Children with disabilities in the juvenile justice system

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ABSTRACT

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Children and youth with disabilities are over represented in the juvenile justice system. Studies show that a lack of compliance, monitoring and enforcement of the mandates of the Individuals with Disabilities Education Act (IDEA) exists. The purpose of this study is to explore the relationship, if any, of the over representation of children and youth in the juvenile justice system and a deficiency in providing special education supports and services as mandated by the IDEA. The files of children and youth presently involved in the juvenile justice system were reviewed for this study and the available educational records, of those identified to receive special education services, were examined. The existing records were utilized to assess the special education services that were or were not provided. Results revealed a number of non-compliance issues pertaining to the mandates of the IDEA, in the areas of identification, evaluation, placement and the provision of related services.
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CHAPTER 1

INTRODUCTION

An over representation of children and youth with disabilities exists in the juvenile justice system. This is evidenced in various studies (McGarvey & Waite, 2000; National Center of Secondary Education and Transition, 2003; Pacer Juvenile Justice Project, 2004) which have estimated the numbers to be anywhere from one-half to over two-thirds of the total population of children and youth in the juvenile justice system. Another extensive study was conducted by the National Council on Disabilities (2003), "Youth with Disabilities in the Justice System", which examined evidence based research that specifically addresses the needs of that unique population. This study found that there exists high speculation between the failure of schools to properly implement IDEA and the increasing over representation of youth with disabilities who become involved in the juvenile justice system. They concluded, in agreement with additional reports from the President’s Mental Health Commission (2001) and the General Accounting Office (2001), that systematic documentation as well as evidence based research is desperately needed that will focus on noncompliance of disability law, the existing gaps in providing special education services/supports and their relationship (if any) to the well documented fact that youth with disabilities are over represented in the juvenile justice system.
This speculation undermines the common misperception that children with disabilities are receiving the supports and services they are required to receive under the Individuals with Disabilities Education Act (IDEA). The intent of the IDEA is to ensure “that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services to meet each child’s unique needs”, 20 U.S.C., 1400 (d)(1)(A). These protections are provided to ensure that children and youth with disabilities have the same opportunities to achieve their future goals and dreams as their peers without disabilities.

Unfortunately, as evidenced in statistics reported by McGarvey & Waite (2000) the protections do not seem to be working. They found that while a ten percent incidence of children with disabilities exists in the general population, more than forty percent of juveniles involved in the justice system have been identified to have a (federally defined) disability. Since their research, The National Center on Secondary Education and Transition (2003) has reported that the number of children with disabilities in the juvenile justice system may actually be closer to sixty-six percent, while the Pacer Juvenile Justice Project (2004) reported estimates of between forty-five and seventy-five percent.

Studies have shown that the implementation of an Individualized Educational Plans (IEP) are particularly relevant for children and youth with disabilities who exhibit behavioral problems, when they encompass both academic and behavioral needs, include positive behavior support (i.e. goals and plans) and
contain schedules for counseling and/or tutoring, as well as social and vocational training (Block 2000).

One viable theory suggested for the high percentage of children and youth with disabilities ending up in the justice system, is that the schools may not be providing and/or implementing the required supports and services, required by law, before these children and youth become involved in the juvenile justice system (Finn et al. 2001). This particular theory is backed up by a report from the National Council on Disability (2000) that established that for over twenty-five years there has been widespread non-compliance in providing children and youth with disabilities the services and supports that they are entitled by the IDEA to receive. They reviewed reports from the United States Department of Education regarding compliance and monitoring issues that encompassed the previous twenty-five years. Their findings, that many students were receiving either no support at all or that the services that were being provided were not adequate to meet their individual needs are undisputed. Regrettably, a relationship between the lack of providing needed services and supports and possible future involvement of children and youth with disabilities in the juvenile justice system was not explored.

Statement of Purpose

This study is designed to examine the educational records of students with disabilities who are currently involved in the juvenile justice system and are receiving legal representation through the Thomas and Mack Juvenile Justice
Legal Clinic in the Boyd School of Law. It’s intent is to document the special education services and supports they have or have not received in order to determine whether or not their schools have provided past and present compliance with state and/or federal laws, prior to their involvement in the juvenile justice system.

Research Questions

The questions addressed in this study are:

1) What are the tools that were utilized for evaluation, identification and assessment of present levels, as listed on the Individualized Educational Programs (IEPs) available for review in this study of special education students referred to the juvenile justice system.

2) What are the goals and objectives contained in the current/past IEPs of special education students referred to the juvenile justice system and: a.) do they match the assessment data and/or b.) are they specific and measurable?

3) What are the indications, in the available records, that the procedural safeguards as required in the IDEA, to ensure parental participation in IEP and disciplinary meetings, were implemented and followed for this group of special education students referred to the juvenile justice system?

4) Are Behavior Intervention Plans (BIPs) included in the IEPs of clients who had previously demonstrated behavior problems; is behavior
checked as a special factor in the IEP, as having an impact on the student’s learning and/or the learning of others?

5) What are the components of the BIPs included in the IEPs of these students, were they designed to: a) be individualized; b) match target behavior(s) to behavior(s) identified in present levels; c) outline progressive discipline steps; d) list positive reinforcement as well as consequences; e) identify the person(s) responsible for implementation; and f) include a review date?

6) What are the related services provided for in the IEPs and do they meet the needs of the special education student referred to the juvenile justice system as identified in present levels?

7) What are the specially designed instruction items, placement considerations and the percent of time the special education student is designated to spend in the regular education environment and do they a) include the time period and locations and b) encompass the entire school day?
CHAPTER 2

REVIEW OF RELATED LITERATURE

This review of related literature encompasses three general areas: (1) An overview of the incidence of children and youth with disabilities in the general population and in the juvenile justice system; (2) an overview of the laws governing special education services in the public school system; and, (3) a review of related literature addressing the relationships between children and youth with disabilities and the existence of gaps in the needs and services areas of special education, delinquency and involvement in the juvenile justice system.

Incidence of Children/Youth with Disabilities
In the Juvenile Justice System

A review of the literature regarding the incidence of children and youth with disabilities leaves one with no doubt that an over representation of children and youth with disabilities exists in the juvenile justice system. A number of various reports exist that have estimated the incidence of children and youth with disabilities in the general population to be approximately ten percent (McGarvey & Waite, 2000). On the other hand, while there are limited reliable, empirical studies available reports have indicated that no less than forty percent of children and youth in the Juvenile Justice System have a federally defined disability
The National Center on Secondary Education and Transition (2003) has reported that the percentage of children and youth with disabilities in the Juvenile Justice System may actually be over and above sixty-six percent. The Pacer Juvenile Justice Program, which is the first national project that has been developed to examine issues related specifically to the over representation of children and youth with disabilities in the Juvenile Justice System, issued a report in 2004 that estimated the number of children and youth involved in the Juvenile Justice System who have been identified with one or more disabilities, to be now somewhere between forty-five to seventy-five percent. They have also reported that the three most prevalent types of disabilities being identified among children and youth with disabilities, who are involved in the juvenile justice system, are emotional, learning and developmental disabilities.

The fact that the percentage of children and youth involved in the juvenile justice system being reported seems to be on the rise is understandable when one considers a related report from the United States Department of Education (2001). It confirms that between the years 1993 and 1997 the number of children and youth with disabilities who were incarcerated rose twenty-eight percent. In actual numbers, this means that twelve-thousand, five-hundred children and youth with disabilities were incarcerated in 1993 compared to sixteen thousand children and youth with disabilities who were incarcerated in 1997. That adds up to an increase of about seven hundred children and youth with disabilities being confined per year and an additional total of three-thousand,
five-hundred children and youth with disabilities being confined in the same time period of one-year, only four years later.

In a more recent related study, it was estimated that at the present time there are close to fifty thousand children and youth with disabilities, who suffer from emotional and/or mental disorders, being arrested and often incarcerated in the United States every year (Tulman, 2003). Existing reports in the literature, which clarify the current rise of the percent of children and youth with disabilities who are becoming involved in the juvenile justice system, seemingly draw a parallel with an ongoing study that is conducted and reported by the Virginia Department of Criminal Justice Services, a part of which addresses children and youth with disabilities who are involved in the juvenile justice system in the state of Virginia. A report from that study, in a bulletin dated September, 2001, indicates that from the year 1995 to the year 2000 there were six times as many minor offenses reported to the juvenile justice system in the state of Virginia, involving children aged ten and under (Hanna, 2001). Reports of serious delinquent offenses increased fifty-five percent involving children under age thirteen and there was a twenty-seven percent increase of reports involving youth ages fourteen to seventeen during the same time period (Hanna, 2001).

Although the reporting of children and youth with disabilities who are involved in the juvenile justice system appear to be increasing at alarming rates, the available statistics of children and youth with disabilities in the general population do not reflect the same trend. The Office of the Surgeon General (1999) has reported that children and youth with disabilities continue to represent
approximately eleven to twelve percent of our nation's total population of children and youth.

Unfortunately, there is a common consensus throughout the related literature that provides confirmation of the fact that few studies have been specifically designed and conducted to determine what specific factors affect the reasons children and youth with disabilities are over represented in the juvenile justice system (Brier, 1989). Additionally, few studies have systematically addressed the disability/delinquency link by utilizing appropriate research methods such as random samples of populations, ranges of disabilities and types of delinquencies (Malmgren et al., 1999). These existing deficits in research have resulted in an incredible lack of empirical data affecting almost every are of relationships involving children and youth with disabilities, delinquency, involvement in the juvenile justice system and whether or not there is an existing gap in the area of special education needs and provided services (Cramer & Ellis, 1996; Leone et al., 2002). Also, due to the existing deficits in research studies, little information is known regarding any school related factors and how those factors may or may not be impacting the over representation of children and youth with disabilities and their involvement in the juvenile justice system (Cramer & Ellis, 1996; Leone et al., 2002).

These unknown factors include both what schools are presently doing in relation to special education services and what more they should be doing to change the outcome of children and youth with disabilities who are undoubtedly over represented in the juvenile justice system (Leone et al., 2002). The idea that
children and youth with disabilities may not be receiving legally required services from schools is routinely suggested as a possible problem in the literature but this area, too, suffers from a tremendous lack of empirical documentation and research (Mears & Aron 2003). As pointed out frequently, research is sorely needed in every area that involves children and youth with disabilities who are at risk of becoming involved in the juvenile justice system as well as those who are presently involved in the juvenile justice system (Mears & Aron, 2003).

One identified relationship that has been consistently well documented and is related to this area of research, is the determination that school failure is a critical risk factor for delinquency among children and youth with disabilities (Patterson & Blum, 1996). Mc Cord et al., (2001) also found that poor school performance, retention and truancy are risks for engaging in delinquency. A number of other studies including Earls (1994), Greenwood et al. (1996), and Ingersol & Le Boeuf (1997), concur that school failure has time and again been found to be associated with delinquency, as well as with children and youth with either emotional or learning disabilities who have not been identified or are not being serviced effectively in their schools. This is particularly troubling for children and youth with emotional disabilities, as emotional issues on their own have also been found to be a related risk factor to school failure (Patterson & Blum, 1996). The United States Department of Education (1998) reported these children and youth, as a group, have the lowest grade point average, fail more courses, have higher retention and absenteeism rates and are more likely to drop out of school when compared to any of the other groups of students with other disabilities.
Another relationship in this area that has been clearly established and reported is the relationship between academic problems and behavioral problems (Hallenbeck & Kauffman, 1995). Studies have shown that low expectations for learning frequently result in academic failure and (as previously discussed) academic failure increases the risk for problem behaviors, delinquency and possible future involvement in the juvenile justice system (Hallenbeck & Kauffman 1995). While it is true that studies have consistently found and reported that children and youth with disabilities have a tendency to exhibit less impulse control, a lack of social skills and more susceptibility when confronted with peer pressure than their peers without disabilities in the same age group (Garfinkel, 2001). One factor that is often overlooked is that these same children and youth are not being provided the emotional and behavioral support and services that they are entitled to, by law, which would enable them to overcome these deficiencies (Garfinkel 2001). This apparent lack of providing children and youth with disabilities the services they need in our schools is a failure of our public school system to provide these students with a free appropriate public education as required by law.

The consequences of not meeting the needs of children and youth with disabilities are clearly defined by the National Council on Disability (2000) which reported that children and youth with disabilities are more likely to act out inappropriately and become involved in delinquent behavior that will eventually lead to involvement in the juvenile justice system, when their needs are not being met. In a related report on youth with developmental disabilities and the juvenile
justice system compellingly entitled, "Manifestation Destiny: School to Prison Pipeline", the author concluded that a failure to find, evaluate and/or provide needed special education services in schools, as well as the recent trend of schools to criminalize inappropriate school behavior by involving the police and the courts in school behavior issues, are quickly becoming the dominate factors impacting the over representation of children and youth with disabilities in our juvenile justice systems (Raskin, 2004). This report pointed out that although it is unlawful for schools to expel children and youth with disabilities, for whom they have not provided required services, if they exhibit behaviors that are a manifestation of their disability, they can legally have those same children and youth with disabilities arrested. The author predicted that unless these issues are addressed soon, they will continue to have a tremendous negative impact on this population of children and youth.

Laws Governing Special Education Services
in the Public School System

In their manual addressing the need of "Special Education Advocacy", Tulman and McGee (1998) have outlined the history of public education for children and youth with disabilities in the United States by describing it in the following way. Before 1975, in the United States, children and youth with disabilities who demonstrated behavioral problems were being placed in programs that excluded them from receiving a regular public school education and resulted in their receiving limited educational services and support. At the
present time, in the United States, all children and youth with disabilities between the ages of three and twenty-one years are entitled to a *Free Appropriate Public Education* (FAPE) in accordance with their state's educational standards and at no cost to them or their parent(s). A *Free Appropriate Public Education* includes special education and related services and at the age of fourteen (and older), transition services. They define related services to include any and all services that a child/youth needs in order to enable him/her to benefit, educationally, from special education services. Transition services are defined to include any and all services the child/youth needs to prepare him/her to transition from secondary to post secondary schools, from school to work and/or from dependent to independent living situations. A *Free Appropriate Public Education* also requires schools to systematically implement the Individuals with Disabilities Education Act (IDEA), a federal law that has been incorporated by all of the states and the District of Columbia.

The Individuals with Disabilities Education Act provides that children and youth with *certain* disabilities receive the services and protections, it is intended to provide by law, through our schools. The specific disabilities that are identified and included in the IDEA regulations include the following: mental retardation, hearing impairments, visual impairments, speech or language impairments, orthopedic impairments, traumatic brain injury, autism, serious emotional disturbance, specific learning disabilities, other health impairments and multiple handicapped. Tulman and McGee (1998) also discuss the fact that a child or youth who may have one of the disabilities identified in the IDEA, is not

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automatically entitled to the services and protections of the IDEA, unless or until
the disability has been found to be adversely affecting the student’s education. If
or when that is the case, the child or youth with a disability is entitled to receive
individualized special education services as well as related services as
established under the IDEA. These services and supports are required to be
designed to address their individualized academic and (if appropriate) behavioral
needs while providing an educational benefit. They also explain that the right to
an education under the Individuals with Disabilities Education Act demands that a
student’s social and emotional needs must be addressed and point out that the
words “unique educational needs”, as stated in the IDEA, are meant to include
the unique academic, social, health, emotional, communication, physical and
vocational needs of each individual student.

Their conclusion is that as proposed, a Free Appropriate Public Education
does not only include requirements for services supporting academic instruction
but it also requires services for the instruction of individualized behavioral
strategies, which are required to assist students in managing their own behavior.
This is also evident in a review of the conclusions of the court in the case of Chris
D. and Cory M. v. Montgomery County Board of Education, regarding a school’s
responsibility in providing services related to behavior problems. The court found
that the few behavioral goals contained in Cory’s Individualized Behavioral Plan
(IEP) were not adequate to prepare Cory to develop the behavioral skills
necessary to eventually access general education classes which, as the law
provides, would be the least restrictive educational environment for him. The
court maintained that it is not enough to provide and implement the generalized school and/or classroom behavior management plans that are readily available and often found duplicated in schools across the country, when addressing the specific needs of students with disabilities who also demonstrate behavioral problems. The explanation was that many of the generalized classroom and/or school wide behavior management plans are designed, more frequently than not, to temporarily “control” a student’s behavior and therefore have a tendency to rely on constant adult supervision which encourages dependency in the child or youth. The court further explained that the teaching of individualized behavioral strategies is required to address the unique and individual behavioral problems of children and youth with disabilities and that encouraging independent behavior control should be the ultimate goal. Finally, the court concluded that in order to be in full compliance with the law, individualized behavioral instruction is needed to provide educational benefit to children and youth with disabilities because they must be prepared for future survival in a regular education classroom (least restrictive environment), as well as for a successful future in the real world.

Tulman and McGee (1998) found further agreement with the court’s decision in this area, connecting behavioral issues of children and youth with disabilities with the obligation for schools to provided needed services to this population of students. They determined that school access, although it is entrenched in the Individuals with Disabilities Education Act, has no meaning if the behavioral needs of students are not addressed and if the services required to meet those needs are
not provided in schools. Further, they point out that the amendments to the IDEA in 1997 specifically mandate that schools have an educational duty to address behavior issues in order to eliminate the exclusion of any student with a disability from school, for discipline reasons.

One might presume that since procedural protections and provisions for services have been specifically designed and put into law in order to protect the rights of children and youth with disabilities since 1975, that schools are providing the individualized special education supports and services that are required to meet the unique, individual needs of this population of students. Unfortunately, it is shockingly apparent that schools are not identifying and/or providing the appropriate services to this population of students, when one considers a report of the findings of the National Council on Disability (2000) after their review of twenty-five years of reports from the United States Department of Education regarding the enforcement and monitoring of the Individuals with Disabilities Education Act. They found, in fact, that “every state was out of compliance with IDEA and that in some states the lack of compliance has existed for many years”. Additionally, it has further been determined that the requirements of the 1997 amendments to the Individuals with Disabilities Education Act are not being implemented in many schools across the country (National Council on Disability, 2000; Finn et al., 2001; President’s Commission on Excellence in Education, 2002). To make matters worse, in a related study conducted by the Surgeon General’s Office (2000), only one out of four students with significant emotional and behavioral problems were found to be receiving
the services they needed and are legally entitled to under the requirements of the IDEA.

Although these findings are alarming, they are also quite generalized. Regrettably, a review of the literature has not revealed the precise extent and nature of the problems that have resulted for children and youth with disabilities that may be due to the lack of implementation and enforcement of the requirements of the IDEA, as those factors are still unknown (National Council on Disability, 2000). What does seem to be apparent at this time is that wide ranging knowledge exists to confirm the fact that many of the provisions of the IDEA have not been fully implemented and that children and youth with disabilities, who are at risk for involvement in the juvenile justice system, are not receiving the services and supports they are entitled to receive by law (Yell, et al., 2000). These are in many cases, services that would address their social and emotional needs and decrease the risk of delinquency and (Yell, et al., 2000). Although school success by itself might not totally eliminate delinquency, without it children and youth with disabilities have a much harder time avoiding its pitfalls, as pointed out in a recent Juvenile Justice Bulletin (2000). But it is impossible to fully examine this area which encompassing yet another gap in the provision of needed services and supports, as the specific existing problems and their impact on children and youth with disabilities has been found, once again, to be in desperate need of research (National Council on Disability, 2000).
Relationships between Children with Disabilities,
Gaps in Special Education Services
and the Juvenile Justice System

As a country, we lack interest in the investing in the adequate services and programs that would reduce referrals of children and youth with disabilities to the juvenile justice system (Tullman, 2003). Part of the difficulty thus far has been attributed to the fact that there is a lack of social commitment in our society to support and fund appropriate services and programs for children and youth with disabilities in our schools (Smith et al., 2002). Research and programming for children with disabilities has continued to be a low priority (National Council on Disability, 2000). This has resulted in little reliable data being collected from our schools regarding needed services that are or are not being provided to children and youth with disabilities in compliance with the Individuals with Disabilities Education Act or the 1997 amendments to the IDEA that require specific, appropriate interventions for behavioral needs (National Council on Disability, 2000).

In that same respect, the procedural requirements of IDEA demand that the school's responsibility continues before, during and after a student is referred to the juvenile justice system (Juvenile Justice Bulletin, 2000). Not only is it true that many schools are not taking these responsibilities seriously, recent studies are showing a disturbing trend developing in our public schools and being referred to as "dumping" (Finn et al., 2001). "Dumping" reportedly consists of referring children and youth with disabilities to the juvenile justice system without
providing required special education services (Finn et al., 2001). Schools that have been "dumping" children and youth with disabilities into the juvenile justice system are doing so to avoid providing required special education services (Shum, 2001). They also are doing it in order to get around having to comply with the 1997 IDEA amendments, which require them to conduct behavior manifestations and find out if problem behaviors are related to a student's disability (Shum 2001). Establishing this relationship between the behavior and a student's disability would then put them in a position of having to deal with other compliance issues (Shum, 2001). Unfortunately, some school administrators feel that there is no incentive for their school to test, identify and service the children and youth with disabilities in their schools once they have demonstrated behavioral problems (Finn et al., 2001).

Although the term "dumping" is relatively new and unique in research studies and the literature, the policy it refers to is not quite as new. Consider the facts of the following case, Morgan v. Chris L., which took place in the early 1990's after Chris's school filed a delinquency petition against him after he was accused of damaging a water pipe in the boy's bathroom by kicking it. Chris had demonstrated both behavioral and academic problems at school in the past. Some members of the school's staff had previously suggested to his parents that they felt Chris had shown signs of Attention Deficit Hyperactivity Disorder (ADHD) and recommended that they seek "private" testing and treatment to help Chris. His parents, on the other hand, requested that Chris be assessed for special education services, and this request was pending at the time of the water
pipe incident. An administrative due process hearing was held and it was determined that the school was at fault and responsible not only for failing to assess Chris appropriately for special education services, but also for trying to use the juvenile justice system to change Chris's educational placement.

The school in this case appealed the due process decision to the Sixth Circuit. They not only lost on appeal but were, once again, found to have ignored their responsibilities under the Individuals with Disabilities Education Act by not identifying and providing services to Chris, which they were required by law to do, in order to ensure that Chris receive a "free appropriate public education". The court in this case also concluded that by attempting to use the juvenile justice system to change Chris' educational placement, rather than providing the individualized special education services and supports that he required, was not only irresponsible but that their actions were unlawful.

Although schools may not recognize the benefits of providing appropriate special education services and supports (Finn et al., 2001), all schools would be well served to consider the positive outcomes that they have the power to ensure. As the following two cases reported by the Children's Behavioral Alliance (2003) demonstrate, providing appropriate identification and services for children and youth with disabilities has the potential of providing phenomenal benefits both for the school and their students.

The first case concerns a male student who had been diagnosed with Attention Deficit Hyperactivity Disorder in the second grade. When the diagnosis was brought to the attention of the personnel at his school, he was evaluated and
identified for special education services under the classification of "other health impaired". Since that original evaluation and identification, it has been reported that the staff at this school have made a consistent, ongoing effort, to update his Individualized Educational Plan and provide individualized supports and services, as they have been needed. This student is now in the seventh grade and has a history of demonstrating academic achievement as well as appropriate school behaviors, which his parents attribute to his school's early intervention policies.

The second relevant case, as reported by the Children's Behavioral Alliance (2003), has to do with a sixth grade student who had a history of severe behavioral problems. The behavioral problems were not addressed appropriately by his school's personnel but led to repeated suspensions from school and finally resulted in criminal charges being filed by the school. This particular school was in a district that had a reputation for disciplining students rather than providing special education services. The student's parents sought the help of a local advocacy group that provided assistance for students with disabilities. They repeatedly tried to convince school administrators to provide the needed behavioral supports and services that their child required. They fought for eight months to try to get the school to provide the free appropriate public education that they knew their child was entitled, by law, to receive. Finally, in order to avoid a due process hearing, the district agreed that the school would provide the supports and services that were recommended. After one year of receiving the needed services, it was reported that the student had received no further referrals for discipline problems, no suspensions and no further criminal charges.
in or out of school. In fact, it was also reported that the school district was so impressed by the results of this individual case that they began to adopt policies (i.e. early identification and comprehensive services to address academic and behavioral needs) for all of their schools that are resulting in more successful outcomes for other children with disabilities who demonstrate behavioral problems.

As discussed, the needs for research and studies related to this topic appear to be overwhelming. The literature does show that children and youth with disabilities are ever represented in the juvenile justice system and that the over representation is increasing. There is no doubt that there are laws in place requiring schools to provide special education support and services. Anecdotal reports show that providing the required special education supports and services to children and youth with disabilities results in positive outcomes for these students. Whereas, reported court cases reveal that a lack of providing appropriate services and supports to children and youth with disabilities does impact behavioral problems, delinquency and ultimately, referrals to the juvenile justice system. Therefore, there is sufficient existing knowledge available to presuppose that a large number of students with disabilities are not receiving the special education services and supports they are required to receive by law.
CHAPTER 3

METHODOLOGY

Participants

The educational records in the legal files of one hundred and fifty-one children/youth, clients of the Thomas and Mack Juvenile Justice Legal Clinic in the Boyd School of Law were reviewed for this study. From the information available in those files it was determined that 83% were males, 16% were females and 1% were undetermined. They ranged in age from eight to seventeen years, at the time of their offenses. The offenses they were charged with, divided into six major categories, included: burglary, robbery and larceny which represented 29% of the total; assault and battery which represented 18% of the total; offenses involving weapons which totaled 12%; destruction of property, 6%; alcohol and drug offences, 17%; prostitution 3%; and the last category which was all other minor infractions and included loitering, curfew and probation violations, added up to 15% of the total.

The environmental information available revealed that 58% of the clients resided with their biological parents; 5% resided with foster parents; 1% resided in a residential treatment center; 18% were documented as living in other arrangements, which included residing with relatives, friends and on their own; w 18% were undetermined; and none resided in group homes or was incarcerated.
From the records available, it was determined that approximately thirteen percent (20 files) contained information that identified them as having been eligible to receive special education services. Of those clients, only a little over eight and one-half percent (13 files) had educational records that included copies of an evaluation or at least one Individualized Educational Plan (IEP) in their files. In reviewing those records, it was determined that 45% had been identified and qualified for special education services under the primary category of Emotional Disturbance (ED); 35% under the category of Specific Learning Disability (SLD); and 20% for whom a determination could not be made. There were 10% who qualified for services under a secondary category; those included both Health Impairment (HI) and SLD.

Instrument

A forty item Special Education Information Sheet (SEIS) was designed to obtain information from the educational records in the files of the participants. Each SEIS was assigned an identification number to protect confidentiality. Demographic information, such as gender, age, grade, ethnicity, primary language, home environment and offense were elicited at the beginning of the information sheet.

Following the demographic information were items regarding whether or not there was an existing IEP in the file, the eligibility category of the participant and the initial date of special education eligibility. The remainder of the information sheet was in the form of a checklist. It included nine items pertaining to
assessment tools inquiring as to what tools were utilized, such as cognitive testing, academic testing, teacher/student input, teacher observation, reports and grades. There were two items regarding goals and objectives, one to determine if they matched assessment data and the other to determine whether they were specific and measurable. Following were three items addressing behavior and social needs, first to check if they were identified in present levels, then to identify if behavior was checked as a special factor addressed in the IEP and finally to review whether or not they were included in goals and objectives.

There were eight items to assess Behavior Intervention Plans for individualization and appropriate content such as progressive discipline steps, consequences and positive reinforcement, person(s) responsible for review and the inclusion of a review date. There was one item related to reviewing accommodations and modifications. The participant's placement and the percentage of time spent in the regular education environment were the last two inquiries on the SEIS.

Procedure

Ethical approval for this study was obtained from the Institutional Review Board (IRB) at the Institution where the study was conducted. The principal investigator of the study trained two members of the Thomas and Mack Juvenile Justice Legal Clinic, students in education, on how to evaluate the participant’s educational records utilizing the SEIS. The trained members of the clinic reviewed the educational records contained in the legal files of the participants.
A SEIS was completed for each participant. After the information sheets were completed, two legal team members reviewed twenty percent of the files, in order to insure inter-rater reliability. Each SEIS was coded with an identification number to protect confidentiality.

Analysis

A descriptive analysis was completed on the demographic information of the participants identified for special education services and the existence of IEPs. Descriptive analysis was also utilized to describe the special education services that were/were not being provided to the participants. From a sample size of one hundred and fifty-one children/youth, twenty were identified as eligible for special education services; thirteen had records that included previous IEPs, existing IEPs, and/or evaluation reports. The quality of the services being provided were analyzed by evaluating assessment tools used for identification, determining individualization of support and services being provided, and comparing appropriateness of services to the participant’s needs as described in present levels. Additionally, behavior and social goals, services and supports were analyzed for specificity to the participant’s needs. This included measurability for determination of achievement; individuality pertaining directly to the participant’s assessment; and, the existence of all legally required components. Additional facts regarding non-existing IEPs, lack of parental participation and other required information missing from the educational records, documents, and files, were also included in the analysis.
CHAPTER 4

FINDINGS OF THE STUDY

Overview

In a review of the Special Education Information Sheets compiled for this study, it was determined that one of the major non-compliance issues related to the IDEA may be the lack of schools to forward special education records to the juvenile justice system. The IDEA mandates that schools are responsible for forwarding the special education records of their students to the juvenile justice system (IDEA '97). This study found that only thirteen percent of the total files reviewed contained the educational information necessary to confirm whether the participant had been previously evaluated and/or identified with a disability, requiring special education supports and services. The lack of educational records in the remaining files made it impossible to confirm or rule out whether previous special education evaluation, identification or provision of services had been provided. Due to the limited amount of existing educational records, an in depth study of the available special education records was conducted. Questions regarding special education services, support and compliance issues were evaluated through an extensive examination of these and included in the subsequent descriptive analysis.
Demographic Analysis of Clients with Special Education Identification

The records contained in the files of clients confirmed as having been previously identified for requiring special education services, revealed that fifteen percent were female and eighty-five percent were male. They ranged in age from eight to seventeen years at the time of their offense(s). A smaller percentage (25%) had been 12 years of age or younger while three times as many (75%) were 13 years of age and older. Almost half (40%) were residing with at least one biological parent, 20% were living with foster parents and 25% were residing in "other" circumstances. There were 15% without enough information to confirm environmental conditions. None were reported as living in group homes, residential treatment centers or correctional facilities.

There were records of initial evaluations, three-year re-evaluations, interim/initial/annual Individualized Educational Plans (IEPs) and/or revisions available in 65% of these client’s files. The remaining 35% did not include any of those records but did indicate that they had previously or were currently eligible to receive special education services. From those records and indications it was determined that 45% were eligible for services in the category of Emotional Disturbance (ED), 35% in the category of Specific Learning Disability (SLD) and 20% for whom a determination could not be made. There were 10% with a secondary eligibility that included categories of Health Impairment (HI) and SLD. It is important to note that although the actual offenses were varied, 75% were determined to be school related, 15% were not and 10% were inconclusive.
Descriptive Analysis

There were a total of thirteen files that contained special education records. Of those, one contained only the records of a three-year reevaluation for special education services, one had a revision to the IEP that included a behavior Manifestation Determination (MD) and two had revisions to IEPs that included both behavior MDs and Functional Behavioral Assessments (FBAs). One file contained records of the annual IEP in which both a behavior MD and a FBA were included. The remaining eight files contained an initial evaluation and/or three-year re-evaluation(s), the initial and/or at least two annual IEPs and (in some cases) additional educational records.

*Three-year Reevaluation Record*

*Client one.* The first file contained only the records of the most current three-year reevaluation for a seventeen-year old female client in the tenth grade. The client was referred to the juvenile justice system for “petit larceny and battery”. The records do not indicate any behavior issues. The Multidisciplinary Team (MDT) report indicates that the meeting was held without the parent. There were no current assessments utilized, the report indicates the MDT used “Information from the prior evaluations” of three and six-years prior and “attached progress reports”. The MDT concludes in the report that the student “continues to meet the definition of a child with SLD” and her IEP “needs to be revised and updated”.

*Manifestation Determinations And Functional Behavior Assessments*

The next three files contained only the records of the IEPs that were reconvened to conduct behavior MDs. They all were written shortly after the time...
of the school related offenses for which the clients were referred to the juvenile justice system. From these records, it was determined that all three clients were male, one was twelve years old and in the sixth grade, the other two were fifteen and sixteen years old respectively and both in the tenth grade at the time of their offenses.

**Client two.** The first of this group of clients had previously been identified to receive special education services under the category of "ED". He had a history of "impulsivity, making threats and gang activity," noted in the records. In the IEP for purposes of the behavior MD, it was also noted that he had a current IEP and Behavior Intervention Plan (BIP) in place, although copies of neither were in the file. This student was charged with two offenses, "physical attack on another student" and "disturbing the peace".

The behavior MD was conducted without the parent in attendance (copy of a notice to the parent was dated as sent on the day of the meeting). On the behavior MD form, the IEP team originally checked "yes" to the question of whether "the student's disability impaired his ability to control this behavior". That "yes" box was later crossed out and changed to a check in the "no" box, initialed by the LEA representative without any explanation provided. In addition, a note was included on the MD form and first written in the section under where the team identifies that there is a "causal relationship" between the student's disability and the infraction. That same note was (at some point) crossed out and moved to the section below "no causal relationship". The LEA representative also initialed this note with no explanation given. The note stated, "student has
impulsivity concerns, this incident is related to off campus conduct. It is conduct related and discipline in the opinion of this team should proceed." A brief IEP revision dated twenty-three days later was also included. The parent was present and Alternative Instructional Arrangement (AIA) was scheduled for "up to fifteen hours of educational instruction; one hour per day; agreed upon site. No further information was provided.

Client three. The records of this client also reflected a past history of "impulsive behavior". In this incident, he was accused of "setting fire to a poster" on a concrete outer wall of the school and was charged with "arson". Both a FBA and a behavior MD were conducted with the parents present. This meeting took place shortly after the offense and nine days before the current IEP was to expire. The IEP team under a "description of the student's current BIP" wrote "normal school rules". On this behavior MD form, there was a question that asked, "what accommodations and/or modifications have been attempted to address behavior"; the team answered "none".

The IEP team, in this case, agreed that "frustration and impulsivity triggered the behavior", they wrote on the first page of the behavior MD form "the team was clearly in agreement that the student's IEP and placement were not appropriate". On the second page, however, they checked "yes" to the question that asked, "if the team determined that the student's IEP and placement were appropriate". The IEP team agreed to "meet six days later to conduct an annual IEP meeting". The IEP also provided for AIA instruction, "fifteen hours pending Opportunity School". No further educational records were available.
Client four. On the first page of the IEP in this file, on the line designated for parent signature was written "reasonable efforts". The offences of this client included "under the influence" and "in possession of a controlled substance". These were also the behaviors addressed in the behavior MD and FBA. Although present levels indicate that the student was "failing all of his classes" and had been "suspended for tardies and truancy", FBA indicates that no BIP was in place at the time of the incident. A brief BIP was added to this revision that stated: "Follow class, school and school district rules and regulations; provide alternative opportunities to develop positive interactions with peers; follow school district policy and procedures regarding disciplinary actions". It was indicated that AIA instruction would be provided "pending administrative decision, regional review and placement at a site off campus".

Client five. The file of the next client contained only a record of his last annual IEP, which indicates, "Parent did not attend". Present levels were assessed with the "Brigance" and only the academic areas of reading and math were addressed in the results. Measurable goals were written for reading, language arts, math and four related to behavior. Transportation was provided as a related service.

Behavior was checked as a "special factor addressed in the IEP", a BIP was included along with both MD and FBA forms. All forms targeted the areas of "following rules, disrespect and physical/verbal aggressive behavior". "Juvenile court involvement" was indicated although the offense, "bomb threat", was not mentioned anywhere. The BIP included positive reinforcement as well as consequences and identified the person responsible for implementation. The
placement indicated “special school” with “five percent” of his day in the general education environment for “field experience”. There was no indication that this was a change of placement but seemed to be a continuation.

*Files Including Identification, Evaluation And IEP Records*

The following information was taken from the educational records in the files of the remaining eight clients. It is worth noting that although it appears to be a small sampling, these files contained an extensive variety of educational records with a wide-ranging spectrum of special education information. A close examination of the information revealed a myriad of problems related to special education implementation, compliance, and service and support issues. Seven of these clients are male and ranged in age from eight to seventeen, at the time of their offense(s) that led to their involvement in the juvenile justice system. One of these clients is female and was sixteen years old at the time of her offense. For the purpose organization only, they are in order by gender (males first) and age (at the time of their referral to the juvenile justice system) from the youngest to the oldest.

**Client six.** The first in this group of clients and sixth in the total was age eight, in the third grade when he was charged with “damage to school property” and referred to the juvenile justice system. In the second grade he had been evaluated for special education services. The evaluation included: “assessments for developmental and medical history; vision and hearing screening; interviews with student, mother and stepfather; administration of WISC III, WAIS, Revised Children’s Manifest, Anxiety Scales and Beery VMI to
student; and completion of the BASC by parent and teacher”. It was determined that his academic achievement was at grade level but that he "demonstrated an educational disability of serious ED". It was established that he was having difficulty "building and maintaining relationships in the school environment", demonstrated a "pervasive mood of depression" and was experiencing "fears and physical symptoms associated with school problems which affect educational performance". It was recommended that goals be included in his IEP to address "coping skills, organizational skills, frustration and self esteem". Also recommended was that a "highly structured behavior plan with positive reinforcement" be implemented, "consult with school psychologist" be provided as a related service and that "appropriate behavior role play" instruction be provided as a behavioral support.

In the initial IEP, the evaluation results were utilized in present levels. Only one of the recommended goals, "frustration", was addressed and two unrelated goals were included. Behavior was checked as "a special factor addressed in the IEP" but a BIP was not included. The student was provided with a "self-monitoring" daily behavior checklist and the teacher was required to review it weekly. He was placed in a "c/c" (cooperative/consultative) general education class for social behavioral instruction. No related services were provided.

Five months later, the student was attending a new school and a meeting was held to revise the initial IEP. Present levels were assessed through "teacher and administrator observation" and indicated that the student "had only attended school three out of the nineteen days he had been enrolled". The records show
that he was having a problem "separating from his mother in the morning". There
was a note in the present levels assessment that "a room was needed to give the
student and his mother a place where he could calm down" but no provision was
indicated if one was made.

In the accommodations/modifications section, a BIP was mentioned but was
not included as part of the IEP. No goals were added to address the non-
attendance issue. There were a number of accommodations/modifications listed
that are related to behavior, such as "praise compliant behavior"; "avoid
criticism"; "watch for frustration"; "provide encouragement"; provide an "area for
de-escalation"; and, "set up behavior plan with mentor teacher". The last
indicates that a BIP did not exist. "Specially designed instruction" included:
"social skills; each class period; in all general education classes".

Over the next few weeks, the student was involved in a "physical altercation
with a student" and was written up for "extreme disruptive/destructive behavior in
the classroom". Another revision to the IEP was scheduled which was within two
months of the last. There were no present levels included but "specially
designed instruction" was revised as follows: "social skill instruction; thirty
minutes per day; in the resource room".

One month to the day later, another meeting was held to revise the current
IEP. The present levels for the revision were assessed through "teacher
observation", "attendance records" and an "Aversive Intervention Incident
Report". Present level results note that at the time of this meeting, the student
had "missed thirty out of fifty-one days" which was the total number of days he
had been enrolled in this school. The present levels also indicate that he was still having "difficulty separating from his mother" in the morning and was being "physically and verbally aggressive", to the point of "having to be restrained by staff" and that "the student is not completing and/or is giving himself higher points than what he deserves" on his "self-monitoring behavior plan".

A FBA was completed to address "attendance and the student's continued refusal to leave his mother's motor vehicle in the morning". Three goals were added, one included "identify and follow all campus and classroom rules, one hundred percent of the time" none to specifically addressed the attendance issue. "Specially designed instruction" was revised, again, this time to: "social skills; five periods per day; in a specialized class". In the placement section "self-contained program" was checked and the percent of time in the regular education environment was noted as "seventeen percent" of the day (which would be one class period). That regular education class plus the special education class, "social skills, five periods per day" represents only two different classes each day. Bus transportation was added as a related service.

It is impossible to determine the student's placement after this time, due to the conflicting information on the IEP. The records are also unclear as to when the student was referred to the juvenile justice system for "destruction of school property". No further informative data was contained in the educational records of this student.

*Client seven.* The educational records of the next client indicate that he was nine years old and in the third grade, at the time of his referral to the juvenile
justice system for “battery on three school employees” and “disturbing the peace”. Earlier during the same school year, the student was evaluated for special education services. The assessment tools used for the initial evaluation included: “WISC III; Wodcock Johnson III; BASC completed by parent, teacher and student; Conners Parent and Teacher Rating Scales; and, Burks Behavior Rating Scale”. It was determined that the student was “eligible for special education services” and qualified under three categories, the primary designated as “ED” and secondary as “HI (ADHD) and SLD”.

Although assessments also indicate that the student has “academic deficiencies in reading, writing and math”, the initial IEP addressed academic goals for reading and writing only. Goals were written to include “calming strategies”, “self concept”, “self discipline” and “social awareness” with no defined measurement; benchmarks have measures of “most of the time” to “all of the time”. There were a number of accommodations/modifications listed but none have beginning or ending dates, frequency of services or locations.

Behavior was checked as a “special factor addressed in the IEP” and a BIP was included. The person responsible for implementing the plan was noted but a date for review was not provided. The plan was brief and provided three simple steps for when the student “refused to obey”: 1) remove him from the area, 2) have him write how he feels, and, 3) have him verbally identify three calming strategies”. Positive reinforcement was listed as “intrinsic”, there were no consequences provided. The student’s “specially designed instruction” included: “reading and writing; four days per week for forty-five minutes per day; in the
resource room. Related services were provided for speech and occupational therapy.

An IEP meeting was reconvened six weeks later for revision. The parental notice states the reason as, "behavior plan in place is ineffective". Parent attended the meeting. Present levels for the revision were assessed utilizing "observation and reports". The results in the present levels indicate that the student's behavior had "escalated", that he "imposes a threat" and that he had to be "restrained and taken to the Juvenile Detention Center". A FBA was completed, addressing a number of behaviors including "non-compliance, threats, aggression, resisting authority, physical assaults and reaching for a weapon". The FBA indicated there were "no antecedents" to the behavior(s) and "no purpose" for the behavior(s). The IEP team noted that the "existing BIP had addressed only non-compliant behavior". They did, however, then check "yes" that "the IEP and placement were appropriate" at the time of the incident. The IEP team also determined that the student's "disability impaired his ability to understand the consequences of his actions" and that his "disability impaired his ability to control the behavior".

On the behavior MD form, the team noted that a revised BIP was "going to be written to include physical restraint and progressive use of restraint" and that staff was to going to be "trained to physically restrain". An updated BIP was not included in this revision. The student's "specially designed instruction" was revised to included: "social skills, reading and written expression; five days per week/one period per day, each; in a specialized self-contained program". The
IEPs placement section also indicated the student was going to be in a "self-contained program" and that he would spend "seventeen percent" of the day in the regular education environment (which equals one class period). It was not noted where the student would be for the sixth period of the day (possibly a math class?).

The parent signed the last page of the IEP, checking "I agree with the contents" but a "notice to implement" this IEP was sent out two weeks later. The parent did not agree with the placement, this is evident in the records of another IEP meeting recorded a few weeks later. The first page of this IEP does not indicate the purpose of the meeting and there are no present levels included. There is, however, a note in the "statement of parent concerns" that reads: "Parent tried to provide information from previous district that was not accepted. Videotapes taken of child. Use of restraints. Training of staff in use of restraints. Did not receive AB280. Behavior issues, behavior specialists brought in. Positive reinforcers used? Communicated, "do not touch". Change of placement." Nothing else was filled out in this revision except for "specially designed instruction" which lists "AIA services; from this date to fifteen days later; fifteen hours; place to be determined". It was noted that the services would be provided during "a continuation of the IEP meeting".

Five days later, another IEP meeting was held with the parent present. There is no indication as to the purpose. There are no present levels included, but a list of accommodations/modifications were added to this revision such as: "daily progress report, adult assistance, two way radios provided for teachers, staff.
training and behavior mentor to create proper BIP". "New school staff to meet with parent prior to student beginning school to review IEP and discuss the student's emotional needs and services" was also written under the section for accommodations. There are no beginning or ending dates, frequency or location of service(s) included for any of the accommodations. A transportation form indicates that transportation was going to be provided to a different school location. Counseling assessment and school health services were added as related services (no frequency/no location).

A BIP was not added to the revision and there was nothing written under "specially designed instruction". Since nothing new was added in this section, the previous IEP, which provided for "classes in a specialized program", would continue. But, in the placement section of this revision, placement was checked as "regular classes with special education resource combination" and it was noted that the student would be spending "fifty percent" of his day in the regular education environment. Due to the conflicting information, it was impossible to determine whether placement was changed or not at this time.

Further records indicate that the student did attend a "new school" and within a few days "had to be restrained for fifty-five minutes" for "refusing to comply with directions and threatening to use a metal edged ruler". An IEP meeting was scheduled for two weeks later and parent notification indicates the reason as "a firm BIP needs to be implemented". There is no record of that meeting but there is a copy of a BIP dated two weeks later, which includes target behaviors, skills that need to be taught, incentives, positive reinforcement and consequences. It
does not indicate who is responsible for implementation or provide a review date. There is no indication that it was made a part of this student’s IEP. There were no other educational records available for this student.

*Client eight.* The educational records of the next client indicate that he was twelve years of age, in the sixth grade at the time he was referred to the juvenile justice system for “battery and assault on a school employee” and “throwing a deadly missile”. This student had previously been identified as eligible to receive special education services under “HI” in another state. He had also been placed in a “psychiatric residential hospital” in a different state, for eight months. There are no records for the year immediately following his release from the residential hospital. There is an annual IEP effective in the middle (January) of his fifth grade year that indicates he had been found eligible to receive special education services in this district, under the category of “ED”.

The present levels for the annual IEP indicate that “teacher observation, student work samples and behavior charting” were the tools utilized for the assessment. The present level results are anecdotal. They lack achievement levels for all areas except reading, which indicates a “first to second grade level of comprehension”. The behavior charting information (over a two month period) reveals that the student “accepts consequences sixty percent of the time and follows directions seventy percent of the time”. The charting results also indicate that he “maintains positive peer interactions about fifty percent of the time”. During that same time period he was involved in “seven physically aggressive incidents and eight verbally aggressive incidents”. There are three academic
goals and one for “appropriate behavior” with a projected measure of “sixty-five percent achievement”.

Behavior is checked as “a special factor addressed in the IEP” but there is no BIP included. “Specially designed instruction” lists: “reading, language arts, math and science; one period per day, each; in the SEC classroom”. It further indicates that “social skills training will be integrated throughout the day” and “social work group will be provided; for one and one half hours, twice per week; in the SEC classroom”. Accommodations include notations of “staff will be trained in de-escalation techniques and interventions” and “token economy with frequent reinforcement”. IEP placement indicates a “self-contained program” and that the student will spend “seventeen percent” of his day in the regular education environment (normal school day in this district includes six periods, no indication as to where the student would be for the additional period).

The student entered a new school at the beginning of the sixth grade. The second day that he was enrolled, he was removed from class for disruptions and committed “battery on a school employee”. The IEP team at the new school met for a behavior MD and completed a FBA. Neither the parent nor student was present. The IEP team checked “yes”, that the “IEP and placement were appropriate and implemented” at the time of the incident, although notes in the file indicate that the new school did not yet have a copy of the IEP at the time of the incident. The team also determined that “yes”, the student’s “disability impaired his ability to understand the impact and consequences of his behavior”
and that his “disability impaired his ability to control the behavior”. They did not complete the section to describe the “immediate intervention” as required.

Behavior was checked as “a special factor addressed in the IEP” revision and a BIP was added. In the BIP, positive reinforcement was listed as “Positive Reward System of the class”, there were a number of consequences listed such as “lose points, parent contact, administration involvement, detentions and alternative instructional arrangements”. The person responsible for implementation was identified but a review date was not. “Specially designed instruction” included: “math, reading, English, science and social skills; one period per day, each; in a specialized program”. Transportation was the only related service provided. Placement also reflected a “self-contained program” and indicated that the student would spend “seventeen percent” of the day in the regular education environment.

Client nine. This is the first of three files of clients who were fourteen years of age at the time of the offense(s) for which they were referred to the juvenile justice system. Of these, the first student’s file contained an annual IEP that was written following his three-year reevaluation. Both “ED (1)” and “SLD (2)” are checked in the eligibility category. Assessments conducted for present levels included: “Kaufman Test of Educational Achievement; BASC from both parent and teacher; prior evaluations; daily progress reports; and Dean’s chronology”. Results show that although he “refused to comply with school psychologist”; his achievement in the area of math was at the “third grade, seventh month” level. It was further noted that there were “extreme behavior concerns”. No goals for
academics were written but there were three goals to address "attendance and
compliance, appropriate interactions and, demonstrate appropriate coping skills".
All contained achievement measures of "fifty percent of the time"; a benchmark
for one goal required "follow one step directions" while a benchmark for another
required "follow two step directions".

Behavior was checked as "a special factor addressed in the IEP" but a BIP
was not included. There were no related services provided. "Specially designed
instruction" listed: "math, reading, science, history, English and social skills; six
periods per day; in a specialized classroom". The placement section indicated a
"self-contained program" and that the student would spend "thirteen percent" of
the day in the regular education environment. Six classes per day (specialized
program) plus one class in regular education (thirteen percent) adds up to seven
classes, although a normal school day in this district includes only six class
periods per day.

One month short of the expiration date, of the existing annual IEP following
the three-year reevaluation, another IEP was written at a different school. It was
not identified as an annual IEP but as a revision to an IEP. The date was related
only to the time of the offense but it appeared to be an annual IEP in all other
respects. Present levels were developed with the following assessments:
"teacher observation; BASC; Kauffman Test of Educational Achievement;
Brigance; and, Curriculum based tests". Results were limited and stated, "the
student was unwilling to participate in most of the assessment procedures". The
effect of the student's present level results "on his academic success" indicated
that he was "aggressive, hostile, defiant and disruptive" but that he had also demonstrated "cooperation, helpfulness and was personable and was polite when he wasn't required to complete tasks he didn't like". There was one academic goal and three behavior goals that included "following directions, appropriate words and social rules". Achievement measurements in the goals ranged from "seventy to one hundred percent".

Behavior was checked as "a special factor addressed in the IEP". There was a BIP designed that included appropriate expectations, positive reinforcement and consequences, but did not identify the person responsible or provide a review date. "Specially designed instruction" included: "social skills, math, reading, language arts and social studies; one period per day, each; in a specialized program". The placement section, on the other hand, reflected a "special school" placement with "zero percent" of the time in a regular education environment. The accommodations/modifications section indicated they were to take place in both "general education and SEC classes". It is impossible to determine, from the records available, the placement that was implemented.

Client ten. The special education records contained in this file differs from all of the others reviewed for this study in two important ways. The first is that the student appears to have had no previous history of behavioral issues before he was charged with the offense of "possession of controlled substance" (at school) and referred to the juvenile justice system. The second is that his parent(s) have filed for "Due Process" against the school district for actions (related to "non-
compliance" and a "denial of special education support and services" issues) taken by the school district both before and after the incident.

From the records, it was determined that this student was identified as eligible for special education services when he was in the second grade, under the category of "SLD". There are no copies in the file regarding the initial evaluation and/or IEP for this student. The second annual IEP, when the student was in the third grade, is available and it is the only one that makes any reference to possible behavioral problems. In the present levels of this IEP, although the tools utilized for assessment are unclear, there is a written notation that states, "behavior is getting in the way of academics". In that same IEP, goals to address reading, spelling, written expression as well as social/behavioral needs are included. There were no related services provided.

In the IEP of the following year (fourth grade), there is no indication that social and/or behavioral problems were addressed. In fact, the goals in that area were dropped but academic goals in reading, written expression and spelling were revised and continued. There were no educational records available for the IEP or three-year reevaluation that was due the following year (fifth grade). In the IEP of the next year (sixth grade) assessment tools utilized for present levels are not listed, although results indicate that the student is "socially and behaviorally age appropriate". There is a notation included in present levels stating, "the student has comprehension and understanding problems". Goals are included for the academic areas of reading and English only. There is a referral for an
assessment for speech as a related service. Behavior is not checked as “a special factor addressed in the IEP”.

The file contained only three sheets of the IEP written the following year (seventh grade) and in effect at the time of the offense (first quarter of eighth grade). After the incident, an IEP meeting was scheduled to conduct a behavior MD. The parental notification is dated “October 12” and the meeting date is four days later, “October 16”. There are two first pages for this IEP. The first is dated “October 10” which the parent signed as a participant; the second is dated “October 16” and is not signed by the parent. On the bottom of the first page, it states “Manifestation determination meeting was reconvened on 10/16”. The FBA has dates of “October 10” crossed out, “cont’d October 12” crossed out and “October 16” written in. The MD form also has all three of those dates in different places. The parent did not sign the IEP under the section for “procedural safeguards” or on the last page. The parent did not sign the FBA form. According to the Due Process records reviewed, parent claims that the district “terminated the first meeting when the parent raised issues that she felt should be included in the behavior MD”. The IEP, FBA and completed behavior MD reflect that the district did reconvene the meeting and conduct it without the parent or student present.

The IEP team indicated on the FBA (with no input from the student or parent) that the “function/purpose” of the behavior was “possibly to promote popularity” and the “gain from the behavior” was “acknowledgement from the individual”. They stated that this was a “one time incident”. Under the description of the
student's BIP, they indicated, "prior to this incident the student demonstrated appropriate citizenship and behavior". They checked "yes", that "the student's IEP and placement were appropriate and implemented" and "no", that his disability did not impair his ability "to understand the consequences of his behavior" or "to control the behavior". In the IEP revision, "specially designed instruction" indicates "AIA, five hours per week, at home campus". Placement section is checked "other" and written in is a note, "AIA placement pending PPS referral". It is also indicated that the student will spend "zero percent" of the day in the regular education environment.

The Due Process filing addresses the following four issues: 1) the student was presented with no option except to attend a "continuation school" and that it is the only "alternative educational setting" that exists in the district; 2) the continuation school is now being designated as the "stay put placement" although the parent had been previously told in mediation that the student's "stay put placement" was the school the student attended before the incident; 3) the student has been advised that he will never be allowed to attend another school in the district unless he "attends the continuation school for forty-five days"; 4) issues the parent raised at the behavior MD meeting "could not/would not" be included as part of the process. These items will be discussed in the following section, along with other issues presented here that demonstrate inadequate assessment and IEP practices, failure to provide adequate special education services, non-compliance with the regulations of parent participation and/or any other non-compliance issues related to the mandates of the IDEA.
Client eleven. The last file of clients in this age group (14 years), included records of IEPs for the three years before the offense of “carrying a concealed weapon” occurred. Although the records show that the student’s “primary language is Spanish” and that he was “identified eligible for services under the category of SLD”, the earliest IEP available indicates that the team agreed that “his previous behaviors warrant placement in a specialized program for students with ED”.

The assessments utilized for present levels are not listed but social/behavioral problems are clearly assessed and include matching goals that are specific and measurable. Behavior is checked as “a special factor addressed in the IEP” on each and there is a BIP included in each one. The BIPs contain positive reinforcement and consequences, identify the person(s) responsible for implementation but lack a review dates. Progressive discipline steps are clearly outlined and individualized for both the student and targeted behaviors. From the records available, it appears that this student was making progress each year on the behavior goals but continued the “specialized program placement”. There is no indication that the offense was school related.

Client twelve. The educational records available for the last male client indicate that he was sixteen years old and in the tenth grade at the time of the offenses for which he was referred to the juvenile justice system. One offense, “stole wallet of school employee/ grand larceny”, was obviously school related but it is unclear as to whether or not any of the others, “violation of parole, attempted burglary, possession of burglary/larceny tools” were related or
occurred at the same time. An IEP was in place at the time of the offense and although the student had a history of behavior/social problems since third grade and BIPs existed in his previous IEPs, a BIP was not included in this one.

The latest three-year reevaluation, completed around the same time as the offense, had been six months overdue. Parent and student were not in attendance and written above parent signature was "copy mailed home". The MDT report indicates that no assessments were utilized; instead "previous evaluations" of four and seven years ago were assessed. From this record, it is apparent that the student qualified for special education services under the category of SLD. It is also important to note that the academic levels in this evaluation and present achievement grade levels on the available IEPs indicate that the student had not improved academically, in any area, over seven years. Present levels show academic performance (on average), at the second grade level in all areas.

Behavior and social problems were not evaluated or mentioned in the reevaluation. A few weeks later, after the offense, a behavior MD was held and the IEP team checked "yes" that the "student's IEP and placement were appropriate at the time of the incident". The current behavior plan in place was described as "follow school rules". A new BIP was developed, that included "target behavior, intervention and consequences". The revision also provided "specially designed instruction of up to five hours of AIA pending PPP".

Client thirteen. The last set of records pertain to a female client, sixteen years old at the time of the offense of "prostitution". An MDT report for her initial
evaluation indicates that she had received special education services in another state in the category of "SLD". The assessments for the evaluation included cognitive and academic testing, social/behavioral assessments, teacher observation and reports, as well as parent and student input.

The MDT summary states, "there is not a discrepancy between academics and achievement". It is noted that the student is receiving "social security as a child with mental retardation (MR)" and that "the parent does not want the student to know of the MR classification" (student scored in the 0.4 percentile on the Vineland Adaptive Behavior Scale). A teacher is quoted as reporting, "sweet girl but needs one on one at a much lower grade level". The MDT made a determination that "the student demonstrates an educational SLD" and recommended "assessments for future services in speech and language" and "instruction for sight word vocabulary".

The initial IEP included goals for math and written expression. One of the benchmarks is to "write a complete paragraph with standard English grammar". A speech/language assessment is indicated under related services. "Specially designed instruction" includes: "math, English, history and science; one period per day, each; in the resource room". Placement reflects "regular/resource class combination" and indicates that the student will spend "thirty-four percent" of the school day in the regular education environment. Behavior/social problems are not addressed in the evaluation or the IEP. The offense for which the student was referred to the juvenile justice system is not school related. There were no additional educational records available.
Summary

Of the thirteen files reviewed, twelve had records of either an existing or a revision IEP. Of those, three incorporated assessments for cognitive testing, academic testing, and social/behavioral needs in the identification and/or evaluation process. There were also three that included goals and objectives that matched the assessment needs of the student, as shown in the results, and were also specific and measurable. All of the others were deficient in one or more of these areas.

Seven of the files contained a record of a MD and of those, five included FBAs. From the MD forms and other records, it was determined that five students had BIP’s in place at the time of their offenses and that two had BIPs added to their IEPs shortly after the incidents. In reviewing the components of the BIPs, a determination was made that three were individualized to meet the student’s needs, contained progressive discipline steps, included positive reinforcement and listed consequences. Only one designated the person responsible for implementation and review; none provided a date for review. Three included discipline steps, positive reinforcement and consequences but were generalized to the school and/or classroom; one contained steps for discipline but did not include positive reinforcement or consequences.

It was apparent in the records that seven meetings were held for IEP and/or disciplinary issues without a parent present and none indicated the presence of the student. Provision of related services were minimal throughout the records; placement was reviewed only in the context of coordinating instruction.
CHAPTER 5

DISCUSSION

The purpose of this study was to examine the special education records of children and youth, referred to the juvenile justice system in order to document the special education services and supports that they had or had not received prior to the referral. Its intent was to determine whether or not schools had provided past and present compliance with special education laws prior to their student's referral to the juvenile justice system. This study was designed to answer questions regarding a number of issues related to special education support and compliance in an attempt to establish a relationship between those issues and the over representation of children and youth with disabilities in the juvenile justice system.

Results show that one of the major non-compliance issues apparently lies in the fact that the educational records of children and youth with disabilities are not being provided by schools to the juvenile justice system. It is important to note that although it is the responsibility of the child’s school (IDEA ’97) to ensure that the special education records of their student’s are provided to the juvenile justice system, in some cases the only special education information available was a notation that the student had been previously identified to receive special education services; or that some form of special education services was being
provided such as a class or related service. This proved to be true whether or not the offenses were school related. Due to the restricted amount of special education records available for the study, a more in depth examination of the accessible educational records was conducted. Issues of non-compliance and the relationship of those issues to the student’s involvement in the juvenile justice system were explored through a closer examination and evaluation of the limited available records.

The results of this research study concurs with the findings in the report from the NCD (2000) which reviewed twenty-five years of compliance and monitoring records related to IDEA from the Department of Education, encompassing all fifty states and found every state to be out of compliance, some for many years. Even though this study was able to examine only a small sampling of special education records that existed for students who were referred to the juvenile justice system, issues of non-compliance and non-support were documented in a number of areas. These areas included: inadequate evaluation issues in identification, assessment, placement and other IEP practices; regulations involving parental participation; the lack of standard practices in designing, implementing and revising BIPs as a remediation for addressing behavior problems at school and in the classroom; deficiencies in providing special education supports and related services; and, coordination of placement, to include the designed instruction and percentage of time in the regular education setting.
Are a variety of assessment tools utilized for initial and three-year evaluations for special education students in the juvenile justice system?

In the area of evaluation, IDEA mandates that a variety of assessment tools be utilized and assessed for initial and three-year evaluations. In one documented case, of a student who came into the district from another state, information was gathered through a comprehensive assessment and clearly established that the student did not qualify for services under the disability category previously identified in the other state. All of the results from the new assessments show that the child qualified for special education services under a different classification but no change was made. A determination was made, that the student was eligible to continue receiving services under the previous category, without supporting evidence in the MDT report. In records reviewed of three-year evaluations, one was not conducted until six months after it was due; and, although IEP teams are required by IDEA to identify if additional data is needed after they review existing reports available for a reevaluation, not one did (no matter how long it had been since new assessments were utilized). In fact, in one of those cases, tests conducted nine years prior were used for evaluation. In relation to the present levels section in IEPs, this study found cases in which there were no assessment tools indicated, vague assessment tools listed and assessments listed without describing results.

Are the goals and objectives contained in the current/past IEPs of special education students in the juvenile justice system based upon the assessment data and are they specific and measurable?
In the area of goals and benchmarks, this study found cases in which they did not match the data in present levels, meet the student's needs and/or enable the child to progress in the general education curriculum. Often they were non-specific and impossible to measure. Benchmarks, intended to break down the skills of the goals into discrete components, were often unrelated to the goal they addressed. For example, consider the fact that one of the goals set for the last client in the study included "improve written expression skills" and a benchmark of "write a complete paragraph with standard English grammar" after the MDT report recommended that the student receive "instruction for sight word vocabulary".

In the area requiring accountability for goals and objectives in the IDEA (1997), even though part B does not require that anyone be held accountable if a child does not achieve growth in annual goals and benchmarks, school districts are required to make a "good faith effort" to assist the child to achieve goals and objectives in the IEP. In one of the files reviewed for this study, that contained special education records that encompassed seven years, it was documented that the student's academic skills were (on average) in the second grade range at the start of the seven years; at the end of the seven years (when he was referred to the juvenile justice system) his academic skills were still in the same range.

Are there indications, in the educational files of special education students in the juvenile justice system that the procedural safeguards as required in the IDEA, to
ensure parental participation in IEP and disciplinary meetings, were implemented?

Although Sections 300.501 of IDEA clearly mandates procedural safeguards involving parental participation and Section 300.503 identifies guidelines for parental notices, this study found incidents where the requirements of one or the other (or both) were not met. In this study, there were records of meetings held for evaluation, educational placement and discipline decisions, which indicated there was no parental participation. Also found were examples of parental notices that lacked the provisions of: being provided within a reasonable time; indicating the action proposed; providing a description of evaluation procedures used as the basis for the action. In addition, some lacked any indication that the required procedural safeguards notice had been provided to the parents along with the parental notification of the proposed meeting.

Are BIPs included in the IEPs of special education students in the juvenile justice system who had previously demonstrated behavior problems?

Since the records examined for this study were of children and youth who had been referred to the juvenile justice system, many of the students had histories of past behavioral and or social problems in school. Although the reauthorization of the IDEA (1997) requires the IEP team to consider using positive behavioral supports to address "behavior that impedes the child's learning and/or the learning of others", conduct a FBA "before or not later than ten days after a disciplinary action and design a BIP that "meets the child's unique needs", this study found that in a variety of cases these requirements were not met. In some
cases there were no BIPs put into place even after meetings were conducted for disciplinary issues, in others, the BIPs were homogenized with quotes like "follow school rules", "district discipline steps" and "class reinforcement plan". The most shocking of these was the case of a child whose behavior problems were documented through records of IEP meetings as becoming increasingly worse, to the point of the school finding no alternative but to restrain him. While records show that five separate disciplinary meetings were held and discussion of a BIP was indicated as the reason for some of the meetings, one was never designed, implemented or made part of the student’s IEP.

Are necessary related services identified in the IEPs of the special education students referred to the juvenile justice system?

In the area of supports and related services (excluding the previously discussed behavioral supports), this study found the provisions to be deficient throughout the documentation. The most frequent related service was transportation, there were a few referrals for speech/language assessment, one IEP indicated that speech was being provided and one indicated that the related service of occupational therapy was being provided. In only one case was support for behavioral problems provided for in the IEP, this was in the form of specially designed instruction for a "social work group". It was provided to take place in addition to a special education classroom social skills curriculum, which was more commonplace.

Are placement considerations of special education students in the juvenile justice system compatible with these students?
As to the areas of placement and the percentage of time that a student was designated to spend in the regular education environment, for purposes of this study efforts were not made to determine whether or not the placements or percentages constituted the least restrictive environment. What this study did examine was whether these components, as presented in the IEPs were compatible. In several IEPs, the number of special education classes and the percentage of time in the regular education environment did not add up to the required number of classes in a normal school day; in one case, the number of classes provided exceeded the number in a normal school day; and, records of one IEP indicated classes would take place in a specialized program and the regular education environment but that the placement would be in a special school.

Limitations of the Study

There are a number of possible limitations in the current study, the first being the sample size. Out of the one hundred and fifty-one files reviewed, only twenty had any indication of previous special education services. Of those, only thirteen contained educational records. This study’s results may differ with a review of an expanded sample of files that include the educational records of each client, as it may be possible to determine whether the remaining clients had or had not been previously identified for special education services. In addition, a larger sampling of the educational records of student’s known to have been previously identified as eligible to receive special education services, may produce a broader more
complete perspective on the issues of compliance with the mandates of the IDEA and could include statistical data. Future studies with larger samplings are needed to establish a relationship of the non-compliance issues to the over representation of students in the juvenile justice system.

Another possible limitation pertains to the type of educational records available in the files. Few had special education records that encompassed the entire time from the initial identification up to the time of the offense. Complete educational records for all students in a future study may provide a different perspective as to the provisions of special education services and supports. Future studies may include a written consent from the parents of all the participants (under the Family Educational Rights and Privacy Act) to obtain missing educational records and develop a more complete picture.

Directions for Future Research

The literature shows that research has examined issues of non-compliance in relation to special education identification and the provision of special education supports and services. Research studies have also been conducted to examine the over representation of children and youth with disabilities in the juvenile justice system. However, there is little to no previous research which focuses on the specific relationship between the non-compliance issues of providing appropriate special education services/supports to children and youth with disabilities and the over representation of that unique population in the juvenile justice system. This present study examined the educational records available in
the files of children and youth who had been referred to one juvenile justice clinic, future research should expand this study's inquiry by taking steps to examine additional educational records for a more extensive group of clients.

As noted previously in the section concerning the limitations of this study, it would be helpful for future studies attempting to establish this relationship, to include obtaining parental release documentation. That would ensure the ability to gather missing records and provide a more complete examination of all educational records for each of the participants. In addition, interviewing the participants and/or the parents of the participants would be a valuable tool in finding answers that a review of the records alone cannot provide.

Practical Implications

This study could be the beginning of the unveiling of a relationship between non-compliance issues in special education and the over representation of children and youth in the juvenile justice system. This study’s results indicate that an examination of even a small sampling of the special education records of children and youth in the juvenile justice system produce evidence of non-compliance of many of the mandates of IDEA. One practical implication that this study suggests is the need for stronger monitoring to guarantee compliance of special education laws and regulations at both the state and federal level.

Another practical implication strongly suggested by this study is the need for schools and teachers to increase student involvement in the IEP process by implementing student led IEPs. Students who are taught how to participate in
their own IEPs are encouraged by the process to become better self-advocates (McGahee, et al., 2001). Moreover, amendments to IDEA (1997) provides for including the child in the IEP process and contains provisions to strengthen the involvement of students with disabilities in their own future. Although the demographic information of the educational records reviewed for this studied indicated that three fourths of the clients were thirteen years of age or older, it appeared that none took an active role in the IEP process. As McGahee, Mason, Wallace & Jones point out, preparing students for involvement in their IEPs teach them to apply the skills of self-determination, goal setting and self evaluation based on personal values, needs and interests, all essential skills for students with disabilities. By teaching students to understand, develop and lead their own IEPs, they will also participate in monitoring and advocacy.

Conclusion

This study represents the groundwork for future ventures of examination regarding the relationship between non-compliance issues in special education and the over representation of children and youth in the juvenile justice system. The findings of this first study, together with the results of future examinations, may develop a strong connection between the provision or lack of providing special education supports and services in school and the over representation of children and youth with disabilities in this distinctive population. Only then will it be possible to determine why special education supports and services, designed to ensure that children and youth with disabilities have the same opportunities for
future success as their peers without disabilities, are failing to provide those opportunities for a significant percentage of that targeted population and allow educators to effect significant changes to end this devastating cycle.
APPENDIX

SPECIAL EDUCATION INFORMATION SHEET

JUVENILE JUSTICE/SPECIAL EDUCATION STUDY
Special Education Information Sheet

Juvenile Justice/Special Education Study

ID#__________

Demographic Information

Gender: _____ Male _____ Female

Age: _____

Grade: _____

Ethnicity: ______________________

Primary Language: ______________

Home Environment:

_____ biological parent(s)

_____ foster parent(s)

_____ group home

_____ residential treatment center

_____ incarceration (i.e. detention center, Elko)

_____ other ______________________

Offense: ______________________

Special Education Information

Is there an existing IEP? _____ Yes _____ No

If YES:

Eligibility Category: Primary______________ Secondary______________

Date of Initial Eligibility: __________
Check the following that apply:

Assessments used for initial eligibility/3-year evaluation included:

- Cognitive Testing
- Academic Testing
- Social/Behavioral Assessments
- Teacher Observation/Reports/Grades
- Student Input

Assessment conducted for current IEP included:

- Academic Testing
- Teacher Observation/Reports/Grades
- Behavioral/Social problems
- Student Input

Goals and Objectives:

- Match assessment data
- Are specific and measurable

Behavior and/or Social need(s):

- Are identified in present levels
- Is checked as a consideration of special factors (impacts learning)
- Are included in goals and objectives

Is a Behavior Intervention Plan included in the IEP? Yes No

If Yes, check the following that apply:

- Plan is individualized for this particular child
- Target behavior matches behavior(s) identified in present levels
- Progressive discipline steps are clearly outlined
- Consequences for inappropriate behavior are listed
- Positive reinforcement for appropriate behavior is included
- Persons responsible for implementation/review are noted
- Review date is provided

Are accommodations related to student’s needs as identified in present levels? Yes No

Student’s placement is:

- Regular class with supplemental services
- Regular class with special ed. class combination
- Self-contained program
- Special School
- Residential

Percentage of time in the regular education environment__________
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