

Child Welfare and The Individuals with Disabilities Education Act (IDEA)

Presented by:
Eric G. Ransleben, J.D.
Dr. Rebecca Hutchinson Julius

Times Have Changed

- ☐ In the past
 - Children with severe needs not in public school
- ☐ Now
 - Children are included
- ☐ In the past
 - Juvenile courts, public schools, police, child welfare all operated independently
- ☐ Now
 - More collaboration and information between these entities

81st Legislative Session

- ☐ New laws attempting to bring parity between municipal and justice courts with juvenile courts
- ☐ Non-disclosure law
 - Protecting juvenile records
- ☐ House Bill 1793

H.B. 1793

- ❑ Shall complete a two-hour course of instruction related to understanding the relevant issues of child welfare and the Individuals with Disabilities Education Act (IDEA)
- ❑ Every judicial academic year ending in 0 or 5
- ❑ Effective September 1, 2009

Objectives

- ❑ Describe the jurisdiction of each trial court in the Texas Judicial System as it relates to child welfare
- ❑ Describe the unique role that Texas municipal courts play in the Texas Juvenile Justice System
- ❑ Define IDEA

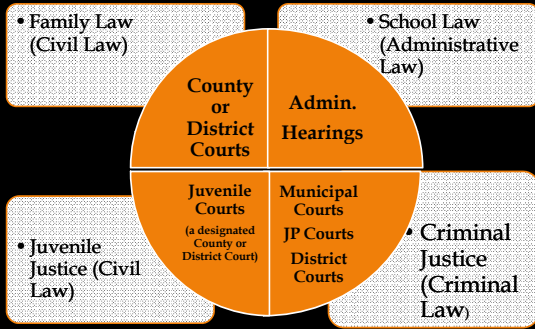
Objectives cont.

- ❑ Define important terminology associated with IDEA
- ❑ Explain how the IDEA relates to child welfare
- ❑ Summarize how certain disabilities affect behavior subject to criminal prosecution
- ❑ Describe how disabilities may come into play in municipal court / justice court.

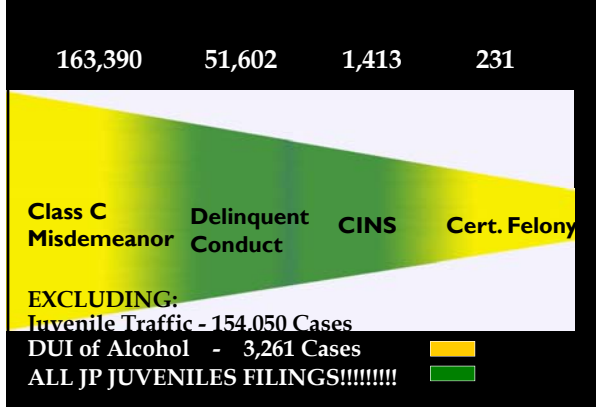
How Many Children are There In Texas?

- ▣ Texas Health and Human Services Commission 2009
 - 6,981,650 under the Age of 18
 - That's 28 Percent of the State's Population
 - 3,202,206 between Ages of 10-18
 - That's 13 Percent of the State's Population

Legal Issues in Child Welfare and Texas Courts



Texas Juvenile Law Continuum



Question: What Percentage of Students in Texas Public School Receive Services Under the IDEA in 2007?

**Answer: 10.7 Percent
(494,302 Students)**

Source: National Center for State Education Statistics

Federal Law Related to Disabilities and Education

- ▣ Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, et. seq.
- ▣ Section 504 of the Rehabilitation Act of 1973, (504), 29 U.S.C. 794
- ▣ Americans with Disabilities Act (ADA), 42 U.S.C. 12101-12213

What is the IDEA?

- ▣ Federal law governing all special education programs in the U.S.
- ▣ How IDEA relates to Child Welfare
- ▣ Child Welfare
 - Program
 - Very broad
 - For IDEA purposes → welfare of the child

IDEA: A Brief History

- ▣ 1975 - Education for All Handicapped Children Act
 - Fair and appropriate public education for all, disability or not, age 3-21
- ▣ 1986 - First Major revision
 - Education for students birth to 21

IDEA: A Brief History

- ▣ 1990
 - Education for All Handicapped Children Act → Individuals with Disabilities Education Act
 - By Age 16: IEP (Individualized Education Plan)
 - A plan for readying students for either work or college
- ▣ 1997
 - Curriculum more demanding
 - More requirements for what students with disabilities needed to learn.

IDEA: A Brief History

- ▣ 2004 - Latest Revision
- ▣ IDEA: 4 parts
 - Section A
 - Defines everything in all other sections
 - Section B
 - Everything a school has to do for students 3-21
 - Section C
 - Addresses babies and small kids
 - Section D
 - What the government will do to help

IDEA General

- ☐ What is a qualifying disability?
- ☐ What services will we provide?
- ☐ Referral Process
 - How
 - Who
 - Parent's Rights
- ☐ Individual Evaluation
 - Does student have a disability?
- ☐ ARD (Admission Review and Dismissal)
 - Within 90 days

IDEA General

- ☐ Specific criteria for defining disabilities
- ☐ IEP (Individualized Education Plan)
 - Classes the student will take
 - Defines the discipline the student can handle
- ☐ Behavioral Intervention Plans (BIP)
 - Outlines the appropriate discipline techniques for the specific disability

IDEA General

- ☐ Services available to special education students
 - Counseling services
 - Occupational therapy
 - Physical therapy
 - Speech therapy
 - Specialized transportation
 - Assistive technology devices
- ☐ Continuous Evaluation to determine need for services

Qualifying Disabilities

- ☐ 13 categories of disabilities
- ☐ Autism
 - Broad spectrum
 - Most have sensory issues
- ☐ Emotionally Disturbed
 - Depression
 - Bipolar disorder
 - Anxiety disorder

Qualifying Disabilities

- ☐ Mental retardation
- ☐ Multiple disabilities
- ☐ Other Health Impaired (OHI)
 - ADHD
- ☐ Learning Disability
 - 11 different learning disabilities
- ☐ Speech Impaired
- ☐ Visually Impaired
- ☐ Non-categorical

Question

- ☐ It seems like there's been a huge slide in the diagnosis of disabilities and learning problems such as Autism, Asperger syndrome, etc. Is this better training and better diagnosis and better treatment or is this over-zealous diagnosis? Are kids changing from what they were 20 years ago, or are we just treating them and looking at them differently?

Response

- ☐ We have better a understanding of autism
- ☐ The definition of autism has changed
 - Broader and broader
 - Behavior-based

Recap

- ☐ IDEA guarantees all school children up through age 21 a free appropriate public education in the least restrictive environment.
- ☐ Related services provided through public schools
- ☐ Special Education Standard
 - Not maximum potential
 - Minimum educational benefit
 - Making education progress

Special Education Law

- ☐ Modifies curriculum for students if disability prevents achievement on appropriate grade level
- ☐ Opportunities to participate in extracurricular activities
- ☐ Provides reasonable accommodations

IDEA Discipline

- ☐ Manifestation Determination by ARD committee before any change in educational placement
- ☐ ARD Committee
 - Multi-discipline team of professionals at the school
 - Parents are also members
- ☐ Review Functional Behavior Assessment (FBA)
 - Determines function of behavior
 - Targets negative behaviors interfering with school environment

Three Domains Affecting Behavior

- ☐ Emotional
- ☐ Choice Behavior
- ☐ Sensory

Question

- ☐ What triggers the manifestation evaluation? Does the student or parents ask for it? Does the school district do it? Can the students or their parents deny it? What gets them into the system?
- ☐ Can the parents ever request the consideration without the school district deciding it's necessary?

Response

- ☐ Parents may request it
- ☐ Federal law
 - Student should not be out of their education placement for more than 10 days

Question

- ☐ Does this only apply to special education students?
- ☐ So a student that blows off class, doesn't go to school, misses third period every day, then sits in ISS for 10 days: Does it apply to them?
- ☐ How are they identified as special ed if the parents never raised the issue, and no one has really tested them?

Question

- ☐ Will there be communication between the school and the court?
 - No
 - It's time to start the dialogue
 - Municipal and Justice Courts not typically in the loop of communication

- ❑ Courts under 45.057, CCP, can make referrals to the department of Family and Protective Services
- ❑ If a parent does not agree to evaluation, school can seek administrative order

Role of School Resource Officer (SRO)

- ❑ Most schools have SROs
- ❑ Certified peace officers
- ❑ They should know of 504 plans and IEPs.

Alternative Education

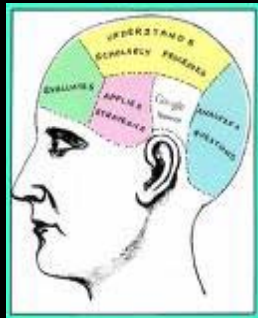
- ❑ AEP - Alternative Education Program
- ❑ DAEP - Disciplinary Alternative Education Programs
 - Requires ARD Committee determination that behavior was not a manifestation of disability
- ❑ JJAEP - Juvenile Justice Alternative Education Program
 - After expulsion
 - No services through school district, but through county

“Capacity”



- ☐ Child (At least age 10 and younger than 17)
 - Art. 45.058(h)(1), CCP

“Capacity”



- ☐ Mental Illness or Mental Retardation - Sec. 55.31, Family Code
 - Lacks capacity to understand the proceedings or assist in defense
- ☐ Insanity - Sec. 8.01, Penal Code.
 - Severe Mental Disease or Defect.
 - Affirmative Defense

Why Do We Need to Know This?

- ☐ Considerations for program options under Art. 45.051 and 45.057.
- ☐ At-Risk Child, Art. 45.057
 - At risk of having child welfare compromised
 - Referral to Department of Family and Protective Services
- ☐ Failure to Attend School -
 - Exception: Cannot be appropriately served by school district under IDEA, Sec. 25.086, Education Code.

Question

- ❑ What other resources are available for judges?
- ❑ What happens to the child when parents refuse services?

Response

- ❑ Under IDEA, school has obligation to identify all children with disabilities.
- ❑ IEP and BIP
 - Could be useful for judges in determining punishment options

IDEA Terminology

- ❑ FIE - Full Individual Evaluation
- ❑ IEP - Individual Education Program
- ❑ FBA - Functional Behavioral Assessment
- ❑ BIP - Behavioral Intervention Plan

Question

- ▣ Under 45.051 (CCP), a judge can require a child to submit to a psychosocial assessment. What is that and how could it help?

Question

- ▣ Can a medical disability ever be considered grounds for special education?
 - OHI (Other Health Impaired)
 - Many kids are in special education due to medical issues, as long as it impacts education performance

Two Prong Test

- ▣ To be eligible for special education services,
 1. Must have a qualifying disability, AND
 2. Must have an educational need for a special education program

Question

- ▣ Is it legitimate to transfer jurisdiction to juvenile court or is it better to keep the case in municipal court?
 - 3 convictions, must transfer to juvenile court
 - Before 3 convictions, it's discretionary

Failure to Attend School

- ▣ There is a legal exemption from mandatory school attendance if a child receives special education services and is not being properly served by the district.
- ▣ Question: If the special ed evaluation is needed in court, will the school present that as evidence?

Question

- ▣ Are there supportive governmental agencies we can refer juvenile defendants to?
 - Department of Family and Protective Services

Question

- ▣ Under 45.057 (CCP) and Chapter 106 (ABC), the judge can order a parent to perform an act or refrain from an act in order to help the child comply with an order of the court. If a judge felt that there may be a disability issue, could they use this language to order an evaluation?

Summary

- ▣ House Bill 1793
- ▣ A good number of kids we see in municipal or justice court could have disabilities.
- ▣ IDEA
