

Education Advocacy



Education Advocacy
November 2010

Overview of Presentation

- Data regarding educational outcomes,
- Federal and state requirements, and
- Practice tips for advocacy on behalf of clients.

Education and Health Needs of Foster Youth

- Education is critical to every child's well-being and future success.
- Physical and mental health of children is foundational.
- Minnesota has over 300 school districts and 87 counties; all with unique education and health care services.

Status and Outcomes

- Children in foster care face unique challenges in terms of achieving academic success:
 - Trauma associated with experiencing sexual, physical, and emotional abuse,
 - Trauma of experiencing separation from their families,
 - Multiple placements with different caregivers, and
 - No identified or consistent adult held accountable for education and health concerns.

Statutory Framework

- The education, physical and mental health, among other things, of children in foster care must be addressed by the county in the case plan.
- Requirements of the case plan are set forth in Minnesota Statutes, section 260C.212

Minnesota Statutes, section 260C.212, subdivision 1(7)

- Names and addresses of the child's health and educational providers,
- Grade level performance,
- School records,
- Assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement,
- Immunizations, medications and known medical problems, and
- other relevant health and education information.

Education and Child Welfare - Common Goals

- Nurture children to healthy adulthood ready to participate, contribute, and live a happy, healthy life.
- Children are received "where they are at" emotionally, academically, developmentally, and physically.

Minnesota Outcomes

- The (U of MN) Center for Advanced Studies in Child Welfare Study.
- High school graduation rates of kids in Minnesota's child welfare system.
- About 1000 older foster youth with a maltreatment finding in the last 30 months.

Summary of Local Findings

- Disproportionately children of color,
- Tended to be low-income,
- Had high rates of disabilities; greater need for special education services, and
- Graduation rate was 47%, compared with Minnesota's overall graduation rate of around 80%.

Summary of National Findings

- Greater developmental delays.
- Numerous school placements by 18.
- Loss of academic progress with each move.
- Higher rates of repeating a grade.
- Lower scores on standardized tests.
- Higher absenteeism, tardiness, truancy, and dropout rates.

More National Findings

- Higher rates of out-of-school suspension which leads to lower academic, achievement and increased Juvenile incarceration. National Children's Law Network, 2007.

Minnesota's Areas In Need of Improvement (2005 Child and Family Services Review)

- Too much reliance on foster parents to see to children's educational needs,
- Children experience multiple school changes related to placement changes,
- The inclusion of school records in case records was the exception rather than the rule, and
- No statutory or rule based requirement that county agency staff track outcomes for child welfare youth, and monitoring varies by county agency across the state.

Federal Requirements

- Individuals with Disabilities Education Act (IDEA) entitles all students in the public education system to an early assessment if there is any indication of special education needs.
- Between 23 and 47 percent of kids in foster care receive special education services at some point in their lives.

Federal Law Continued...

- IDEA provides some protections to children with disabilities.
- Children assessed with disabilities are entitled to an appropriate public education, early intervention services, and any special education services or accommodations they need to enable them to make educational progress.

The "IEP"

- All children in special education must have an Individualized Education Program (IEP) that is developed by a team. The IEP outlines appropriate coursework, determines a pathway to graduation, sets goals and includes transition plans.

Contents of the IEP

- The IEP indicates what the school will do to help a child learn, such as:
 - Using a different way of teaching,
 - Making school materials simpler,
 - Changing the amount of kind of information the child will learn, and
 - Providing the child with individualized help.

Tips for Advocacy

- Get children's education records.
- In every conversation and court hearing, make sure that the child's educational status is addressed.
- Insist that children receive the services they need and to which they are entitled.

More Advocacy Tips

- Be actively involved in the young person's education – everything from routine school matters to attending IEP meetings and other relevant meetings as appropriate.
- Review recommendations from caseworkers about education issues, ensure that the recommendations are based on the individualized needs of the child, and present the recommendations in an informed manner to the Court.

Important Questions

- Is your client attending school? If so, where?
- How is your client doing in school?
- How does your client's placement impact his or her school continuity and stability?
- Are your client's school records in their case file?

More Important Questions

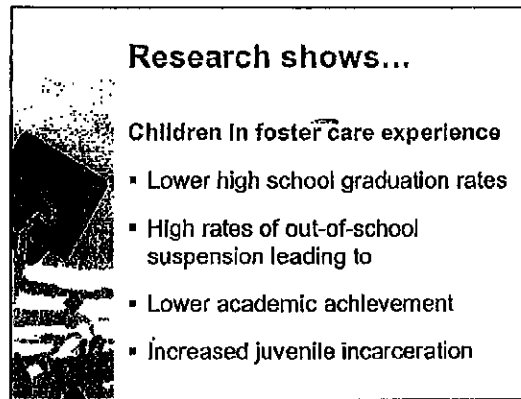
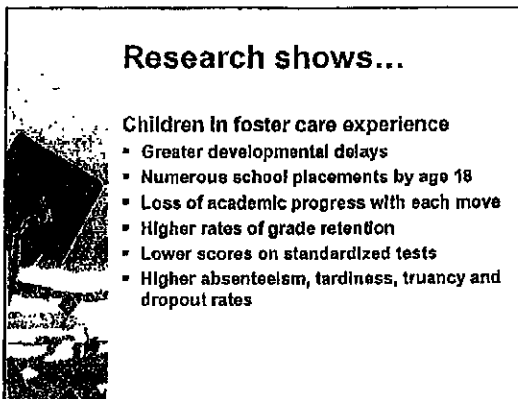
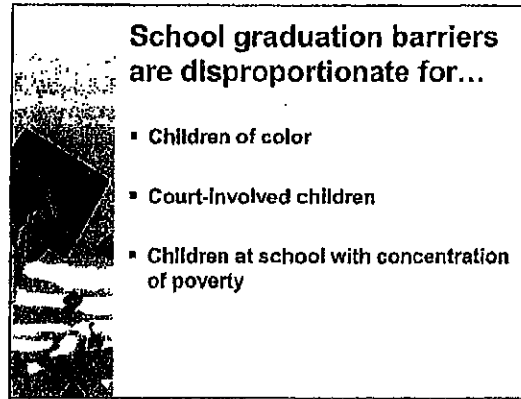
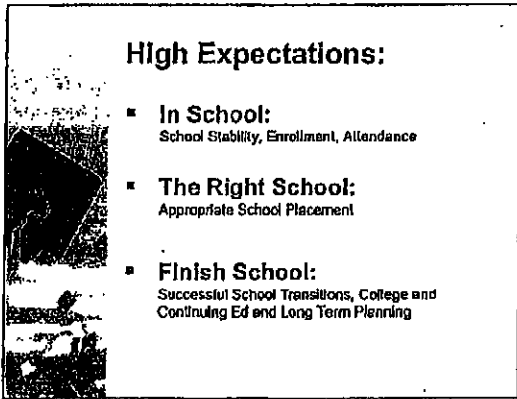
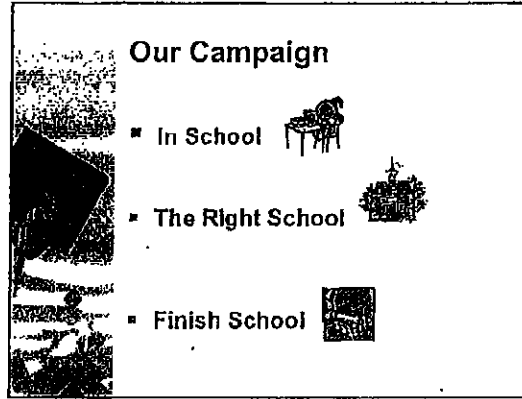
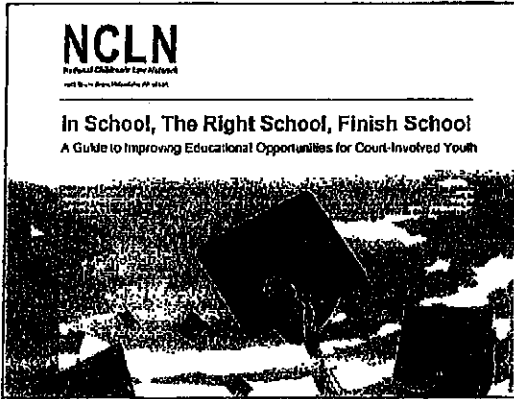
- What are the medical, developmental, and emotional needs of your client that impact his or her educational performance?
- Who is advocating for your client to do well in school? Are they actively participating?

And Still More Questions

- Does your client like school? Why or why not?
- What is your client's level of reading, writing, and mathematics?
- Has your client repeated a grade? When and Why?
- Has your client taken summer school classes? Why?

And Still More...

- What are your client's results on any standardized tests that have been taken? Has she or he passed the high school competency plan?
- Does your client require general education support services?
- What is your client's special education eligibility?
- Does your client have an IEP; who is part of the IEP team, and when was the last time they met?



Research shows...

Each year many of the 20,000 youth leaving foster care

- Hope to attend and graduate from college
- Do not complete high school
- Encounter barriers to obtaining services and becoming independent
- Report a history of arrest and conviction
- Experience homelessness

Research shows...

Children charged as delinquent, often...

- Experience unaddressed health, mental health, and learning problems
- Are suspended or expelled even if charges are dismissed
- Are not permitted to return or re-enroll in home school
- Cannot get credit for alternative school or school in detention
- Are re-arrested if not in school
- Are not provided alternative education while under discipline
- Do not receive appropriate education while incarcerated

Research shows...

School dropouts are more likely to:

- Be unemployed
- Experience higher levels of early pregnancy
- Experience substance abuse
- Require more social services

Research shows...

- In Illinois 30% of prison inmates read below 6th grade level
- 72% of prison inmates have not completed high school
- 60% of inmates dropped out of school before 10th grade

Obtain Educational Records

- Attendance
- Report Cards / Progress Reports / Credits
- Behavior / Discipline Records
- Special Education
- Standardized Tests
- Evaluations
- Immunization
- Language Needs

At Every Hearing for Every Child...

Every ...

- lawyer,
- agency,
- parent,
- guardian ad litem or CASA,
- social worker,
- school liaison,
- probation officer ...

... must know the educational needs of the child.

At Every Hearing for Every Child...

- Judges should:
 - Require up to date educational information
 - Determine who has educational decision-making authority (parents, surrogate, etc.)
 - Hold the parties accountable

Legal Framework

- Individuals with Disabilities Education Act (P.L. 101-476) [20 USC § 1400 et seq., 34 CFR 300]
- Section 504 of the Rehabilitation Act of 1973 [20 USC § 794; 34 CFR 104]
- McKinney-Vento Homeless Assistance Act (42 USC § 11143)
- No Child Left Behind Act [incorporated into McKinney-Vento]
- John F. Chafee Foster Care Independence Act of 1999 (42 USC § 677) (Chafee Act)
- Carl D. Perkins Vocational Education Act (20 USC § 2301)
- Office for Civil Rights, US Dept. Education
- Best Interests of the Child Standard
- State Constitution, Statutes, and Regulations
- Case Law
- Local Court Rules
- School Handbook and School Board rules

In School

School Stability



In School : Why Is It Important?



- Enhances options for higher education
- Provides continuity in school and community
- Prevents loss of credits
- Reduces risk of dropping out
- Improves placement stability for foster children
- Reduces recidivism

In School: Legal Rights to Access & Enrollment

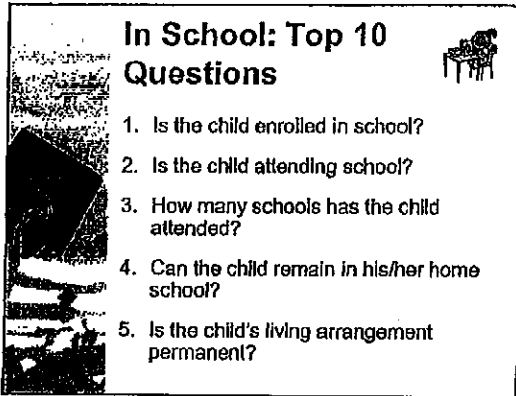


- McKinney-Vento Act requires immediate enrollment and provides school stability
- Due process rights prevent improper exclusion
- State laws mandate attendance

In School: Legal Right to Stay in School

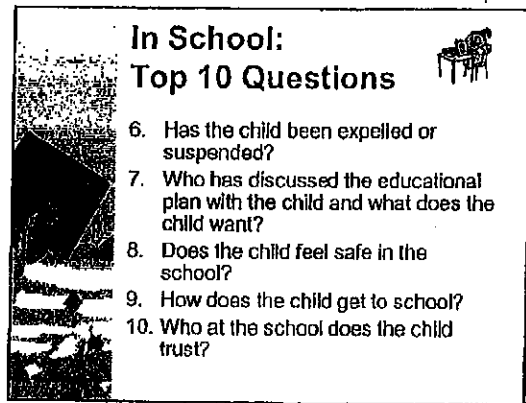


- IDEA gives some protections to children with disabilities
- Due process clause of the Constitution provides some protection from suspensions and expulsions



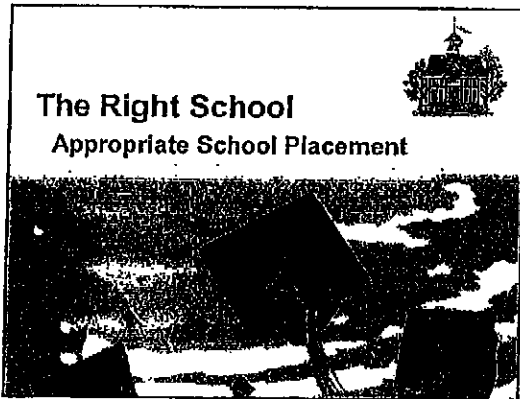
In School: Top 10 Questions

1. Is the child enrolled in school?
2. Is the child attending school?
3. How many schools has the child attended?
4. Can the child remain in his/her home school?
5. Is the child's living arrangement permanent?



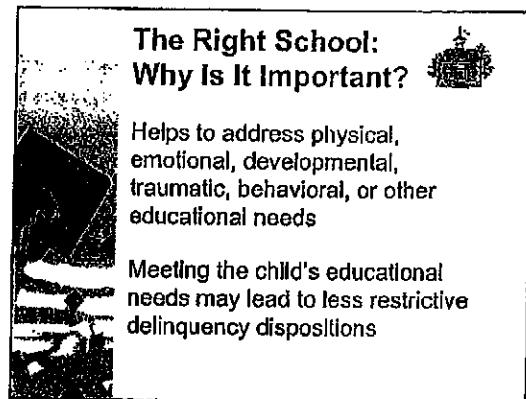
In School: Top 10 Questions

6. Has the child been expelled or suspended?
7. Who has discussed the educational plan with the child and what does the child want?
8. Does the child feel safe in the school?
9. How does the child get to school?
10. Who at the school does the child trust?



The Right School

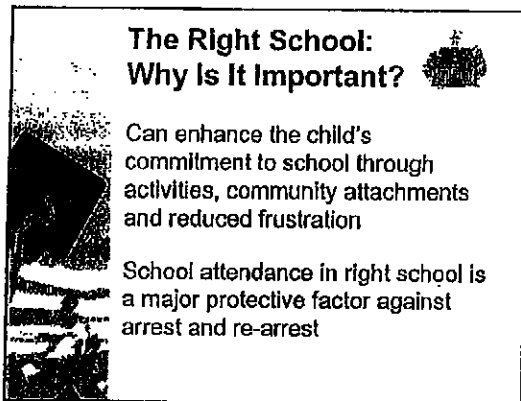
Appropriate School Placement



The Right School: Why Is It Important?

Helps to address physical, emotional, developmental, traumatic, behavioral, or other educational needs

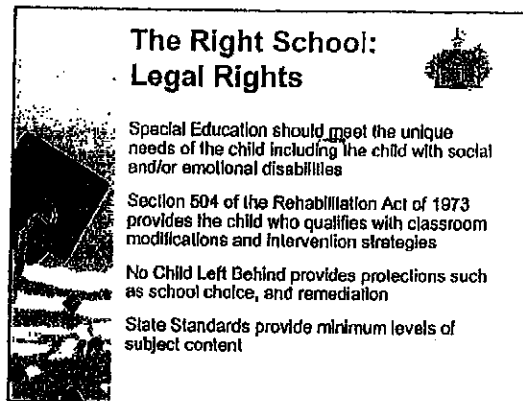
Meeting the child's educational needs may lead to less restrictive delinquency dispositions



The Right School: Why Is It Important?

Can enhance the child's commitment to school through activities, community attachments and reduced frustration

School attendance in right school is a major protective factor against arrest and re-arrest



The Right School: Legal Rights

Special Education should meet the unique needs of the child including the child with social and/or emotional disabilities

Section 504 of the Rehabilitation Act of 1973 provides the child who qualifies with classroom modifications and intervention strategies

No Child Left Behind provides protections such as school choice, and remediation

State Standards provide minimum levels of subject content

The Right School: Top 10 Questions



1. How is the child performing academically, socially, emotionally?
2. Has the child been observed, assessed or identified as needing special services at any point?
3. Is there a significant discrepancy between the child's age and child's achievement level?
4. Does the child have an appropriate IEP or a Section 504 plan that is being followed and is up to date?
5. For every proposed school, what is the state's assessment (teacher qualifications, graduation rates, class size, No Child Left Behind, etc.)?

The Right School: Top 10 Questions



6. Who has discussed the plans with the child and what does the child want?
7. To what people or activities is the child significantly connected in the current school?
8. What services does the child need to succeed and does the child's school and/or home placement have these services?
9. Is the child in the least restrictive environment?
10. Is the child accruing credits toward high school graduation and college admission?

Finish School Successful School Transitions & Long Term Planning



Finish School: Why Is It Important?



- Transitional services will:
 - Improve planning for education and career
 - Encourage and facilitate access to
 - Higher education
 - Specialized training

Finish School: Why Is It Important?



- Transitional Services will lower incidence of:
- Homelessness
 - Unemployment/underemployment
 - Substance abuse
 - Criminal activity
 - Incarceration

Finish School: Legal Rights



- Entitlement to an education
- State plans under Chafee Foster Care Independence Act
- IDEA transition planning
- No Child Left Behind supplemental services
- Foster care placement over 18 while in special ed

Finish School : Top 10 Questions

1. What are the child's strengths and interests and how can these be enhanced?
2. What is the future educational and/or vocational plan for the child?
3. What classes does the child need to achieve his/her educational and vocational goals?
4. If the child is 14 or older and has an IEP, what transition planning has occurred?
5. What is the child's plan for independent living and who has discussed this plan with the child?

Finish School : Top 10 Questions

6. Where will this child live in 6 months, 1 or 2 years, to allow him/her to finish school?
7. Will the child need transitional housing?
8. How will this child access health benefits and medical care?
9. What family and community resources are available and appropriate for the child?
10. What other services or resources does the child need? How long will the child need these services or resources?




Practice Tips

- Obtain, review and understand complete educational record
- Make educational stability and success a priority
- Know who the "parent" is
- Put every communication in writing
- Meet with child and parent and bring united front on educational objectives
- Encourage parent to "Just say NO!"

Practice Tips

- Ask parent to request your presence in writing
- Prepare schools in advance for transfers from residential or correctional schools
- Respond IMMEDIATELY to disciplinary matters
- Keep your cool. Give schools a chance to do the right thing.
- Call for legal help

Conclusion: Our Campaign

- In School 
- The Right School 
- Finish School 

SUCCEED!!

Family Law Forum

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Rights and Remedies for Children with Behavioral Limits and Disabilities in the Classroom

Lori D. Semke & Anne Tyler Gueinzus

Introduction

We all know how important education is for children, but in many cases, ensuring that children receive an appropriate and fulfilling education becomes more difficult in the face of disciplinary challenges. Some children have limits in their behavior that affect the way they learn and at times the kind of education they receive. Schools are responsible for identifying appropriate settings and plans to teach children, and parents are responsible to be involved in their child's school assessment and education plan. Yet many parents are not always aware of what rights they have regarding their child's education. Furthermore, children who are state wards or in foster care do not have parents who can vigorously advocate on their educational behalf. Parents and attorneys helping parents and children need to be well equipped with knowledge of disciplinary

rules, rights and procedures when encountering these challenges in the educational setting.

Children often receive consequences for improper behavior. If these consequences in the school setting are extreme and negative, they can often lead to other detrimental outcomes, such as decreased interest or desire to remain in school. Children faced with such extreme consequences as being expelled, excluded or transferred from their school may also perceive themselves as different and separate from others.

Further, the more a child moves from school to school the harder it is to ensure that all the child's school credits have moved with the child. Maintaining earned credits is important so that the child remains on track for graduation and does not have to make up credits that have already been partially or fully completed. Not only may credits go

uncompleted or be lost, but support from school counselors for a student's post-secondary education planning can be interrupted. As a result, a child's continued interest and enthusiasm in any post-secondary schooling can ultimately be lost.

This article will discuss legal rights and remedies arising from the extreme consequences of expulsions and transfers. Specifically, this article will focus on what parents and students can do to address and remedy such extreme school actions applied to students with behavioral limits and disabilities. Despite the significant and substantial concern regarding "the schoolhouse to jailhouse pipeline" for many disadvantaged children, this article will not address delinquency concerns within the school setting.¹

Expulsion

Schools are increasingly turning to expulsions and exclusions² to respond to disciplinary situations. The practice has been particularly prevalent in the Anoka-Hennepin school district, which in fiscal year 2006 expelled or excluded 82 students, which was 20.4% of the 402 total expulsions/exclusions statewide.³ Other districts with significant numbers of expelled or excluded students that year included Rochester (32), Rosemount (18), Forest Lake (13) and S. Washington County (13). The previous school year, Anoka-Hennepin also had the largest number of expulsions (47), followed by Rosemount (29) and Rochester (25).⁴ The demographic breakdown of expulsions by race for 2005 indicated that 62.47% of all expulsions in Minnesota involved white children; 13.7% of children expelled were black, 10.96% were Hispanic, 6.58% were Asian, and 6.3% were Native American.⁵ The percentage of expulsions of black, Hispanic, Asian and

Native American children is disproportionately higher than the statewide race population percentages of each of those groups (e.g., 10.96% of expulsions were of Hispanic children, but the total Hispanic population is only 4.96% of Minnesota's population). Expulsions are overwhelmingly more prevalent among young males, which account for 78.36% of expulsions in the fiscal year 2005.⁶ The practice of expulsions and exclusions reaches children of all demographics, and all families should be well versed in the law governing discipline in the education setting.

Minnesota's Pupil Fair Dismissal Act (PFDA), codified at Minnesota Statute sections 121A.40-121A.56 (2008), governs dismissal of students from public schools and protects the due process rights of all students.⁷ Recently, the Minnesota Court of Appeals, in the case of In the Matter of the Expulsion of N.Y.B., 750 N.W.2d 318 (Minn. Ct. App. 2008), clarified expectations for school districts making disciplinary decisions to expel students for certain infractions. The case focused on whether the school board adequately explained its decision to expel N.Y.B. for a full calendar year, consistent with the requirements of the PFDA.

N.Y.B. was a freshman in an Anoka-Hennepin Independent School District high school and was also a child in foster care with counsel from Children's Law Center of Minnesota (CLC).⁸ In December 2006, N.Y.B. confronted another student, C.S., who had made comments about N.Y.B.'s racial heritage. A fight ensued during which N.Y.B. broke a cafeteria tray over C.S.'s head. The principal recommended expulsion. At the school board meeting N.Y.B. read a prepared statement, and her CLC attorney urged the board to consider mitigating circumstances. The board voted 5 to 1 to

expel N.Y.B., and listed as its reasons only the portions of the school discipline policy it found her to have violated. N.Y.B. appealed her expulsion to the Commissioner of Education; the Commissioner found the expulsion was reasonable, but that the school board's written explanation was inadequate because it failed to state the controlling facts, and thus remanded with instructions to provide a sufficiently detailed written decision. The school board met again and amended its original resolution and expelled her for one year. N.Y.B., 750 N.W.2d at 320-21.

A school board has the "authority to expel a student for up to one calendar year if that student willfully (1) violates a reasonable school-board regulation, (2) engages in significantly disruptive conduct, or (3) engages in conduct that endangers the student or others." N.Y.B., 750 N.W.2d at 325 (citing MINN. STAT. §§ 121A.42, subd. 5; 121A.45, subd. 2). To ensure that the criteria were properly applied, the school board must provide its decision in writing and "state the controlling facts on which the decision is made in sufficient detail to apprise the parties and the commissioner of education of the basis and reason for the decision." Id. (quoting MINN. STAT. § 121A.47, subd. 13).

N.Y.B. argued on appeal that the school board's written decision failed to satisfactorily explain its reasons for expelling her for one calendar year, in violation of the PFDA's formal requirements. N.Y.B., 750 N.W.2d at 325. The school district's amended decision had stated that it had expelled 22 other students for fighting during that school year and that the totality of circumstances concerning N.Y.B. was at least as egregious as the facts involved in those previous cases. N.Y.B., 750 N.W.2d at 321-22. The school district contended that this explanation provided sufficient detail to

demonstrate its rationale for the decision, thus meeting the statute's requirements. N.Y.B., 750 N.W.2d at 325-26.

The Minnesota Court of Appeals disagreed. "An agency not only must identify the evidence on which it is relying, but also it must 'explain...how that evidence connects rationally with the agency's choice of action.'" N.Y.B., 750 N.W.2d at 324-25 (citing Peterson v. Minn. Dep't of Labor & Indus., 591 N.W.2d 76, 79 (Minn. Ct. App. 1999) (quotation omitted), *review denied* (Minn. May 18, 1999)). The explanation must be sufficient to facilitate meaningful appellate review. *See* MINN. STAT. § 121A.47, subd. 13 (2008); MINN. STAT. § 121A.50 (2008). Without the factual context of the prior expulsions, the decision failed to explain why the board concluded that N.Y.B.'s conduct was "at least as egregious as those incidents which led to one calendar year expulsions." The court also found that the decision does not address any of the mitigating circumstances raised by N.Y.B., or explain why it rejected N.Y.B.'s arguments. N.Y.B., 750 N.W.2d at 326.

The court remanded and directed the school board to explain its decision with enough detail to comply with Minn. Stat. § 121A.47, subd. 13, so that its decision includes its basis for comparing the relative egregiousness of conduct, the factual context of any incident with which N.Y.B.'s conduct was compared, an explanation of its comparison of N.Y.B.'s conduct with the other incidents, as well as its conclusion about the relative seriousness of N.Y.B.'s conduct after considering the mitigating factors she presented. N.Y.B., 750 N.W.2d at 326-27. The Court of Appeals' emphasis on the school board's obligations under the PFDA will go far to aid Minnesota students in ensuring that disciplinary decisions are fully considered and supported by school authorities.⁹

Not all children who are expelled from school have legal representation to advocate for them when they are being expelled; however, all children in Minnesota who are expelled from school are entitled to due process in their dismissal proceedings. MINN. STAT. § 121A.42 (2008).¹⁰

Transfers

Most school districts in the state of Minnesota have alternative learning centers (frequently referred to as ALCs, and often called “area learning centers” in some school districts) in which students can learn and earn credits toward graduation in a non-traditional setting.¹¹ ALCs often can be good fits for students with special needs or unique approaches to learning. For example, the Saint Paul school system offers several diploma-granting programs through its Area Learning Center alternative secondary learning programs, including Gordon Parks High School for high school age students who benefit from and prefer individual and small group instruction,¹² and the LEAP program, which helps students with limited English-language skills transition to traditional high school, post-secondary education or career opportunities.¹³ Minneapolis Public Schools has several Area Learning Centers, which are full day or extended day programs following various education models, including school-within-a-school, pullout and stand-alone sites. Minneapolis also has numerous “Contract Alternative Schools” run by community agencies; approximately 2200 students attended these schools in the 2007-08 school year.¹⁴

In many cases, however, school districts rely on ALCs as a holding area for youth who pose behavioral challenges in mainstream classrooms. Rather than addressing problems internally and searching for better ways to

deal with disciplinary challenges within the classroom—including evaluating whether behavioral issues are related to a disability—schools too quickly resort to expulsion and transfers to ALCs. Indeed, most ALCs primarily serve students characterized as “at-risk” and include youth who have been expelled or excluded from regular high schools in their school districts.¹⁵

“In general, students are referred to alternative schools and programs if they are at risk of education failure, as indicated by poor grades, truancy, disruptive behavior, suspension, pregnancy, or similar factors associated with early withdrawal from school.” *Public Alternative Schools and Programs for Students at Risk of Education Failure: 2000-01*, National Center for Education Statistics – Statistical Analysis Report, September 2002, at <http://nces.ed.gov/pubs2002/2002004.pdf> (hereinafter “NCES Rpt”). What is often not fully considered is whether those indicators are the result of a behavioral disorder or disability. The data in fact shows that behavior that may well be the result of emotional or behavioral disorders—such as assault, fighting, and threat or intimidation—comprised 21.76% of expulsions in Minnesota in 2006.¹⁶

Hasty transfer of students to ALCs raises several concerns. One risk of frequent transfers of students from and between regular high schools and ALCs is a loss of credits earned toward graduation, due to transfers and/or expulsions in the middle of a semester. Also, individual students who have been transferred numerous times have difficulty tracking the credits they have fully or partially earned. This difficulty adds to the student becoming frustrated with traditional methods of learning, and makes students less committed or interested in sticking with secondary education offerings long enough to earn a diploma. There also

may be a negative impact as a result of the stigma associated with being considered an "at-risk" youth.

Another reality is that minority students and students living in poverty appear to be disproportionately directed to alternative schools. A study by the National Center for Education Statistics (NCES) found that during the 2000-01 school year, urban districts, districts with high minority student enrollments, and districts with high poverty concentrations were among those more likely to utilize alternative school programs, and were more likely than other districts to consider certain behaviors (particularly drug or weapons possession, physical attacks or fights, and disruptive verbal behavior) to be reasons sufficient in themselves for transfer to an alternative school. NCES Rpt., at pp. iii, 33, 34.

Even though many ALC programs provide a better learning environment and experience for certain students, it should not become de facto practice to funnel youth to ALCs. In the NCES study, 54% of districts with alternative schools reported that demand for enrollment in alternative schools exceeded capacity during the three years prior to the study. NCES Rpt. at p. iv. Given the high demand by many students and families for access to alternative schools, it would make sense that school districts work harder to ensure there is room for those students by helping other students who prefer to stay in traditional schools to do so. One way to press school districts for more thoughtful use of ALCs is for a parent to request an assessment of the child so that the school may develop ways of better handling behavioral problems before resorting to transfers. Families should strongly advocate for all causes of behavioral problems at school to be fully evaluated for possible

disability services, so that students with unique needs are not lost in the ALC funnel.

Most school districts encourage that special education students be served in traditional school through the use of comprehensive special education services. If a child has a disability and is in need of special education and related services, an individual education plan or program (IEP), must be developed for the child. 34 C.F.R. § 300.306(c)(2) (2008).¹⁷ Where the school district does transfer a special education student to an ALC,¹⁸ all appropriate services must be provided. For example, the Saint Paul Public Schools expressly require that "[i]f a student with an IEP is referred to one of the ALC secondary locations an IEP meeting at the referring school must take place" and the Procedure for Referring Special Education Students to an ALC Program must be followed. According to this procedure, the school in which the student was originally enrolled must conduct an IEP meeting, the receiving school must conduct an intake meeting, and an ALC Special Education Referral Form must be completed. The IEP meeting must address what the best placement options are for the student based on his or her needs.¹⁹

Parents whose children are special education students should request copies of any such procedures applicable in their school district, and must insist upon full compliance with them in disciplinary situations to ensure that schools do not funnel a child perceived to be difficult to deal with into an ALC school if it is not in that pupil's best interests. Parents who believe their child may need a special education evaluation should demand one so these services and procedures, if applicable, can be applied. Moreover, as the following section of this article discusses, transfers to ALCs may be rendered unnecessary if the

full spectrum of behavioral interventions to which special education children are entitled are followed.

Solutions

An emotional or behavioral disorder (EBD),²⁰ or other disability, may be the cause of a child's behavioral problems in the classroom. Schools must follow specific and distinct disciplinary procedures for students with disabilities,²¹ thus it is important for families to ensure not only that their child's unique needs are identified, but also that an appropriate individual education plan, or IEP, is in place so the school reacts appropriately in a disciplinary situation.

School districts must provide appropriate special education instruction and services to all students with disabilities.²² These services are determined and delivered through an IEP developed by schools, parents and students. MINN. STAT. § 125A.08(a)(1) (2008). An IEP is a written statement that addresses current performance, goals, services and aids to be provided, an implementation plan and measurement strategy. MINN. ADMIN. R. 3525.2810, subp. 1 (2008). The IEP is developed, reviewed, and revised in meetings of the IEP team; the IEP team must include parents, a regular and/or special education teacher, a school district representative, as well as other individuals with knowledge or expertise about the student or the student's evaluation results. When appropriate, the student is also a part of the IEP team. MINN. ADMIN. R. 3525.2810, subp. 1(B) (2008). The IEP must address the student's need to develop skills necessary to allow the student to live and work as independently as possible within their community; plans for transition to post-secondary education or employment must be included in the IEP by the time the

student reaches grade 9 or age 14. MINN. STAT. § 125A.08 (a)(1) (2008). The IEP team must review the IEP at least annually to determine whether annual goals are being achieved. MINN. ADMIN. R. 3525.2810, subp. 3 (2008).

In the case of a student whose behavior impedes his or her learning or that of others, the IEP team considers strategies to address that behavior, including positive behavioral interventions and supports. MINN. ADMIN. R. 3525.2810, subp. 2(B)(1) (2008). Because school districts are obligated to continue to provide special instruction services,²³ either within the district or in another district, to suspended or expelled students who are disabled, MINN. STAT. § 125A.03(a) (2008), and given the disruption that frequent changes in school placement creates, it behooves all involved to seek to avoid suspension or expulsion through a comprehensive IEP and behavioral intervention plan.

"Positive behavioral interventions and supports" are "those strategies used to improve the school environment and teach pupils skills likely to increase pupil ability to exhibit appropriate behaviors." MINN. STAT. § 121A.66, subd. 6 (2008). The law requires that school rules regarding conditional procedures²⁴ must promote the use of positive behavioral interventions and supports, and must not encourage or require the use of aversive or deprivation procedures. MINN. STAT. § 121A.67, subd. 1(1) (2008). Any planned application of aversive or deprivation procedures can only be implemented after completing a functional behavior assessment, or FBA, and developing a behavior intervention plan that is included as part of the IEP. MINN. STAT. § 121A.67, subd. 1(2) (2008).²⁵ The school must also document that it has ruled out any other treatable cause for the behavior. MINN. ADMIN. R. 3525.2710, subp. 4(F) (2008).

An FBA is "a process for gathering information to maximize the efficiency of behavioral supports," and "includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior." MINN. ADMIN. R. 3525.0210, subp. 22 (2008). Students work with teachers and the IEP team to complete an FBA worksheet, as well as a behavioral support or intervention plan that sets forth strategies for responding to triggers that lead to the problem behaviors to help avoid escalation and reduce the likelihood of negative consequences such as dismissal, suspension or expulsion. Members of the IEP team sign off on the plan and agree to review the plan as needed throughout the year. The law mandates that schools do everything possible to educate students with disabilities as much as possible in regular education settings:

To the maximum extent appropriate, pupils with disabilities shall be educated with children who do not have disabilities and shall attend regular classes. A pupil with a disability shall be removed from a regular educational program only when the nature or severity of the disability is such that education in a regular educational program with the use of supplementary aids and services cannot be accomplished satisfactorily.

MINN. ADMIN. R. 3525.0400 (2008). It also must be shown that the student will be better served outside of the regular program. *Id.*; see also MINN. STAT. § 125A.08(a)(5) (2008).

If a disabled child misbehaves and a school decides to change the child's placement because of a violation of a code of student conduct, a "manifestation determination

meeting" is to be held within 10 school days of the decision, and must include all members of the child's IEP team. 34 C.F.R. § 300.530 (e)(1) (2008). A behavior is deemed to be a manifestation of the child's disability when one of the following is true:

1. the conduct was caused by, or had a direct and substantial relationship to the child's disability, or
2. the conduct was a direct result of the local educational agency's failure to implement the IEP.

34 C.F.R. § 300.530(e)(1), (2) (2008). If the student's violation of school disciplinary rules is determined to be a manifestation of the child's disability, the school must either conduct a functional behavioral assessment, or review and modify if necessary any existing behavioral intervention plan. The school also must, unless otherwise agreed upon by the parents and the district, return the child to the placement from which he or she was removed. 34 C.F.R. § 300.530(f) (2008).

Additionally, "[i]f a pupil who has an individual education plan is restrained or removed from a classroom, school building, or school grounds by a peace officer at the request of a school administrator or a school staff person during the school day twice in a 30-day period, the pupil's individual education program team must meet to determine if the pupil's individual education plan is adequate or if additional evaluation is needed." MINN. STAT. § 121A.67, subd. 2 (2008); see also MINN. ADMIN. R. 3525.2900, subp. 5(C) (2008) (requiring IEP team meeting in certain circumstances after emergency intervention or conditional procedures have been used).

If a student with an IEP is excluded or expelled for misbehavior that is not a manifestation of his or her disability, the district must continue to provide special

education and related services after any imposed period of suspension. The school district must initiate a review of the student's IEP and "conduct a review of the relationship between the pupil's disability and the behavior subject to disciplinary action and determine the appropriateness of the pupil's education plan before commencing an expulsion or exclusion." MINN. STAT. § 121A.43 (2008). Clearly, there are many statutory protections in place to reassess and ensure that the needs and education plan of a child with a disability are appropriate before extreme disciplinary consequences are implemented.

In addition to ensuring that a child has been properly assessed, evaluated and provided appropriate services, another solution for some children could be the use of an "education passport."²⁶ This would be a particularly useful approach for those students who are subject to multiple transfers. The concept of an education passport is that it allows a child's educational information to be kept together which then would follow the child. For example, all of the child's credits, schools attended, and educational plans would be part of the passport and thus would be easily available when the child attends a new school. This concept currently focuses primarily on court-involved children such as foster care youth who often change schools when they are moved to new homes; however, it could be used for all students in our increasingly mobile society, and should be considered by school administrators and legislators as a way to ensure a student's educational record is not lost.

Resources for Children and Parents

Minnesota has many organizations that provide information, help and advocacy for parents and children with disabilities. The following is a list of such organizations:

1. P.A.C.E.R. (Parent Advisory Coalition for Education Rights), a parent training and information center for families of children with disabilities. You may contact P.A.C.E.R. at www.pacer.org, 952.838.9000, 1.800.537.2237, or 952.838.0190 (TTY).
2. Minnesota Disability Law Center, which provides advocacy for children with disabilities. The Center is located at 430 First Avenue N., Mpls, MN 55401 and can be reached at 612.332.1441, 612.332.4668 (TTY), 1.800.292.4250;
3. Legal Aid Society of Minneapolis Youth Law Project offers counseling, advocacy and representation to youth aged 12-18 who live in Hennepin County and are facing issues of abuse, neglect, abandonment and/or estrangement. The project advocates for youth at school as well as truancy matters. It is located at 2929 Fourth Avenue South, Minneapolis, MN 55408 and can be reached at 612.827.3774.
4. Southern Minnesota Regional Legal Services (SMRLS) Education Law Project at 652.222.5863 provides legal advocacy on special education issues for students who reside in Ramsey County.
5. Minnesota Department of Children, Families & Learning at 651.582.8689, 651.582.8201 (TTY) also provides information about parental rights and procedural safeguards.
6. Family Service Inc., Learning Disabilities Program, at 651.222.0311, 1.800.982.2302, 651.222.0175 (TTY) provides information and support to parents with children with learning disabilities residing primarily in Dakota, Ramsey, Anoka and Chisago counties.

Another useful resource and guide is In School, The Right School, Finish School - A Guide to Improving Educational Opportunities for Court-Involved Youth, by National Children's Law Network, April 2007. This guide provides a valuable state resource list and practice tips. Although the guide is primarily for those working with court-involved youth, much of the information contained in the guide is also useful for anyone working with a child with disability or other education concerns.

Conclusion

Parents need to be mindful of the obligations that their child's school has to their child, and need to be an active part of their child's education team. This means requesting evaluations for possible eligibility for special education services, demanding IEPs for children who have special education needs, and attending IEP meetings. Parents must question their child's educators as to what and why specific plans and strategies are being implemented for their child and must work collaboratively with the other team members.

It is important that students and their parents stand up for their school rights. In order to do this they must educate themselves as to the school's written policies and obligations.²⁷ It is necessary to identify the problematic behaviors in order to determine the proper diagnosis and education plan and thereby avoid unnecessary and extreme negative consequences for students. It is hoped that with a strong IEP, and if necessary EBD support plan, extreme disciplinary decisions such as expulsions and exclusions for students are decreased. The key to avoiding extreme and negative school consequences is to correctly identify a child's behavior limits and plan accordingly.

When behavioral issues come to a head in the school setting, resulting disciplinary decisions can be extreme and have serious repercussions for a student's educational career and future. Parents and family law attorneys should be mindful of the student's appeal rights as well as the school district's obligations in making disciplinary decisions.²⁸

Notes

¹ A good summary of this concern can be found at Education on Lockdown: the Schoolhouse to Jailhouse Track, Advancement Project in Partnership with Padres and Jovenes Unidos, Southwest Youth Collaborative, and Children & Youth Justice Center of Northwestern University School of Law, March 2005. Moreover, students are well advised to remember that police liaisons at schools are in fact police officers and any comments made to them are comparable to any other statements made to police officers. In the Matter of the Welfare of B.M.K., No. A07-0852, 2008 WL 1972488 (Minn. App. May, 6, 2008).

² An "expulsion" prohibits a student's further attendance for up to 12 months; an "exclusion" prevents enrollment or reenrollment of a student for a period not to extend beyond the school year. MINN. STAT. § 121A.41, subds. 4, 5 (2008).

³ "Breakdown of Expulsions/Exclusions Reported by District for FY06" at <http://education.state.mn.us/mdeprod/groups/Compliance/documents/Report/030948.pdf>.

⁴ "Breakdown of Expulsions Reported by District July 01, 2004 to June 30, 2005" at <http://education.state.mn.us/mdeprod/groups/Compliance/documents/Report/008561.pdf>.

⁵ "Number and Percentage of Expulsions by Race for Fiscal Year 2005" at <http://education.state.mn.us/mdeprod/groups/Compliance/documents/Report/008557>.

⁶ "Number and Percentage of Expulsions by Gender for Fiscal Year 2005" at <http://education.state.mn.us/mdeprod/groups/Compliance/documents/Report/008569>.

⁷ "No public school shall deny due process or equal protection of the law to any public school pupil involved in a dismissal proceeding which may result in suspension, exclusion, or expulsion." MINN. STAT. § 121A.42 (2008).

⁸ Children's Law Center of Minnesota (CLC) is a 501(c)(3) nonprofit organization whose mission is to promote the rights and interests of Minnesota's children in the judicial, child welfare, health care and education systems. CLC carries out its mission in three main ways: (1) by providing direct representation for children; (2) by

advocating and participating in state-wide efforts to improve and reform the child protection and juvenile justice systems; and (3) by training volunteer lawyers and other child advocates to represent children.

⁹ N.Y.B. also challenged the board's decision on due process grounds, relying on technical violations of the PFDA. The court denied this claim, finding that N.Y.B. did not demonstrate that she was prejudiced by the technical violations of the PFDA, and thus had not established a basis for relief. N.Y.B., 750 N.W.2d at 327-28.

¹⁰ Procedural protections required for school disciplinary situations are set forth in Minn. Stat. § 121A.47.

¹¹ A list of over 180 Minnesota alternative schools can be found at the Minnesota Association of Alternative Programs website, at <http://www.maapmn.org/schools/>.

¹² See <http://gordonparks.spps.org>.

¹³ See <http://leap.spps.org>.

¹⁴ See <http://alternative.npls.k12.mn.us/home.html>.

¹⁵ For example, Minnesota's Intermediate District 287—a collaboration of 13 community school districts in the west, northwest, and southwest Twin Cities Metro area—has Area Learning Center “educational programs that are tailored to meet the needs of at-risk learners and to help each student earn a high school diploma.” http://www.district287.org/index.php?src=gendocs&link=teachLearn_ALC_Overview&category=TeachingLearning_ALC. Students are considered “at-risk” for a variety of reasons, such as being chemically dependent, being chronically truant, having been expelled or excluded, or having been homeless, among other factors. http://www.district287.org/index.php?src=gendocs&link=teachLearn_ALC_Eligibility.

¹⁶ “Number of Percentage of Expulsions and Exclusions by Reason for Fiscal Year 2006” at <http://education.state.mn.us/mdeprod/groups/Compliance/documents/Report/030949.pdf>.

¹⁷ IEPs will be discussed in greater detail in the Solutions section of this article, *infra*.

¹⁸ Twelve percent of all students in alternative schools in 2000-01 were special education students with IEPs in place. NCES Rpt. at pp. iv, 34.

¹⁹ See <http://alc.spps.org/Eligibility.html>.

²⁰ A child that has an emotional or behavioral disorder and needs special instruction and services is a child with a disability under Minnesota law. MINN. STAT. § 125A.02, subd. 1 (2008). Emotional or behavioral disorders (EBD) are defined in the Minnesota Administrative Rules as “an established pattern of one or more of the following emotional or behavioral responses:

- A. withdrawal or anxiety, depression, problems with mood, or feelings of self-worth;
- B. disordered thought processes with unusual behavior patterns and atypical communication

styles; or

C. aggression, hyperactivity, or impulsivity.” MINN. ADMIN. R. 3525.1329, subp. 1 (2008). To qualify as EBD, the “established pattern of emotional or behavioral responses must adversely affect educational or developmental performance, including intrapersonal, academic, vocational, or social skills; must be significantly different from appropriate age, cultural or ethnic norms; and be more than temporary, expected responses to stressful events in the environment.” *Id.* The child is in need of special education and related services for EBD when the pattern of emotional or behavioral responses (e.g., inappropriate language, overly affectionate behavior, or threatening/antagonistic behaviors) adversely affects educational performance, and significant impairments in intrapersonal, academic, vocational, or social skills are demonstrated. MINN. ADMIN. R. 3525.1329, subp.2a (A)–(C) (2008).

²¹ These procedures typically involve use of a behavioral intervention plan (discussed *infra*), incorporated through the IBP and following the completion of a functional behavioral assessment (FBA) by the IEP team.

²² Children with disabilities are generally entitled to special instruction and services through the age of 21. See MINN. STAT. § 125A.03(b) (2008).

²³ Minn. Stat. § 125A.03(a) defines “special instruction and services” as a “free and appropriate public education” including special education and related services as set forth in the Individuals with Disabilities Education Act, subpart A, section 300.24.

²⁴ Conditional procedures are “interventions that meet the definitions of aversive and deprivation procedures which are not prohibited” and include 1) manual restraint, 2) mechanical or locked restraints, 3) time-out procedures for seclusion, and 4) temporary delay or withdrawal of regularly scheduled meals or water. MINN. ADMIN. R. 3525.0210, subp.9 (2008).

²⁵ Conditional procedures may also be used in an emergency situation according to Minn. Admin. Rule 3525.0200.

²⁶ See Mary Lee Allen & Mary Bissell, *Safety and Stability for Foster Children: 14 The Policy Context*, THE FUTURE OF CHILDREN: CHILDREN, FAMILIES AND FOSTER CARE, 60 (2004).

²⁷ The Minnesota Department of Education's website has considerable information helpful for navigating the school system and disciplinary issues. Go to http://www.spps.org/Rights_and_Responsibilities.html for more information.

²⁸ For more information on appeal rights following school disciplinary decisions, see Minn. Stat. §§ 121A.49, 121A.50.

Ms. Semke became a staff attorney at Children's Law Center of Minnesota (CLC) in March 2008, after 8 years of civil litigation practice at the Minneapolis law firm of Flynn, Gaskins & Bennett, where she was a partner. She received her Juris Doctor from the University of Iowa College of Law and her Bachelor of Arts from the University of Iowa. Ms. Semke was a CLC volunteer attorney for four years prior to joining the staff at CLC. She has been active in bar association activities, most recently as co-chair of the 2008 MSBA Bar Convention, as chair of the HCBA Community Relations Committee, and as a member of The Hennepin Lawyer committee. She has been recognized by Minnesota Law & Politics as a "Rising Star" for the past four years, and was honored as one of Minnesota Lawyer's 2007 "Up-and-Coming Attorneys."

Ms. Gueinzius is the managing attorney at Children's Law Center of Minnesota (CLC). She received her Juris Doctor from Hamline University School of Law and her Bachelor of Arts from Northwestern University. After graduating from law school, Ms. Gueinzius clerked for the Third Judicial District in Olmsted County. Prior to joining the staff at CLC, she had her own private practice specializing in family and juvenile law matters and was a long standing volunteer for CLC. She has also served as a Guardian ad Litem in both Hennepin and Ramsey Counties. In addition to representing children in court and assisting the over 300 volunteer attorneys of CLC, Ms. Gueinzius is an active member of the Ramsey County Children's Justice Initiative. She is a member of Minnesota Women Lawyers, the Minnesota State Bar Association and the Hennepin County Bar Association. She is the proud parent of two children.