disability an equal opportunity to education.

3. Does the school have a program that helps students with problem-solving, and if not, can one be created?

Most students feel uncomfortable when they see bullying, but may not know what to do when it happens. If they do take action, it has a high rate of success: More than 57 percent of bullying stops when another student intervenes. One example of a program that works is a Peer Advocacy Program*, which empowers students without disabilities to watch out for more vulnerable students. Other programs that can help include positive behavior supports and peer problem-solving programs.

The Peer Advocacy Program works for two reasons: Students are more likely than adults to see what is happening to their peers, and peer influence is powerful. A student telling someone to stop bullying may have more impact than an adult giving that same advice. A peer advocacy program can also help students with disabilities to make new friends at school.

What Parents Can Do at Home:

1. Watch for signs and talk to your child

Children may not always realize that they are being bullied. They might think it is bullying only if they are being physically hurt; they might believe the other child is joking; or they may not understand the subtle social norms and cues. There can be many possible signs of bullying. Consider the possibilities if your child:

- doesn't want to attend school or ride the bus,
- is truant,
- starts complaining of stomachaches or headaches,
- seems down or anxious,
- or has sleep problems or temperament changes.

If you suspect bullying, you may learn more information from your child if you approach the subject indirectly. You might ask your child:

- How is your bus ride to school?
- Who do you sit by at lunch?
- I notice that you seem to be feeling sick a lot and wanting to stay home. How come?
- Are kids making fun of you?
- Are there a lot of cliques at school? What do you think about them?
- Has anyone touched you in a way that did not feel right?
- Does anyone say things to you or about you online that make you feel bad?

2. Keep a record/Notify school professionals

When a child is a target of bullying, parents need to document the events in writing and develop a record (or history) of what is happening to their child. The record should include all communication with school professionals. This record is useful when talking with school educators, law enforcement personnel, or other individuals who may need to assist parents. It's also useful if your child decides to retaliate against another child, since it may show a more accurate picture of what has been taking place at school. For more

* Learn more about the Peer Advocacy Program at PACER.org/Bullying/resources/students-with-disabilities/peer-advocacy.asp

information on keeping records on bullying situations and notifying school professionals, order PACER's handout, "Notifying the School About a Bullying Incident—Using a Template Letter" (Action Sheet: BP-19), or go to PACER.org/bullying/pdf/Notifying-School-About-Bullying-handout.pdf.

Facts about Bullying and Students with Disabilities:

- A 2013 study shows that students receiving special education services for behavioral disorders and those with more obvious disabilities are more likely to be bullied than their general education counterparts and are also more likely to bully other students.
- A 2002 study of U.S. mothers found that 75 percent of children with a diagnosis of Asperger's Syndrome were emotionally bullied.
- Other research has found that students with behavior disorders are more likely to perpetrate bullying, but the bullying behavior may be retaliatory, in response to being bullied.

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When School Absences Lead to Juvenile Justice: What Parents of Children and Youth with Disabilities Need to Know

Maria is a 17-year-old in 11th grade who has been diagnosed with depression and anxiety as well as post-traumatic stress disorder (PTSD). She has been in her school district's gifted and talented programs since fourth grade, but began failing her classes in eighth grade and has struggled to keep up with her accelerated coursework in English for the last two years. She began using marijuana in 9th grade, and has since had irregular attendance and inconsistent grades in school. Her parents just learned that she's missed 42 class periods this school year; as a result the school district referred her to the county attorney. Maria will be charged because she has been through the truancy prevention program twice last year and continues to be truant.

School attendance plays an important role in academic success. Children often fall behind in school if they frequently miss part of or an entire school day. All students sometimes have valid reasons to miss school, such as illness or injury, or appointments that cannot be scheduled before or after school hours. In some cases, such as Maria's above, children may avoid attending school due to their disability, and then find themselves in trouble. Maria's parents should make sure the county attorney and school have information about her disability in order to reduce or drop her truancy charges. In addition, parents can work with the school to prevent charges from being filed.

For students with disabilities, their diagnosis may contribute to more frequent absences and may even result in "school refusal" in some cases. Whether because of bullying, anxiety, depression, attention deficit hyperactivity disorder (ADHD), or something else, students may avoid or refuse to attend school when their needs are not being met. In addition, students may become anxious about not being successful in school. School failure can lead students to feelings of rejection and lower self-worth, and even to dropping out of school or spending time with peers who are already involved in delinquent activities, such as skipping school. If you notice that your child frequently claims to be sick or finds ways to avoid classes, talk to your child and the school so the

problem can be addressed immediately.

Excused Absences

If you expect that your child will have multiple absences in order to receive needed treatment or because of physical or mental illness, it helps to be proactive and plan ahead as much as possible.

Work with the School

- Reach out to the school nurse. This person can become an advocate and work with you to make sure the absences are excused without problems.
- Talk to teachers about developing a plan so your child can catch up on school work. Some ideas include planning for catch-up lessons, having homework delivered to your home, or arranging to use notes from other students. Whenever possible, plan ahead so that your child can have materials before the absence.
- Look in your school's handbook to find its policy on excused absences, and follow the policy or an alternate written plan you've developed with the school.

Schools have different definitions for excused absences, and these are included in the school district's attendance policy. In general, when your child is absent for a medical reason, contact the school office or attendance line as early as possible on the day of the absence. Give your child's name, grade level, and reason for the absence. Tell the school when you think your child will return. When your child returns to school, write a note that explains your child's absence.

Some schools have a limit on parent-excused absences. If your child exceeds that amount, you may be asked to provide a health provider's note verifying the absence. If you have worked out a written plan with the school early in the year, you may not need to provide a note, but make sure you include in the plan information about when a health care provider's note is required.

Work with Your Child's Doctor and Other Health Care Providers

- Many health care providers will write a general letter to the school at the beginning of the school year, when your child changes schools, or at first diagnosis. This letter can be kept on file at school and included in the Individualized Education Program (IEP) or 504 plan¹. It could explain things such as:
 - ◊ The diagnosis in general, and what impacts it may have at school, including frequent absences
 - ◊ How often the child will be having office visits or may be absent for illness
 - ◊ What accommodations may be helpful
- Ask your child's health care provider to send a standard letter at the beginning of school.
- Make sure you have a copy of the school's policy on attendance, and follow the school's policies to excuse health-related absences.

If your child has an IEP for special education or a 504 plan, be proactive about absences by:

- Discussing the potential of having an altered school day with your child's IEP team
- Assigning someone, such as the school nurse, to monitor absences
- Planning accommodations for managing make-up work
- Writing goals and objectives so older children and youth will build skills to keep track of missed lessons and assignments by themselves

If your child does not qualify for an Individualized Education Plan (IEP) or a 504 plan, work with your school to develop an Individual Health Plan to support your child with disabilities that require frequent absences. The tips above can help.

Truancy and Unexcused Absences

Truant students are those who miss school repeatedly and do not have a valid excuse. Truancy is different than school refusal. A student with school refusal

repeatedly stays home, claims to feel sick, or finds ways to visit the library, bathroom, or nurse's office rather than attend class. A student who is truant more likely enjoys the time off from school, hangs out with friends, or goes out into the community rather than attending class. School refusal must be addressed through the special education or 504 process so the student's needs are met and he or she is able to learn without the barriers of a disability.

In some cases, it can be difficult for schools to tell the difference between students who are absent with a valid excuse and students who are truant. This is especially true when students have frequent absences due to chronic mental and physical health conditions. Additionally, schools have different policies and procedures for recording absences, and sometimes absences with a valid excuse are still recorded as unexcused. If a student has multiple unexcused absences, the school is required to try to improve that student's attendance. Sometimes those efforts include notifying the parents that the child is truant and referring the student to juvenile court.

Truancy and problems brought on by frequent absences can be avoided, however, if you know your school's policies, plan ahead, and take action early on to address "school refusal." Being proactive and working with the school can help your son or daughter stay on track with school work and avoid involvement in the juvenile justice system.

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What Parents of Children with Disabilities Need to Know about Juvenile Court

As a parent, it's important for you to understand your role if your child with a disability is charged at school and must appear in juvenile court. While it is understandable that you may be upset, the best advice is to remain calm so you can advocate for your child. This handout can help you understand what to expect in court, what you can say in court to help your child, and what information is important to share with attorneys and other professionals.

Does my child need an attorney?

- Youth should never say that they don't need an attorney, and parents should not act as their child's attorney.
- If you cannot afford an attorney, you may ask that your child have a court-appointed attorney.
- Be aware that because the court-appointed attorney represents your child, and not you, some attorneys may not speak with you.
- If you hire a private attorney, it is important that the attorney is knowledgeable about juvenile court or education law in order to best help you.

What should we do in court to help our child?

It is critical that parents and youth show respect for the court. The judge wants to know that the young person will not return to court in the future. This means that the young adult and his or her family must show that they take the charges seriously and are working to prevent repeated behaviors in the future. They might share what steps they are taking to avoid future problems and the names of the agencies that are helping them. Always remember to:

- Speak respectfully to the police, attorneys, judge, and others.
- Help your child accept responsibility for the action and not blame the school, friends, or others.
- Help your child and the attorney understand and describe the impact of your child's disability without making excuses.

- Fully explain any circumstances that might have affected your child's behavior, which may include medication changes, bullying, or changes at school or home.

What information can I provide that will help our child?

When attorneys and other professionals work with a youth in court, they need to understand how a disability may have contributed to the problem behavior. This is especially true if the school was not meeting the youth's learning or special education needs, or when issues should have been resolved in school through the special education process and not in court. Parent Centers and other disability advocacy groups may be able to connect parents to attorneys who know juvenile law and understand disability issues. Find a Parent Center near you by visiting ParentCenterNetwork.org.

It can be difficult to offer information about your child's disability. As a parent, you can make sure the attorney and the court have access to the following information:

- The most recent special education records, either the Individualized Education Program (IEP) or a 504 plan
 - ◊ Let the attorney know if the school has followed the IEP, provided the services promised, and provided a behavior or crisis plan.
 - ◊ Share whether or not your child is meeting learning and comprehension goals, and whether or not your child's comprehension is typical for his or her age.
 - ◊ Let the attorney and court know if you have shared your concerns with the school and what actions were taken.
- Information about the incident, witnesses, and any available video of the incident
 - ◊ Let the attorney know whether or not your child has been suspended for the same

behaviors in the past, and how the school has handled it.

- Information about any prescribed medication, and if the youth was not taking his or her medication at the time of the incident

What should I expect in court?

- Be prepared to wait several hours at court for your child's case to be heard. You may even have to return to court the next day. Let your employer know about the situation, and enlist daycare help for other children if needed. The court cannot predict how long other cases may take.

Parents can help their children in juvenile court by participating in the process in a respectful way, providing information to the court, and acting as their child's advocate.

Youth with disabilities are at a higher risk for involvement in the juvenile justice system. If your child with a disability is involved with the juvenile justice system, you can provide important information to the court and the system about the disability. Parents and caregivers can also ask questions about special education, specific policies, treatment, and placement to make sure a youth's disability is taken into account and addressed.

This brief is the fifth in a series designed to help parents understand their child's rights and ask important questions if their son or daughter is involved in the system. To order the complete series of "Students with Disabilities & the Juvenile Justice System: What Parents Need to Know," call 952-838-9000 or visit PACER.org/jj.

