

Back To School: P&A's Advocate Across the Board for Students With Disabilities

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Protection & Advocacy systems (P&As) are best known for their special education casework, but there are many other forms of advocacy which are just as important in order to truly protect the rights of students with disabilities. The casework itself must address every aspect of the students school experience, not just the content of his or her Individualized Education Plan (IEP), or the type of services provided (although these issues remain extremely important).

P&A staff:

- Comment on regulations and policies proposed by government agencies.
- Form coalitions of disability groups and national working groups of special education advocates and attorneys in order to strategize or to solve a particularly difficult problem.

Amendments have been proposed to the Individuals with Disabilities Education Act (IDEA) which would allow school districts to cut off special education services for students who are long term suspended or expelled for bringing a weapon, gun, firearm or illegal drugs to school, or possession at school or a school function. This is an important issue not only for the very small percentage of special education students who face this type of discipline, but also as a precedent-- allowing for the first time, the complete cessation of services for special education students. These amendments, if they become law, will have a significant impact on students with disabilities. Staff of the Advocacy Center Training and Technical Assistance Center of the National Association of Protection & Advocacy Systems, Inc. (ATTAC/NAPAS) has information regarding the potential impact of these proposed amendments as well as other possible solutions to school safety problems. Staff is working with other disability groups around this issue.

- Serve on the steering committee of state self assessment teams which prepare the reports that the Department of Education (DOE), Office of Special Education Programs (OSEP) uses when monitoring states to see if they are complying with IDEA and Section 504.
- Meet with federal agency and legislative staff to educate them about practical issues and access barriers that P&A staff encounter in the field.

Enforcement of Section 504 and the IDEA by the federal government is an important issue, since a statute is only as strong as it is enforced. NAPAS staff meet with US Department of Education, Office of Civil Rights (OCR) staff, which enforce Section 504, to discuss ways to make its enforcement more effective. P&A and NAPAS staff also meet with a coalition of education related disability groups to discuss monitoring and enforcement by the US Department of Education OSEPs, which enforces the IDEA.

The P&As casework demonstrates a broad view of the role of education in the life of a child with a disability. For school age children, school is more than just a place to learn the specific skills necessary for a life in the adult work force. It is also the location of recreation, athletics, health, nutrition, social and ethical training. It is, in essence, a reflection of all aspects of the child's life. Here are some examples of work the P&As have done in other areas of a child's school day:

§ J.A., a young student in Northern Marianas, required a power wheelchair to get around at school. The school district refused to provide the expensive device, and the case went to a due process hearing. J.A. won his hearing, and the hearing officer's fifty page decision ordered that the district provide:

- 1) an evaluation of how he would actually use the chair in his day to day life, both at home and at school;
- 2) a training program on the use of the wheelchair, including if necessary, one-to-one aides to provide the training;

3) a physical therapist to create the professional physical therapy goals, objectives, and services he needs to operate the chair;

4) any other services he needs to meet his communication and independent mobility needs, so that he can be included in the regular classroom; and

5) one full year of compensatory education.

- In a California case, students access to social time with peers and extracurricular activities was a key issue. One student had been "included" in the regular education classroom but could not get physically close to the other students because her wheelchair would not fit all the way down the aisle. Students with disabilities were also excluded from field trips and school assemblies. The county department of education agreed to integrate students more completely, as part of the settlement of the case.

- In a Michigan case, students with learning disabilities in an all day high school resource room were prevented from using the schools brand new \$50,000 computer lab, and were expected to make do with one very outdated terminal located within the resource room itself. The principal said "those students will never need to use a computer in their jobs." and that it would be too time consuming for the person who supervised the lab to help them. Knowing that the use of a personal computer was an essential part of work, school and recreation, the exclusion from the computer lab frustrated one student and he sought help from the P&A. As a result of P&A intervention, the students in the resource room received computer training by an LD certified teacher, and the same access to the lab as the other students.

The number of cases regarding access to all of a schools programs, including its extracurriculars, may increase because the IDEA regulations released in March 1999 specifically address the need for inclusion in these areas.

The 8th Circuit Court of Appeals which handles appeals from federal district courts in Iowa, Missouri, Minnesota, Nebraska, North and South Dakota, and Arkansas recently held that Section 504 could not be enforced against state governments, and the IDEA could only be enforced when the state gave its permission to be sued (i.e. has waived its right to immunity). This is a very important and concerning decision because the states hold a great deal of

responsibility under both statutes. The decision set a legal precedent in the 8th Circuit states, and could have implications for the rest of the nation as well. On September 29, 1999, NAPAS and P&A attorneys are meeting with representatives from the US Department of Justice (DOJ) to collaborate around this issue.

Federal Government Reports on Race and Gender In Special Education*

The U.S. Department of Education (DOE), Office of Special Education Programs (OSEP) is the federal agency which monitors states to ensure that they are complying with the IDEA and its regulations. OSEPs most recent annual report to Congress includes national information about race, ethnicity, and gender in special education. This article is only a summary of the OSEP report - the original report (at <http://www.ed.gov/offices/OSERS/OSEP/OSEP98AnIRpt> .) provides more detailed information.

RACE

Identification and Placement

According to the OSEP report, African American students nationally make up 16% of the elementary and secondary school enrollments, but 21% of the total enrollments in special education. Poor African American students are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterparts. Children categorized as eligible for special education because of emotional disturbance are more likely to be African American, male, economically disadvantaged, and living in a single parent home, foster home or other alternative living arrangement (as defined by the study). Research suggests that some of the reasons for the high identification of African Americans as emotionally disturbed may be (culturally based) teacher expectations about behavior, and tests which are not culturally sensitive.

Both minority students in general, and students identified as emotionally disturbed, are more likely than other students to receive special education services in less inclusive and/or segregated settings, such as special education classrooms or schools. In fact, the majority of students with emotional disturbance receive most of their services in (disability) segregated environments. The report suggests that reasons for this segregation include the failure to provide the supports the student needs to succeed in a regular education setting, a decline in the use of resource rooms, and rising academic and behavioral standards.

Since very poor students are overwhelmingly represented in special education and a student may be both a minority student and be very poor, it is not always possible to pinpoint the exact cause of the disproportionate representation of minority students in special education. However, research completed for the U.S. House of Representatives in 1997 suggests that the special education identification process is often reactive, subjective, limited by a local lack of culturally and linguistically appropriate assessment tools, driven by institutional needs, and constrained by parental concerns about negative labels.

Outcomes

Males, African Americans, and students with an annual family income under \$12,000 are more likely to be placed in restrictive settings, less likely to receive counseling at school, less likely to graduate, and more likely to drop out than their female, White, and more affluent counterparts. In fact, more than 50% of minority special education students in large cities drop out of school. The drop out rate for minority special education students is 68% higher than it is for White special education students.

A study tracking students categorized as emotionally disturbed, a special education category which is disproportionately populated by African American students, found that within 3-5 years of leaving school, 48% of the female students were mothers as compared to 28% of female students with other types of disabilities. Also, 58% of the former students had been arrested, as compared to 19% for students with other disabilities.

The 1997 Amendments to the IDEA require that local education agencies (school districts) use tests and other evaluation materials which do not discriminate racially or culturally to identify students as eligible for special education. All states are required to collect and examine data to see if a "significant disproportionality based on race" is occurring in the identification or placement of students with disabilities. If a state sees that a significant disproportionality exists, it must review and revise the state policies, procedures, and practices that are used to identify or place students.

GENDER Identification

Two thirds of all students in special education are male, although they make up about half of all students. In secondary school, the percentage of males is much higher in the general special education categories of learning disabilities (LD), emotional disturbance (ED), and multiple disabilities, and is somewhat higher in mental retardation and speech impairment (SI). There is a more proportionate number of female students in the categories of visual impairment, hearing

impairment, deafness, orthopedic impairment and other health impairment. In general, girls in special education may have more severe disabilities than boys.

The report suggests that some reasons for the greater representation of boys in special education are: 1) Girls mature earlier than boys; 2) Boys behavior may predispose them to identification for special education; 3) Teachers may react differently to boys than to girls; 4) The methods used to identify students with LD, ED and SI may be biased in favor of girls; 5) There may be physiological differences, such as girls are believed to have fewer birth defects than boys; 6) Although they are equally likely to have LDs, Attention Deficit Disorder (ADD) is more prevalent in males and ADD can make it more difficult for a student to overcome LDs, causing more boys to be categorized.

In one study, students who were given a test for reading disability, and did not meet the criteria for a reading disability based on the test results, but who had difficulties with behavior, attention, fine motor skills, and language were more likely to be identified as having a reading disability. Students who did meet the criteria for a reading disability based on test results, but were identified as having a reading disability were likely to have no behavior problems. The report also suggests that one reason girls are less often identified as ED, is that the evaluations used to identify ED students do not pick up on such ED symptoms as depression, suicidal ideation, and suicide attempts symptoms as easily as they do the types of acting out (externalizing) behaviors that boys more often display. More adolescent girls experience depression than boys. Those girls who do get identified as ED tend to show externalizing behaviors.

Outcomes

Girls in special education tend to do better than boys in school environments, e.g. they receive better grades, graduate at higher rates. However, once they are out of school, boys are more likely to be employed, have higher wages, work more hours, and are more likely to enroll in post secondary education or training.

THE ADVOCATES ROLE

Advocates can correct individual cases, for example, by ensuring that a student is receiving the supports he or she requires to remain in the regular education classroom -- to prevent placement in a segregated setting. Advocates can also assist states and districts by pointing out policies that appear to result in the inappropriate identification, and/or placement of minority students with disabilities into segregated or less inclusive settings.

Advocates can also point out cases where gender seems to be a factor, e.g. female students with emotional impairments who are overlooked, or male students with behavior problems who have been wrongly identified as having learning disabilities. Often behavior problems can be solved successfully outside of special education with the right interventions. Advocates can also point out policies which appear to result in gender discrimination. All civil rights violations should be reported to the appropriate state and federal civil rights enforcement agencies.

*The information in this article is based solely on the OSEP report, the IDEA statute and its regulations, except for the section on the advocates role.

WORK BEING DONE IN THIS AREA

The Native American P&A was involved in a class action lawsuit alleging that students received different levels and quality of special education services because of their race. In California, one of the nations largest school districts, Los Angeles Unified School District, was sued in a class action law suit regarding the over-identification of African American students as mentally retarded. As part of the resolution of that case, Los Angeles stopped using IQ tests to determine eligibility for special education.

SPECIAL EDUCATION LINKS

U.S. Department of Education, Office of Special Education and Rehabilitation Services, Office of Special Education Programs (OSEP): www.ed.gov/offices/OSERS/OSEP/index.html *Contains the annual reports to Congress as referenced in this issue, information about the IDEA 97 and the new regulations, copies of state monitoring reports and other useful information.*

Other Links Which May Be Of Interest To The Special Education Advocacy Community

The ARC of the US: www.thearc.org/

Council of Parent Advocates and Attorneys: www.copaa.net

Family & Advocates Partnership for Education (FAPE), of the PACER Center: www.fape.org

National Center for Youth Law: www.youthlaw.org/contact.htm

National Parent Network on Disabilities (NPND): www.npnd.org

Rehabilitation Engineering and Assistive Technology Society of North America: www.resna.org

TASH: www.tash.org/misc/index.htm

United Cerebral Palsy Association: www.ucpa.org

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