

# CREATING POSITIVE CONSEQUENCES: IMPROVING EDUCATION OUTCOMES FOR YOUTH ADJUDICATED DELINQUENT

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## INTRODUCTION

Youth adjudicated delinquent are in an educational crisis—they are more likely than their peers to be absent or truant,<sup>1</sup> face disciplinary action,<sup>2</sup> need evaluation and remedial services,<sup>3</sup> perform below grade level,<sup>4</sup> have a disability that qualifies them for special education services,<sup>5</sup> and drop out of high school.<sup>6</sup> These problems arise in the context of a broad social disparity along racial and economic lines that emerges in the education system and is often reinforced by policing practices and entry to the juvenile justice system.<sup>7</sup> Thus, a

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1. Matthew T. Zingraff et al., *The Mediating Effect of Good School Performance on the Maltreatment-Delinquency Relationship*, 31 J. RES. CRIME & DELINQ. 62, 62 (1994); see also NAT'L CHILDREN'S LAW CNTR., IN SCHOOL, THE RIGHT SCHOOL, FINISH SCHOOL: A GUIDE TO IMPROVING EDUCATIONAL OPPORTUNITIES FOR COURT-INVOLVED YOUTH 28 (2005).

2. *Id.*

3. *Id.*

4. See Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Youth Needs and Services: Findings from the Survey of Youth in Residential Placements*, JUV. JUST. BULL., Apr. 2010, at 5, available at <http://www.ncjrs.gov/pdffiles1/ojdp/227728.pdf>; see also JACQUELYN MCCROSKEY & CARRIE WATSON, RESEARCH ON THE EDUCATIONAL EXPERIENCES OF DEPENDENT AND DELINQUENT YOUTH 3 (L.A. Cnty. Educ. Coordinating Council eds., 2005), available at <http://www.educationcoordinatingcouncil.org/Documents/Reports/Other%20Reports/Research%20on%20the%20Educational%20Experiences%20of%20Dependent%20and%20Delinquent%20Youth.pdf> (citing Lynn J. Meltzer et al., *An Analysis of the Learning Styles of Adolescent Delinquents*, 17 J. LEARNING DISABILITIES 600, 600 (1984) and L.A. CNTY. OFFICE OF EDUC., JUVENILE COURT AND COMMUNITY SCHOOLS, SCHOOL ACCOUNTABILITY REPORT CARD (2001–02)).

5. Joseph B. Tulman & Douglas M. Weck, *Shutting Off the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, 54 N.Y. L. SCH. L. REV. 875, 882 (2009/2010); see also MCCROSKEY & WATSON, *supra* note 5 (citing T. Rowand Robinson & Mary Jane K. Rapport, *Providing Special Education in the Juvenile Justice System*, 20 REMEDIAL & SPECIAL EDUC. 19, 19 (1999)); see also DAVID OSHER, ANJU SIDANA & PATRICK KELLY, IMPROVING CONDITIONS FOR LEARNING FOR YOUTH WHO ARE NEGLECTED OR DELINQUENT (2008), available at <http://www.neglected-delinquent.org/nd/resources/spotlight/cflbrief200803.asp>.

6. RUTH CURRAN NEILD & ROBERT BALFANZ, UNFULFILLED PROMISE: THE DIMENSIONS AND CHARACTERISTICS OF PHILADELPHIA'S DROPOUT CRISIS, 2000–2005 37 (Phila. Youth Transitions Collaborative eds., 2006), available at [http://www.csos.jhu.edu/new/Neild\\_Balfanz\\_06.pdf](http://www.csos.jhu.edu/new/Neild_Balfanz_06.pdf) (noting that 90% of students in a Philadelphia study who had a juvenile justice placement during their high school years ultimately dropped out); see also McCroskey & Watson, *supra* note 5, at 3 (citing Roger G. Dunham & Geoffrey P. Alpert, *Keeping Juvenile Delinquents in School: A Prediction Model*, 22 ADOLESCENCE 45, 45 (1987) (stating that only 20–40% of youth in the juvenile justice system earn a diploma or GED)).

7. See, e.g., PETER LEONE & LOIS WEINBERG, ADDRESSING THE UNMET EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN THE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS 1, 11 (2010), available at [ocrdata.ed.gov/ocr2006rv30](http://www.modelsforchange.net/publications/260; Test, punish, and push out: how 'zero tolerance' and high-stakes testing funnel youth into the School-to-Prison Pipeline; ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW ZERO TOLERANCE AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL TO PRISON PIPELINE 14 (2010), available at http://www.advancementproject.org/digital-library/publications/test-punish-and-push-out-how-zero-tolerance-and-high-stakes-testing-fu; U.S. Dep't of Educ. Office of Civil Rights, 2006 Data Collection (2008), <a href=); RUSSELL SKIBA & M. KAREGA RAUSCH, CTR. FOR EVALUATION AND EDUC. POLICY, THE RELATIONSHIP BETWEEN ACHIEVEMENT, DISCIPLINE, AND RACE: AN ANALYSIS OF FACTORS PREDICTING ISTEP SCORES (2004), available at <http://eric.ed.gov/PDFS/ED488899.pdf>; CIVIL RIGHTS PROJECT & ADVANCEMENT PROJECT, HAVARD UNIV. OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES (2000), available at <http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies>; *infra* note 16.

disproportionate number of youth arrive in the juvenile justice system from under-resourced schools that offer fewer opportunities for positive educational engagement, struggle with higher rates of violence, and rely increasingly on police, criminal, and juvenile justice system involvement to resolve school discipline problems.<sup>8</sup> Academics and activists have written at great length about the serious problems raised by the school-to-prison pipeline.<sup>9</sup> As these researchers recognize, the problem should be solved at the front end by developing positive educational opportunities for youth and preventing entry into the justice system.<sup>10</sup> Given the reality that roughly 93,000 youth are currently held in juvenile correction facilities,<sup>11</sup> however, a pressing need still exists to consider the educational wellbeing of youth in the justice system. This Article therefore focuses on problem solving at the tail end of the school-to-prison pipeline, once youth have been adjudicated delinquent.

Too often, involvement with the juvenile justice system further entrenches pre-existing educational problems. Consequently, poor education outcomes are a grave but lesser known, collateral consequence of delinquency adjudication. Many youth fall farther behind, and even those who progress academically while in the system often experience school push-out or drop out upon their release. Indeed, the dropout rate for youth who have had experience with the juvenile justice system is as high as 90% in some cities.<sup>12</sup> The disproportionate contact with the system by poor youth of color means that these statistics illustrate not only a failing system but also one which embeds race and class-based disparities, underscoring the urgency of addressing this issue.<sup>13</sup>

At the core of the juvenile justice system is the notion that the state will support youth adjudicated delinquent by providing rehabilitation and competency development. This priority has been recognized by the Supreme

8. See *supra* note 7 for more information; see also Russell SKIBA & KAREGA RAUSCH, ZERO TOLERANCE, SUSPENSION, AND EXPULSION: QUESTIONS OF EQUITY AND EFFECTIVENESS, in HANDBOOK OF CLASSROOM MANAGEMENT: RESEARCH, PRACTICE, AND CONTEMPORARY ISSUES 1063–89 (C. M. Evertson & C. S. Weinstein eds., 2006), available at [http://www.indiana.edu/~equity/docs/Zero\\_Tolerance\\_Effectiveness.pdf](http://www.indiana.edu/~equity/docs/Zero_Tolerance_Effectiveness.pdf).

9. See, e.g., CATHERINE Y. KIM ET AL., THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM (2010); ZERO TOLERANCE TASK FORCE, AMERICAN PSYCHOLOGICAL ASS'N, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS, available at <http://www.apa.org/pubs/info/reports/zero-tolerance.aspx> (last visited May 16, 2010); RUSSELL SKIBA, EDUC. POL'Y. CTR., INDIANA UNIV., ZERO TOLERANCE, ZERO EVIDENCE: AN ANALYSIS OF SCHOOL DISCIPLINARY PRACTICE (2000).

10. See generally KIM, *supra* note 9; Zero Tolerance Task Force, *supra* note 9; SKIBA, *supra* note 9.

11. JUSTICE POL'Y. INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE (2009), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/09\\_05\\_rep\\_costsofconfinement\\_jj\\_ps.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/09_05_rep_costsofconfinement_jj_ps.pdf) (citing M. Sickmund, T.J. Sladky, W. Kang & C. Puzanchera, OJJDP, *Easy Access to the Census of Juveniles in Residential Placement* (2008), available at <http://ojjdp.ncjrs.gov/ojstatbb/ezacjrp/asp/display.asp>).

12. RUTH CURRAN NEILD & ROBERT BALFANZ, PROJECT U-TURN, *Unfulfilled Promise: The Dimensions and Characteristics of Philadelphia's Dropout Crisis 2000–2005* 5 (2006), available at [http://www.csos.jhu.edu/new/Neild\\_Balfanz\\_06.pdf](http://www.csos.jhu.edu/new/Neild_Balfanz_06.pdf).

13. The authors would like to thank the Duke Forum for Law & Social Change Symposium organizers for bringing together experts in the field to encourage mutual learning before final publication of this Issue. In particular, the authors want to thank the Symposium closing speaker Keith Howard of the Legal Aid of North Carolina for elevating the conversation at the symposium by asking critical questions about race, class, and the viability of the juvenile justice system.

Court<sup>14</sup> and reflected in juvenile justice statutes across the country.<sup>15</sup> This Article discusses how, in the context of education, juvenile justice systems across the country are currently falling short of meeting this goal. Indeed, too often, the juvenile justice system even fails to provide youth with the educational services and supports to which they are entitled under current education law.

Federal legislation offers an opportunity to change this story. Congress is currently considering reauthorization of the Elementary and Secondary Education Act (ESEA). Title I Part D of the ESEA provides for “Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk.”<sup>16</sup> Title I Part D has three purposes: (1) to improve educational services in institutions for neglected and delinquent youth, (2) to provide such youth with services to assist their transition to further schooling or employment, and (3) to address the dropout problem by preventing at-risk youth from dropping out and providing support services for youth returning to school after dropping out or returning to school from correctional facilities or institutions.<sup>17</sup> The law supports these goals through grants to state educational agencies, which can in turn award sub-grants to other state agencies and local education agencies to establish or improve their programs for this population.<sup>18</sup> While Title I Part D contains useful funding for dropout prevention, reintegration, and collaboration in support of at-risk youth, and holds states to some basic standards in these areas, reauthorization poses an opportunity to hold states more accountable for linking youth with needed education services to which they are entitled under federal and state law. This Article proposes that the ESEA could be strengthened by improving data collection mechanisms and more effectively linking youth with education services and supports to which they are legally entitled. While this Article focuses on using Title I Part D to connect youth with appropriate, *existing* supports, legislation recently proposed by Senator Sanders to amend Title I Part D would further enhance the benefits of these connections by requiring states to focus more thoroughly on high school completion and school reentry issues.<sup>19</sup> Additionally, this legislation could be further supported by better data collection that would ensure that such programs take into account the unique educational needs of each youth.

## I. EDUCATIONAL CHALLENGES FACING YOUTH ADJUDICATED DELINQUENT

Involvement in the juvenile justice system is often the last straw in a series of obstacles alienating youth from the educational process and discouraging them from educational success. Indeed, youth adjudicated delinquent are more

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14. See, e.g., *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (holding that juveniles have no constitutional right to a jury trial in part because doing so would undermine the informal intimate nature of juvenile proceedings).

15. See NAT'L CTR. FOR JUVENILE JUSTICE, STATE JUVENILE JUSTICE PROFILES (2006), available at <http://70.89.227.250:8080/stateprofiles/> (providing a searchable database of state juvenile justice including links to each state's purpose clause for delinquency proceedings).

16. Programs for Children and Youth Who Are Neglected, Delinquent, tit. 1D, Pub. L. No. 107-110, 115 Stat. 1580 (2002).

17. 20 U.S.C.A. § 1401(a) (West 2010).

18. *Id.* § 1401(b).

19. Secondary School Reentry Act of 2011, S. 1019, 112th Cong. § 2 (2011).

likely to have had negative educational experiences before becoming incarcerated, including attending an under resourced school, repeating a grade, learning in restrictive special education placements, and being suspended or expelled.<sup>20</sup> According to the *Survey of Youth in Residential Placements* conducted by the Office of Juvenile Justice and Delinquency Prevention, nearly one-half (48%) of youth in custody are functioning below the grade level appropriate for their age, compared to 28% of youth in the general population.<sup>21</sup>

Many of the risk factors associated with poor academic performance also contribute to involvement in the juvenile justice system and recidivism.<sup>22</sup> Youth adjudicated delinquent disproportionately suffer or have suffered from traumatic childhood experiences such as abuse, poverty, emotional and behavioral disorders, poor physical health, relationships with antisocial peers, excessive mobility, and poor family-school relationships.<sup>23</sup> As researchers point out, these factors do not exist in a vacuum but rather “intersect and exacerbate one another,” especially as these youth become involved in multiple systems that do not adequately address their needs.<sup>24</sup>

Involvement with the juvenile justice system frequently aggravates these educational problems—particularly for youth who are placed in residential facilities. Studies have documented that adjudicated youth often fail to receive adequate educational services while in placement,<sup>25</sup> in part, due to ineffective

20. David Domenici & James Forman, Jr., *What it Takes to Transform a School Inside a Juvenile Facility: The Story of Maya Angelou Academy*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM (Nancy Dowd, ed., 2011); see also David Osher, Simon Gonsoulin & Stephanie Lampron, *Preface* to PETER LEONE & LOIS WEINBERG, ADDRESSING THE UNMET EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN THE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS 1 (2010), available at <http://www.modelsforchange.net/publications/260>.

21. OJJDP, *supra* note 4, at 5; see also MARSHA WEISSMAN ET AL., DIGNITY IN SCH. CAMPAIGN, THE RIGHT TO EDUCATION IN THE JUVENILE AND CRIMINAL JUSTICE SYSTEMS IN THE UNITED STATES 8 n.34 (2008), available at [http://www.dignityinschools.org/files/US\\_Prisoner\\_Education.pdf](http://www.dignityinschools.org/files/US_Prisoner_Education.pdf). (“[Youth in juvenile facilities] are typically below grade level in test scores and commonly have a history of school failure, with an estimated 75% of youth in juvenile facilities failing one or more courses and 40-50% who have been retained in at least one grade.”).

22. Osher, Gonsoulin & Lampron, *supra* note 20, at 1.

23. *Id.* (citing Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREVENTIVE MED. 245, 245 (1998)); Robert H. Zabel & Frank A. Nigro, *Juvenile Offenders with Behavioral Disorders, Learning Disabilities, or No Disabilities: Self-reports of Personal, Family, and School Characteristics*, 25 BEHAV. DISORDERS 22, 22 (1999); David Osher, Gale Morrison & Wanda Bailey, *Exploring the Relationship Between Student Mobility and Dropout Among Students with Emotional and Behavioral Disorders*, 72 J. NEGRO EDUC. 79, 79 (2003); Tina Maschi, Carolyn A. Bradley & Keith Morgen, *Unraveling the Link Between Trauma and Delinquency: The Mediating Role of Negative Affect and Delinquent Peer Exposure*, 6 YOUTH VIOLENCE AND JUV. JUST. 136, 136 (2008); Thomas J. Dishion, Joan McCord & François Poulin, *When Interventions Harm: Peer Groups and Problem Behavior*, 54 AM. PSYCHOLOGIST 755, 755 (1999).

24. See *supra* note 23 and accompanying text.

25. See, e.g., Peter E. Leone & Sheri Meisel, *Improving Education Services for Students in Detention and Confinement Facilities*, 17 CHILD. LEGAL RTS. J. 2, 5-7 (1997); PETER E. LEONE, A REVIEW OF SPECIAL EDUCATION PROGRAMMING AT CATALINA MOUNTAIN JUVENILE INSTITUTION (November 1988) (report submitted to U.S. District Court, District of Arizona, *Johnson v. Upchurch*, No. 86-195 (D. Ariz., filed August, 1986)); Peter E. Leone, EVALUATION OF EDUCATIONAL AND VOCATIONAL SERVICES AT CEDAR KNOLL AND OAK HILL YOUTH CENTERS (December 1990) (report submitted to the Office of the Monitor, Jerry M. v. D.C., No. 1519-85 (D.C., filed April, 1985)); Peter E. Leone, *Education Services for*

governance and monitoring of education programs in facilities, the impact of high mobility, poorly developed links between public schools and institutional settings, and a failure to meet the special education needs of youth with disabilities in facilities.<sup>26</sup> Although youth in residential juvenile justice placements may attend school more regularly than before their placement,<sup>27</sup> many schools onsite at correctional facilities are characterized by low academic expectations of students, a lack of adequate special education services, and an under-skilled and demoralized teaching staff.<sup>28</sup>

The tremendous variability with regard to the quality of education provided to youth in juvenile justice placements results, in part, from the differing structures for providing education to youth in facilities.<sup>29</sup> In many states, the placement (either state-operated, locally operated, or contracted) may determine who provides educational services, the level of funding for education, and even whether academic credit earned while in the juvenile justice system is

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*Youth with Disabilities in a State-Operated Juvenile Correctional System: Case Study and Analysis*, 28 J. SPECIAL EDUC. 43, 48-54 (1994); Peter E. Leone, Ted Price & Richard K. Vitolo, *Appropriate Education for All Incarcerated Youth: Meeting the Spirit of P.L. 94-142 in Youth Detention Facilities*, 7 REMEDIAL & SPECIAL EDUC. 9, 9-11 (1986).

26. See *supra* note 25 and accompanying text. Indeed, in response to the inadequacy of education services provided in correctional settings, some advocates have initiated class action suits to secure educational rights for youth, particularly in the special education context. Katherine Twomey, *The Right to Education in Juvenile Detention Under State Constitutions*, 94 VA. L. REV. 765, 776-77 (2008).

27. According to the *Survey of Youth in Residential Placements* conducted by the Office of Juvenile Justice and Delinquency Prevention, the majority (92%) of youth attend school when in custody. This differs dramatically from their attendance situation at the time youth enters custody. It is estimated that 21% were not enrolled in school at all and 61% were suspended or expelled during the previous year. OJJDP, *supra* note 4, at 5.

28. Domenici & Forman, *supra* note 20, at 1-2; see also Osher, Gonsoulin & Lampron, *Preface*, *supra* note 20, at 1.

29. A state-by-state directory explaining the administration and financing of state juvenile justice education programs was first developed by the Training Resource Center at Eastern Kentucky University and is currently updated and maintained by The National Center on Education, Disability and Juvenile Justice. To learn about the administration of education programs in your state, go to [http://www.edjj.org/state\\_directory/](http://www.edjj.org/state_directory/).

transferable.<sup>30</sup> Moreover, in some states, there may be no state or local support for the education of youth in placements operated by private contractors.<sup>31</sup>

Youth educated in juvenile justice placements often receive fewer hours of instruction than their peers in public schools. While a typical school day is six to seven hours long,<sup>32</sup> a survey by the Office of Juvenile Justice and Delinquency found that fewer than half (45%) of youth adjudicated delinquent spent that amount of time in school.<sup>33</sup> Notably, adjudicated youth who spend more time in school are more likely to characterize their school program positively.<sup>34</sup>

Many onsite educational programs also fail to meet the unique special education needs of their student body.<sup>35</sup> Researchers estimate that as many as 70% of youth in the juvenile justice system have a disability that impairs their learning.<sup>36</sup> The vast majority of these youth are diagnosed as having severe emotional disturbances and specific learning disabilities.<sup>37</sup> Studies suggest that youth with emotional disturbance in particular fail more courses, earn lower grade point averages, miss more days of school, and are retained more often than other youth with disabilities.<sup>38</sup> Youth with emotional disturbance have the worst graduation rate of all youth with disabilities; nationally, only 35% graduate from high school.<sup>39</sup> Interviews with youth reflect that less than one-half of those with a diagnosed learning disability actually attend a special education program while in custody.<sup>40</sup>

30. In 1999, the Training Resource Center at Eastern Kentucky University surveyed juvenile correctional education programs in twenty states and found great variability among programs and that education was often delivered by a variety of agencies. BRUCE I. WOLFORD, TRAINING RES. CTR. AT E. KENTUCKY UNIV., JUVENILE JUSTICE EDUCATION: "WHO IS EDUCATING THE YOUTH" 5 (2000), available at [http://www.edjj.org/Publications/educating\\_youth.pdf](http://www.edjj.org/Publications/educating_youth.pdf). In only two states (10%) were all youth in juvenile justice placements educated under the same administrative arrangement with a state education agency. *Id.* at 8. In seven states (35%) there was a special school district within the state level juvenile justice agency. *Id.* In another seven states (35%) the juvenile justice agency was responsible for overseeing the delivery of educational services. *Id.* Local Education Agencies were responsible for the administration and delivery of education in two states. *Id.* Special legislation governing juvenile justice education existed in 65% of the twenty states. *Id.* In most states there was no consistent curriculum across the juvenile justice programs. *Id.* at 9. In more than half the states, no state department of education funds were directed to educate youth in juvenile justice settings. *Id.* at 8. The per-pupil funding for youth in juvenile justice educational programs ranged from \$2259 to \$9000 per year. *Id.* at i. In 25% of the states surveyed there was no way to calculate the per pupil cost of education. *Id.* Notably, in 20% of the states surveyed, there was a federal court intervention related to the delivery of educational services in the juvenile justice system. *Id.*

31. *See generally id.*

32. *See OJJDP, supra note 4, at 6.*

33. *Id.*

34. *Id.*

35. *See generally* MARY M. QUINN, ROBERT B. RUTHERFORD, JR. & PETER E. LEONE, COUNCIL FOR EXCEPTIONAL CHILDREN, STUDENTS WITH DISABILITIES IN CORRECTIONAL FACILITIES (2001), available at <http://www.cec.sped.org/AM/Template.cfm?Section=Home&CONTENTID=2459&TEMPLATE=/CM/ContentDisplay.cfm&CAT=none>.

36. JIM COMSTOCK-GALAGAN & RHONDA BROWNSTEIN, S. DISABILITY LAW CTR. & S. POVERTY LAW CTR., STOPPING THE SCHOOLHOUSE TO JAILHOUSE PIPELINE BY ENFORCING FEDERAL SPECIAL EDUCATION LAW 1, available at <http://www.splcenter.org/images/dynamic/main/SpecialEducationLaw.pdf>.

37. *Id.*

38. *Id.*

39. *Id.*

40. *See OJJDP, supra note 4, at 6.*

Even when an onsite school meets state standards for the provision of education, the move from school to school causes disruptions which can undermine a youth's capacity to learn.<sup>41</sup> Moreover, problems with properly transferring education records to each new school or institutional educational program can result in delayed enrollment, causing these already educationally at-risk youth to fall further behind.<sup>42</sup> Missing records may also prevent youth from receiving credits for work they have completed.<sup>43</sup> The loss of full or partial credits presents a particularly acute problem for youth involved in the justice system, as frequent school changes and differing school policies governing the awarding of credits often means that youth do not earn credits for all the time they spend in the classroom.<sup>44</sup>

The problem is exacerbated when home districts refuse to re-enroll youth returning from a delinquency placement.<sup>45</sup> A 2008 study of youth detained in Cook County, Illinois, for example, revealed that youth were regularly denied reentry into their home schools after being held in the Cook County Detention Center.<sup>46</sup> Youth leaving the same facility were also unable to recoup credits for their coursework unless they spent an entire semester in the onsite school.<sup>47</sup> In many cases, youth may be sent directly to alternative disciplinary schools upon their release from a juvenile justice placement, regardless of their potential ability to succeed in a regular public school.<sup>48</sup> These programs often hold students to lower academic standards, placing youth at a disadvantage in their postsecondary educational pursuits.<sup>49</sup>

The poor quality of onsite schools, the absence of needed educational services in juvenile justice facilities, and the challenges posed by transitions between facilities and home schools create severe educational problems for

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41. See PETER LEONE & LOIS WEINBERG, ADDRESSING THE UNMET EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN THE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS 1, 15-16 (2010), available at <http://www.modelsforchange.net/publications/260>. There is little published on the effect of school changes on youth involved with the juvenile justice system. Research on other highly mobile youth, including youth in the child welfare system, indicates that frequent school moves contributes to negative education outcomes such as failing classes and dropping out, however. See, e.g., JAN MOORE, NAT'L CTR. FOR HOMELESS EDUC. AT THE SERVE CTR., A LOOK AT CHILD WELFARE FROM A HOMELESS EDUCATION PERSPECTIVE 7 (2007).

42. LEONE & WEINBERG, *supra* note 41, at 17.

43. See *id.*

44. See *id.* at 18.

45. See Osher, Gonsoulin & Lampron, *supra* note 20, at 1.

46. *Id.* at 18 (citing L.A. Wojcik, K.L. Schmetterer & S.D. Naar, *From Juvenile Court to the Classroom: The Need for Effective Child Advocacy* (2008), available at [http://www.dlapiperprobono.com/files/upload/Juvenile\\_Justice\\_Book\\_2.pdf](http://www.dlapiperprobono.com/files/upload/Juvenile_Justice_Book_2.pdf)).

47. Wojcik, Schmetterer & Naar, *supra* note 46.

48. This policy was successfully challenged in Philadelphia. See *D.C. v. Sch. Dist. of Phila.*, 879 A.2d 408 (Pa. Commw. Ct. 2005).

49. In Texas, for example, the state's largest counties are required to create a Juvenile Justice Alternative Education Program ("JJAEP") to educate students with records of violent behavior or persistent disciplinary violations. A 2004 state report on the program, however, revealed little evidence of improved academic achievement by the students in attendance. Rather, on state-mandated achievement tests, less than one-third of students passed in math and only 56% passed in reading. See Shane Hall, *Problems With the Juvenile Justice Alternative Education Program in Texas*, EHOW.COM, [http://www.ehow.com/list\\_6312034\\_problems-alternative-education-program-texas.html#ixzz1Jbb8TQWQ](http://www.ehow.com/list_6312034_problems-alternative-education-program-texas.html#ixzz1Jbb8TQWQ).



youth adjudicated delinquent. Instead of gaining needed access to education, these youth too often face educational disruptions, delayed enrollment, and inappropriate school placements. Too many youth then fall increasingly behind in school and ultimately drop out.

## II. LEGAL OBLIGATIONS AND INCENTIVES TO EDUCATE YOUTH ADJUDICATED DELINQUENT

States have a legal obligation to provide an adequate education to youth adjudicated delinquent—an obligation based both in education law and in the juvenile justice system’s duty to rehabilitate youth in its care.<sup>50</sup> As described above, states too often fall short of reaching these goals. Policies aimed at improving education outcomes for this population, including Title I Part D of the ESEA, should, at a minimum, ensure that youth benefit from existing legal entitlements. To that end, the Article provides an overview of these entitlements.

### A. *The Right to Education*

Although the U.S. Supreme Court has never recognized a constitutional right to an education,<sup>51</sup> nearly all state constitutions recognize such a right.<sup>52</sup> State laws may also confer specific statutory entitlements such as the right to

50. See STATE JUVENILE JUSTICE PROFILES, *supra* note 15 (a searchable database of state juvenile justice including links to each state’s purpose clause for delinquency proceedings). States also have other compelling reasons—beyond their moral obligation—to meet the educational needs of youth adjudicated delinquent. Research has linked quality education with reduced recidivism and better reintegration for youth coming back to the community. Decreasing dropout rates, in particular, benefits not only the youth him or herself, but it also saves the state money by increasing tax revenue. PA. P’SHPIS FOR CHILDREN, OPERATION RESTART, RE-ENGAGING HIGH SCHOOL DROPOUTS AS A GROWTH STRATEGY FOR PA 1-2 (2010) (citing NEETA P. FOGG, PAUL E. HARRINGTON & ISHWAR KHATIWADA, THE TAX AND TRANSFER FISCAL IMPACTS OF DROPPING OUT OF HIGH SCHOOL IN PENNSYLVANIA vi (Ctr. for Labor Mkt. Studies, Ne. Univ. eds., 2008)), and decreasing the high costs associated with criminality. See *id.* (“nationally, dropouts are three and a half times more likely than high school graduates to be arrested, and more than eight times as likely to be incarcerated”) (citing COAL. FOR JUVENILE JUSTICE, ABANDONED IN THE BACK ROW: NEW LESSONS IN EDUCATION AND DELINQUENCY PREVENTION (2001); JOHN.M. BRIDGELAND, JOHN.J. DILULIO, & KAREN.B. MORISON, THE SILENT EPIDEMIC: PERSPECTIVES OF HIGH SCHOOL DROPOUTS 2 (2006)).

51. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35-36 (1973). Notably, as a nation, the United States has recognized the right to equal access to education as a fundamental human right. See, e.g., Organization of American States, American Convention on Human Rights art. 26, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 13, *opened for signature* Nov. 17, 1988, O.A.S.T.S. No. 69 (entered into force Nov. 16, 1999); International Covenant on Economic, Social and Cultural Rights [ICESCR] arts. 2(2), 13, 14, Jan. 3, 1976, 993 U.N.T.S.

52. See, e.g., FLA. CONST. ART. IX, § 1(a) (“The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require . . . .”); see also ARVAL A. MORRIS, THE CONSTITUTION AND AMERICAN EDUCATION (1974).

attend public school,<sup>53</sup> to attend public schools for a designated number of hours per day or per term,<sup>54</sup> to attend a regular public school rather than an alternative school,<sup>55</sup> or to receive adequate procedures in suspensions or expulsions.<sup>56</sup> Some state statutes explicitly address the educational issues of youth adjudicated delinquent.<sup>57</sup> Under California law, for example, “[b]efore any decision is made to place a pupil in a juvenile court school . . . , a community school . . . , or other alternative educational setting, the parent or guardian, or person holding the right to make educational decisions for the pupil . . . , shall first consider placement in the regular public school.”<sup>58</sup> These rights, in turn, can trigger due process protections under federal and state constitutions.<sup>59</sup>

### B. *The Right to Rehabilitation*

All states also have a legal obligation under their juvenile justice codes to rehabilitate youth adjudicated delinquent.<sup>60</sup> Since the juvenile court system’s birth at the beginning of the twentieth century, its aim has been to rehabilitate youth who allegedly committed wrongful acts.<sup>61</sup> With the operating principle that there are no bad children, only bad conditions, the creators of the juvenile court set out to save children, not punish them.<sup>62</sup> Although the rehabilitative model eroded substantially over the following century,<sup>63</sup> every state recognizes that at least one of the purposes of its separate juvenile justice system is to treat and rehabilitate youth coming under juvenile court jurisdiction.<sup>64</sup> Quality education is part and parcel of effective rehabilitation.<sup>65</sup> Indeed, many states

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53. See, e.g., ALASKA STAT. § 14.03.080 (2007).

54. See, e.g., 22 PA CODE § 11.3 (designating minimum required instruction hours per grade level).

55. According to recent study and survey by the Institute on Community Integration (UCEDD) at the University of Minnesota, all fifty States and the District of Columbia have some legislation relating to alternative schools covering a variety of themes, including enrollment criteria. Camille A. Lehr, Eric J. Lanners, & Cheryl M. Lange, INSTITUTE ON COMMUNITY INTEGRATION, UNIV. OF MN., COLL. OF EDUC. AND HUMAN DEV., *Alternative Schools: Policy and Legislation across the United States* 5 (2003), available at [http://ici.umn.edu/alternativeschools/publications/Legislative\\_Report.pdf](http://ici.umn.edu/alternativeschools/publications/Legislative_Report.pdf).

56. See, e.g., WYO. STAT. ANN. §§ 21-4-305–21-4-306 (2009) (procedures governing suspension or expulsion).

57. See, e.g., FL. STAT. ANN. § 1003.52(1) (2011) (“The Legislature finds that education is the single most important factor in the rehabilitation of adjudicated delinquent youth in the custody of Department of Juvenile Justice programs. It is the goal of the Legislature that youth in the juvenile justice system continue to be allowed the opportunity to obtain a high quality education.”); CAL. EDUC. CODE § 48853(b) (2009).

58. CAL. EDUC. CODE § 488.53(b) (West 2011).

59. See, e.g., *D.C. v. Sch. Dist. of Phila.*, 879 A.2d 408 (Pa. Commw. Ct. 2005).

60. See STATE JUVENILE JUSTICE PROFILES, *supra* note 15.

61. YOUTH ON TRIAL 1–2 (Thomas Grisso and Robert G. Schwartz, eds., 2000).

62. See ELIZABETH S. SCOTT & LAWRENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 82–83 (2008).

63. See, e.g., *id.* at 6–9.

64. See STATE JUVENILE JUSTICE PROFILES, *supra* note 15.

65. See Jessica Feierman et al., *The School to Prison Pipeline...and Back: Obstacles and Remedies for the Re-Enrollment of Adjudicated Youth*, 54 N.Y.L. SCH. L. REV. 1115, 1116 (2009/10); Twomey, *supra* note 26, at 766.

explicitly identify the development of competencies or skills that allow youth to develop into productive members of society as a goal of their juvenile system.<sup>66</sup> Some go even farther by specifically including education in their juvenile system's purpose clause.<sup>67</sup>

### C. Education Quality

Federal laws holding schools accountable for student progress also provide legal support for ensuring an adequate education for youth adjudicated delinquent. The federal No Child Left Behind Act (NCLB)<sup>68</sup> requires, among other things, that all schools in the nation maintain "Adequate Yearly Progress"<sup>69</sup>

66. See, e.g., ALASKA STAT. § 47.12.010(a) (2010) (" . . . equip juvenile offenders with the skills needed to live responsibly and productively"); ALASKA STAT. § 47.12.010 (b)(1)(D) (2010) ("development of the juvenile into a productive citizen"); ALASKA STAT. § 47.12.010 (b)(11) (2010) ("provide an early, individualized assessment and action plan for each juvenile offender so that the juvenile is more capable of living productively and responsibly in the community"); COLO. REV. STAT. § 19-2-102(1) (2010) (" . . . assist the juvenile in becoming a productive member of society"); D.C. CODE § 16-2301.02(5) (2010) (" . . . goal of creating productive citizens . . . "); IDAHO CODE ANN. § 20-501 (2010) (" . . . competency development"); 750 ILL. COMP. STAT. § 405/5-101(1) (2010) (" . . . equip juvenile offenders with competencies to live responsibly and productively . . . "); ME. REV. STAT. ANN. tit. 15, § 3002(1)(D) (2010) (" . . . assist that juvenile in becoming a responsible and productive member of society"); MD. CODE ANN. CTS. & JUD. PROC. § 3-8A-02(a)(1)(iii) (2010) ("competency and character development to assist children in becoming responsible and productive members of society"); MONT. CODE ANN. § 41-5-102(2)(b) (2010) ("competency development"); NEB. REV. STAT. ANN. § 43-246(1) (LexisNexis 2010) (" . . . development of their capacities for a . . . useful citizenship"); N.C. GEN. STAT. § 7B-2500(3) (2010) ("The court should develop a disposition in each case that . . . [p]rovides the appropriate . . . training . . . to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the community."); PA. CONS. STAT. § 6301(b)(2) (2010) ("development of competencies to enable children to become responsible and productive members of the community"); WIS. STAT. § 938.01(2)(c) (2010) (" . . . individualized assessment of each alleged and adjudicated delinquent juvenile, in order to prevent further delinquent behavior through the development of competency in the juvenile offender, so that he or she is more capable of living productively and responsibly in the community").

67. See, e.g., DEL. CODE ANN. tit. 31, § 302(2) (2010) (" . . . provide for the delinquent such wise conditions of modern education and training as will restore the largest possible portion of such delinquents to useful citizenship"); FLA. STAT. ANN. § 985.01(f) (LexisNexis 2010) (" . . . provide children committed to the Department of Juvenile Justice with training in life skills, including career education"); FLA. STAT. ANN. 985.02(f) (LexisNexis 2010) ("equal opportunity and access to quality effective education, which will meet the individual needs of each child . . . "); HAW. REV. STAT. ANN. § 352D-4(2) (LexisNexis 2010) ("The necessary educational . . . services"); 750 ILL. COMP. STAT. ANN. § 405/5-101(1)(c) (LexisNexis 2011) (" . . . development of educational . . . skills which enable a minor to mature into a productive member of society"); NEB. REV. STAT. ANN. § 43-402(7) (LexisNexis 2010) ("base treatment planning and service provision upon an individual evaluation of the juvenile's needs recognizing the importance of meeting the educational needs of the juvenile in the juvenile justice system"); N.J. STAT. ANN. § 52:17B-169(i)(1) (West 2011) ("ensure accountability, provide training, education, treatment, and, when necessary, confinement . . . adequate to . . . promote successful reintegration into the community"); TENN. CODE ANN. § 37-5-102(2) (2010) ("provide . . . educational services").

68. 20 U.S.C. § 6301, *et. seq.* (2006).

69. 20 U.S.C. § 6311(b)(2)(B) (2006). Section 6311(b)(2)(B) provides: Each State plan shall demonstrate . . . what constitutes adequate yearly progress of the State, and of all public elementary schools, secondary schools, and local educational agencies in the State, toward enabling all public elementary school and secondary school students to meet the State's student academic achievement standards, while working toward the goal of narrowing the achievement gaps in the State, local educational agencies, and schools. *Id.*

(AYP) as evidenced by the test scores of their students. NCLB also requires that each state's educational agency submit a plan to the Secretary of the U.S. Department of Education.<sup>70</sup> The state plan must demonstrate that the state has adopted challenging academic content standards and challenging student academic achievement standards for all public elementary and secondary school students.<sup>71</sup> The state plan must also demonstrate that the state has developed and is implementing a single, statewide accountability system for ensuring that all schools make AYP.<sup>72</sup> NCLB also requires schools to provide remedial education services to students in specific circumstances.<sup>73</sup> Schools that fail to achieve AYP in the third year are required to offer remedial services in the form of free tutoring and other supplemental education services to struggling students.<sup>74</sup>

Significant challenges exist to ensuring that youth adjudicated delinquent are properly accounted for in the AYP calculation.<sup>75</sup> In addition, however, the NCLB accountability structure can cause problems for adjudicated youth as concerns about low test scores by students who have been in juvenile justice placements can lead to discrimination and push-out by schools concerned about making AYP.<sup>76</sup> However, all programs serving youth who are adjudicated delinquent or are otherwise at-risk must at least develop state-approved criteria by which to evaluate and assess the effects of the programs on participants.<sup>77</sup> Accordingly, NCLB can provide an additional incentive and opportunity for improving the educational outcomes of youth adjudicated delinquent.

#### D. Special Education Services

The Individuals with Disabilities Education Act (IDEA) imposes additional legal obligations on states to educate youth adjudicated delinquent. The law establishes the rights of youth with disabilities to receive special education and

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70. *Id.* § 6311(a)(1). Again, for a complete list of all fifty state plans, see *Approved State Accountability Plan*, U.S. DEPT. OF EDUC. (2006), available at <http://www.ed.gov/admins/lead/account/stateplans03/index.html>.

71. 20 U.S.C. § 6311(b)(1) (2006).

72. *Id.* § 6311(b)(2)(A).

73. Under NCLB, schools that fail to achieve AYP in the third year are required to offer remedial services in the form of free tutoring and other supplemental education services to struggling students. See 20 U.S.C. § 6316(b)(5)(B), (e)(1), (6) (2006). While NCLB is silent regarding funding gifted programs, several states additionally require schools to identify gifted students and provide them with appropriate challenging opportunities and/or specially designed instruction when needed. See, e.g., ARIZ. REV. STAT. § 15-779 (2005); 24 PA. STAT. ANN. § 13-1371 (West 2011); 22 PA. CODE § 16.1 (2004); CAL. EDUC. CODE §§ 52200-52212, AB 2313, AB 2207 (West 2011).

74. See 20 U.S.C. § 6316(b)(5)(B), (e)(1),(6) (2006).

75. In many cases, State definitions of AYP may not provide an appropriate indication of progress for programs designated for children and youth in institutions who are adjudicated delinquent. Because of high turnover and limited length of stay of youth in many institutions, responsible education agencies may not use the same measures as are applied to children who attend school in a more traditional setting. Students in these institutions who receive instruction for different lengths of stay may not be available during the time period in which the assessments are given or may be present for less than the full academic year contemplated by AYP assessments. Moreover, the governance structures for schools in institutions vary from state to state and will affect which school district gets assessed for the youth's progress. See WOLFORD, *supra* note 30.

76. See Feerman et al., *supra* note 65, at 1122-23.

77. 20 U.S.C. §§ 6439, 6471 (2006).

related services as necessary to ensure they are provided a free and appropriate public education (FAPE).<sup>78</sup> Youth must be identified and must receive special education and related services whenever eligible, regardless of their adjudication status.<sup>79</sup> While the 1997 IDEA amendments provide for modification of Individualized Education Programs (IEPs) of youth with disabilities who are incarcerated in adult criminal corrections facilities if there is a “bona fide security or compelling penological interest,” no such exception exists for juvenile facilities.<sup>80</sup> As a result, the IDEA is an essential tool for the educational success of adjudicated youth.<sup>81</sup>

The IDEA provides extensive and detailed procedural and substantive mandates aimed at ensuring that youth with disabilities receive *individualized* education services. Under the IDEA, school districts are affirmatively required to find and evaluate students with disabilities.<sup>82</sup> Students who possess a disability as defined by the IDEA are entitled to an IEP, education in the least restrictive setting, and specialized instruction to meet their unique needs<sup>83</sup> provided in conformity with a written IEP.<sup>84</sup> A FAPE offered to a student through the IDEA’s procedures must be reasonably calculated to enable the student to receive educational benefits.<sup>85</sup>

As a preliminary matter, the juvenile justice system must identify those youth who may need special education evaluations.<sup>86</sup> The system must also ensure that a student’s individualized education plan is appropriate and up-to-

78. Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1142 (codified as amended in scattered sections of 20 U.S.C.)

79. States must demonstrate that “all children residing in the State who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated.” 20 U.S.C. § 1412(2)(C) (2006); *see also* 20 U.S.C. § 1414(a)(1)(A) (2006). Local education agencies also have an affirmative duty to identify, locate, and evaluate children who may be eligible for special education services. *See* 20 U.S.C. § 1412(2)(C) (2006); 34 C.F.R. § 300.128(a)(1) (2011). This “child find duty” applies to youth in juvenile justice placements up to age 21. *See* 20 U.S.C. § 1412 (a)(1) (2006); *see also* 34 C.F.R. § 300.300 (a)(1) (2011) (“Each State receiving assistance under this part shall ensure that FAPE is available to all children with disabilities, aged 3 through 21, residing in the State, including children with disabilities who have been suspended or expelled from school.”). For more information see Sue Burrell & Loren Warboys, *Special Education and the Juvenile Justice System*, JUVENILE JUSTICE BULLETIN (July 2000), available at [http://www.ncjrs.gov/html/ojdp/2000\\_6\\_5/contents.html](http://www.ncjrs.gov/html/ojdp/2000_6_5/contents.html); JUVENILE LAW CTR., UNIV. OF D.C., SPECIAL EDUCATION ADVOCACY UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) FOR CHILDREN IN THE JUVENILE DELINQUENCY SYSTEM (Joseph B. Tulman & Joyce A. McGee eds., 1998), available at <http://www.aecf.org/upload/PublicationFiles/JJ3622H5030.pdf>.

80. 20 U.S.C. § 1414(d)(6)(B) (2006); 34 C.F.R. § 300.311(c) (2011).

81. Twomey, *supra* note 26, at 774; Mark Soler et al., *Juvenile Justice: Lessons for a New Era*, 16 GEO. J. ON POVERTY L. & POL’Y 483, 508 (2009).

82. 20 U.S.C. §§ 1412(a)(3), 1413(a)(1) (2006).

83. Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1142 (codified as amended in scattered sections of 20 U.S.C.)

84. 20 U.S.C. §1401(9)(D) (2006); *see also* 34 C.F.R. 300.17, 300.320 (2011). Moreover, each placement decision must be individualized and based on the youth’s Individualized Education Program (IEP). 34 C.F.R. 300.116(b)(2) (2011).

85. *See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206–07 (1982); *see also* 20 U.S.C. § 1415(f)(3)(E)(i) (2006).

86. For one example of a state policy to accomplish this goal, see MICHIGAN’S POLICY JJ6 650 FOR IDEA COMPLIANCE (July 1, 2008), available at <http://www.mfia.state.mi.us/olmweb/ex/jj6/650.pdf>.

date.<sup>87</sup> Schools must regularly review and revise the IEP for each individual student to determine whether the youth is progressing in his or her IEP goals, and to assess the specific services that he or she may need.<sup>88</sup>

To ensure that the special education rights of adjudicated youth are met, justice and education systems must also ensure that each youth has an education decision maker. This is a particular area of concern for youth in the juvenile justice system as youth may lack a parent to make such decisions. Thus, the IDEA requires the appointment of a “surrogate parent” to make special education decisions on behalf of students with disabilities to protect their rights whenever their parents are not known or when the youth is a ward of the state.<sup>89</sup> When a student is in court custody, judges may appoint surrogate parents if it is in the student’s best interest.<sup>90</sup> Alternatively, a school district may appoint a special education decision maker in four specific situations: when (1) no “parent” can be identified; (2) the school, after reasonable efforts, cannot locate a parent; (3) the student is a ward of the state under laws of that state; or (4) the student is an unaccompanied homeless youth.<sup>91</sup>

The IDEA also requires that older youth receive transition planning to help them move toward higher education, vocational training, or other post-secondary goals. Under the IDEA, an IEP Team must begin transition planning for each student by the time the student is sixteen.<sup>92</sup> Transition services resulting from such planning must be a component described as part of the IEP.<sup>93</sup> In some states, transition planning begins at an earlier age.<sup>94</sup> Part B of the IDEA sets forth specific requirements related to transition planning and transition services to prepare youth with disabilities for their move toward, and life after, they complete high school.<sup>95</sup> These services can include, for example, postsecondary education, vocational training, employment (such as supported employment), continuing and adult education, specific adult services, independent living, and community participation.<sup>96</sup> These services can help youth adjudicated delinquent move on to post-secondary education and successful community reentry.

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87. See Burrell & Warboys, *supra* note 79.

88. 34 C.F.R. 300.320 (2011); see, e.g., *Penn Trafford Sch. Dist. v. C.F.*, Civ. No. 4-1395, 2006 WL 840334, at \*3 (W.D. Pa. Mar. 28, 2006); *Larson ex rel. Larson v. Indep. Sch. Dist. No. 361*, Nos. Civ. 02-3611, Civ. 02-4095, 2004 WL 432218, at \*12 (D. Minn. Mar. 2, 2004) (holding that short-term objectives were too vague where they do not provide objective criteria against which achievement could be measured); *Evans v. Bd. of Educ.*, 930 F. Supp. 83, 97 (S.D.N.Y. 1996) (noting that vague measurements such as “80% success,” “fail to specify strategies for adequately evaluating [a student’s] academic progress and determining which teaching methods are effective and which need to be revised”).

89. 20 U.S.C. §§ 1415(b)(2), 1439(a)(5) (2006).

90. See 20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519 (2011).

91. See 34 C.F.R. § 300.519.

92. 20 U.S.C. § 1414(d)(1)(A)(VIII) (2006).

93. *Id.*

94. See, e.g., 22 PA. CODE § 14.131 (5) (2001, amended 2008) (enforcing that transition planning must begin at age fourteen).

95. 20 U.S.C. § 1414(d)(1)(A)(VIII).

96. See 34 C.F.R. § 300.29 (2006) (defining transition services to mean “a coordinated set of activities for a student with a disability that—(1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the

### E. *Disabilities Law*

Section 504 of the Rehabilitation Act of 1973 (§ 504)<sup>97</sup> prohibits discrimination on the basis of disability or perceived disability, and applies to programs that receive federal financial assistance, including publicly funded facilities for delinquent youth and their schools.<sup>98</sup> Section 504 specifically requires the provision of services and reasonable accommodations for youth with a qualifying disability—that is, a physical or mental impairment that substantially limits a “major life activity.”<sup>99</sup> A Section 504 Accommodation Plan (also called an Accommodation Plan, Service Agreement, or a 504 Plan) must be individualized to accommodate the youth’s specific disability (*e.g.*, a student with diabetes may be allowed to leave class to see the school nurse in order to receive insulin injections).<sup>100</sup>

In addition, Title II of the Americans with Disabilities Act (ADA) prohibits local and state governmental entities from excluding persons with disabilities from participation in or the benefits of services, programs, or activities, provided the exclusion is by reason of the disability.<sup>101</sup> A disability under the ADA is similarly defined as a physical or mental impairment that substantially limits one or more of the major life activities.<sup>102</sup> One of the federal regulations promulgated to implement this law, the so-called “integration regulation,” requires a “public entity [to] administer . . . programs . . . in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”<sup>103</sup> The “reasonable-modifications regulation,” requires public entities to “make reasonable modifications” to avoid “discrimination on the basis of disability,” but does not require measures that would “fundamentally alter” the nature of the entity’s programs.<sup>104</sup> Thus, the ADA protects the right of youth adjudicated delinquent with disabilities to be accommodated in their education settings.

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individual student's needs, taking into account the student's preferences and interests; and (3) Includes—(i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and functional vocational evaluation.”); *see also* 34 C.F.R. § 300.347 (2006) .

97. *See* 29 U.S.C. § 794 *et seq.* (2006); *see also* 34 C.F.R. §104 (2000).

98. *See* 34 C.F.R. § 104.4(b)(1)(iii) (defining discrimination, *inter alia*, as affording a qualified person with “an aid, benefit, or service that is not as effective as that provided to others”); *see also* 34 C.F.R. § 104.33(a) (mandating that each student receive an education that is designed to meet the student’s need as adequately as the needs of non-handicapped persons are met); 34 C.F.R. § 104.34(a) (requiring a recipient to ensure that each qualified handicapped person is educated in its regular educational program with supplementary aids and services unless it is demonstrated that otherwise the student cannot achieve satisfactorily).

99. 34 C.F.R. § 104.3(j).

100. *See* 34 § C.F.R. 104.33(b)(2) (providing appropriate education means providing regular or special education and related aids and services designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met).

101. 42 U.S.C. § 12132 (2006).

102. 42 U.S.C. § 12102(a) (2006).

103. 28 C.F.R. § 35.130(d) (2011).

104. 28 C.F.R. § 35.130(b)(7).

*F. School Transitions and Re-entry*

Federal law also promotes reentry services for youth returning from secure placements. Title I Part D of the ESEA provides for "Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk."<sup>105</sup> Below, the Article discusses the ESEA in detail, including the authors' recommendations for amending it to hold states more accountable for the educational success of youth adjudicated delinquent; the Article includes the ESEA in this Section as well in order to highlight the substantive requirement it imposes on states accepting funding to facilitate a youth's transition into and out of correctional facilities. The ESEA requires state operated institutions to reserve not less than 15% and not more than 30% of Part D funds for transition and reentry projects, including the return of youth from state operated institutions to local schools.<sup>106</sup> Among other requirements, states receiving funds must clarify the method by which they will coordinate with local education agencies or alternative education programs to ensure that "student assessments and appropriate academic records are shared jointly between the correctional facility and the local educational agency or alternative education program."<sup>107</sup>

Recently introduced federal legislation would strengthen the reentry provisions of Title I Part D further.<sup>108</sup> It would require a greater focus on ensuring that youth attain a secondary school diploma or progress on a career pathway to employment in a high-wage, high-growth industry.<sup>109</sup> It also would require states to clarify the supports and services they will provide to students returning to school, including the facilitation of credit transfers from facilities to schools.<sup>110</sup> Additionally, the legislation would require State and local educational agencies to work together to develop and implement reentry programs for such students.<sup>111</sup>

For older youth, part of successful reintegration requires appropriate supports for the transition to adulthood. Title I Part D establishes that youth under the age of twenty who already have high school diplomas or the equivalent be provided with support services to enter college, vocational school, or employment.<sup>112</sup> Individual transition planning is also a requirement for youth eligible for services under the IDEA.<sup>113</sup> Transitions may be further supported by state law or jurisdiction specific policy and practice.<sup>114</sup> In Washington State, for

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105. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1580, Tit. 1(D) (2002).

106. § 1418.

107. § 1414(c)(9).

108. Secondary School Reentry Act of 2011, S. 1019, 112th Cong. (2011).

109. *Id.* at § 2.

110. *Id.* at § 5.

111. *Id.* at § 6.

112. No Child Left Behind Act of 2001, § 1418; § 1425.

113. 20 U.S.C. § 1414(d) (2006); 34 CFR § 300.320(b).

114. For example, the Alternative, Community, And Correctional Education Schools and Services (ACCESS) program of the Orange County, CA Department of Education focuses on preparing youth to transition successfully from alternative education placements back into the community, including returning to local district schools. Alternative, Community, And Correctional Education Schools and Services, Orange County DEPT. OF EDUC. DIVISION OF ALTERNATIVE EDUC., *Alternative Education Options 2010-2011 for Youth and Adults in Orange County*, 10, (2011), available at <http://>



example, the Office of Superintendent of Public Instruction earmarked funds for transition specialists in twenty-two detention centers across the state. Interventions by transition specialists range from check-ins to actual transition planning and community placement support for up to thirty days after release.<sup>115</sup> An Education Advocate then makes contact with the transitioning youth and provides case management to assist youth with reintegration issues, connecting them with services, engaging their families, and documenting their progress.<sup>116</sup> Similarly, Missouri passed legislation requiring the Division of Youth Services to create individual treatment plans including education/vocation information as a part of their aftercare responsibilities.<sup>117</sup> In West Virginia, legislation requires the institution to gather stakeholders together to develop an after care plan, including an education plan.<sup>118</sup> The juvenile probation officer or mental health professional then submits the plan to the court.<sup>119</sup> Maine's law also identifies a structure to assist with transitions, and timelines for completing the tasks, but places the responsibility for overseeing transitions and reintegration on the district superintendent.<sup>120</sup> Kentucky facilitates the process through education passports that accompany a student through the transition.<sup>121</sup> State laws may also require the transfer of full and partial credits whenever a youth enrolls in a new school.<sup>122</sup>

### III. USING TITLE I PART D TO HOLD STATES ACCOUNTABLE FOR THE EDUCATION OF YOUTH ADJUDICATED DELINQUENT

#### A. *Title I Part D: Background*

To effectuate its three broad goals of improving educational services for youth in institutions, providing transitions services, and addressing the dropout

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[www.access.k12.ca.us/PdfFiles/Ed\\_Options\\_2010-2011.pdf](http://www.access.k12.ca.us/PdfFiles/Ed_Options_2010-2011.pdf). ACCESS partners with community organizations such as CORE to provide some of these services. CORE helps ensure a successful transition for youth on probation after incarceration by providing educational and life skills services. *Id.* at 15. The ACCESS Title I Transition Program also operates an Education Counseling Center inside a juvenile hall. *Id.* at 30. There, a Transition Specialist team monitors youth's progress toward graduation and works to ease the youth's transition back to the community. *Id.* at 17, 30.

115. KRISTIN SCHUTTE & MICHELLE M. MAIKE, OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, WASHINGTON'S EDUCATION ADVOCATE PROGRAM MANUAL, A-1 (Nov. 2009) [http://www.k12.wa.us/InstitutionalEd/pubdocs/EA\\_Manual.pdf](http://www.k12.wa.us/InstitutionalEd/pubdocs/EA_Manual.pdf).

116. *Id.* at A-1-A-2.

117. MO. CODE REGS. TIT. 13 §110-3 (2000), available at <http://www.sos.mo.gov/adrules/csr/current/13csr/13c110-3.pdf>.

118. W. VA. CODE § 49-5-20 (2011), available at <http://www.legis.state.wv.us/WVCODE/code.cfm?chap=49&art=5>.

119. *Id.*

120. ME. REV. STAT. TIT. 20(A), §1055(12) (2010) available at <http://www.mainelegislature.org/legis/statutes/20-A/title20-Asec1055.html>.

121. KY. REV. STAT. ANN. § 158.137 (1998).

122. See Cal Assemb. B. 490(1), 2003 Leg., Reg. Sess. (2003) (requiring that school districts accept credit for any full or partial coursework satisfactorily completed by a student while attending a public school; juvenile court school; or nonpublic, nonsectarian school or agency). For more information on states using Title I Part D to ease reentry, see ANGELINE SPAIN, NAT'L EVALUATION & TECHNICAL ASSISTANCE CENT., STATE LEGISLATION STRENGTHENING TRANSITION, [http://www.neglected-delinquent.org/nd/resources/trans\\_strength.asp](http://www.neglected-delinquent.org/nd/resources/trans_strength.asp).

problem,<sup>123</sup> Title I, Part D includes two key subparts.<sup>124</sup> Under subpart 1, states receive formula funds to make subgrants to state agencies if they comply with certain criteria—including ensuring coordination between agencies and programs, and between correctional facilities and local education agencies,<sup>125</sup> facilitating youths’ smooth transitions out of the correctional facility and into a school setting or other stable environment,<sup>126</sup> meeting youths’ special education needs,<sup>127</sup> and engaging families.<sup>128</sup> Subpart 1 also contains a section specifically devoted to institution-wide projects.<sup>129</sup> The law clarifies that a state agency educating youth within an institution—other than an adult correctional facility—can use Title I Part D funds to upgrade the “entire educational effort” of that institution or program, as long as the institution complies with certain requirements.<sup>130</sup> These requirements include describing how they will help youth to succeed in their education and complete secondary school or its equivalent, or find employment after leaving the institution,<sup>131</sup> and assuring that they will provide appropriate training for teachers and other staff to carry out the project.<sup>132</sup>

Under subpart 2, the State Education Agency awards subgrants to local educational agency programs that collaborate with locally operated correctional facilities.<sup>133</sup> Funds may be used for programs assisting youth who are returning from a correctional environment to school with their transition, dropout prevention programs for at-risk youth (including youth adjudicated delinquent), the coordination of health and social services for at-risk youth if there is a likelihood that such services would help them complete their education, special programs to meet the unique academic needs of participating youth, and programs providing mentoring and peer mediation.<sup>134</sup>

Accepting Title I Part D funds triggers a requirement on the state to evaluate programs and assess individual youth.<sup>135</sup> For both subparts 1 and 2, the state agency or local education agency conducting a program must evaluate the program at least every three years to assess the participants’ ability to maintain and improve educational achievement, accrue school credits toward grade promotion and graduation, make the transition to an education program operated by a local education agency, complete secondary school or its equivalent and obtain employment after leaving a correctional facility or institution, and to participate in postsecondary education and job-training

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123. No Child Left Behind Act of 2001, Pub. L. No. 107-110, Title I, § 1401(a)(1)–(3), 115 Stat. 1439, 1580 (2002) (identifying three-pronged purpose of Title I, Part D).

124. *See id.* at §§ 1411–1419 (Subpart I); §§ 1421–1426 (Subpart II).

125. *Id.* at § 1414 (c)(8) and (9).

126. *Id.* at § 1414(c)(9), (11), (13), § 1418.

127. *Id.* at § 1414(c)(15), (17).

128. *Id.* at § 1414(c)(14).

129. *Id.* at § 1416.

130. *Id.*

131. *Id.* at § 1416(3).

132. *Id.* at § 1416(8).

133. *Id.* at § 1422(a).

134. *Id.* at § 1424(1)–(5).

135. *Id.* at § 1416; §1431.

programs.<sup>136</sup> The provisions for institution-wide projects under subpart 1 also include a variety of requirements relating to assessing the educational progress of youth.<sup>137</sup> The state agency must submit a plan that “provides for a comprehensive assessment of the educational needs of all youth in the institution or program serving juveniles,”<sup>138</sup> or in the case of juveniles held in adult facilities, an assessment of the needs of “youth aged 20 and younger who are expected to complete incarceration within a 2-year period.”<sup>139</sup> The plan must also describe the “measures and procedures that will be used to assess student progress.”<sup>140</sup> Under subpart 2, “the state education agency may require correctional facilities or institutions for neglected or delinquent youth to demonstrate [improvement] in the number of youth returning to school, obtaining a secondary school diploma or a GED, or obtaining employment after release.”<sup>141</sup> The state agency may also terminate funding if the local education agency does not show progress in reducing dropout rates over a three year period.<sup>142</sup>

*B. Amending Title I Part D: Gathering Data, Effecting Change*

Given the significant failure across the country to provide youth adjudicated delinquent with services to which they are entitled by law, including special education services, disabilities accommodations, and the provision of adequate hours of education in a regular school, rather than an alternative school for disruptive youth, Title I Part D should build on its existing evaluation requirements to mandate that states identify youth’s eligibility for such services and then track the extent to which they receive the services, both within an institution and at the time of reentry. To implement this law fully, states would need the resources to (1) develop a data collection mechanism that has the capacity to assess the progress of youth over time and in various settings; and (2) develop a tool to track both eligibility and provision of services to support thorough data collection and practice changes.

*i. Grants for Data Collection*

The legislation should not only set the stage for evaluating programs or institutions, it should also lay a basis for deeper change. Carefully controlled data should be gathered on the needs, services, and outcomes of youth in secure placements as compared with their peers receiving community-based services. Title I Part D could directly require this data collection, or could offer incentive grants to states for collecting the more comprehensive data outlined here.

Federal education law already establishes grants for the collection of longitudinal data on the academic progress of youth. The U.S. Department of Education may provide funding to states to develop “information and reporting

136. *Id.* at § 1431.

137. *Id.* at § 1416.

138. *Id.* at § 1416(1).

139. *Id.* at § 1416(2).

140. *Id.* at § 1416(6).

141. *Id.* at § 1426(2).

142. *Id.* at § 1426(1).

systems designed to identify best educational practices based on scientifically based research or to assist in linking records of student achievement, length of enrollment, and graduation over time.”<sup>143</sup> This structure could be used as a model—but for the juvenile justice system to assess whether it is meeting its obligation to rehabilitate and educate youth, the data collected would need to include that collected from juvenile justice *and* education agencies. Research suggests that evidence-based treatment in the community is particularly effective at reducing recidivism rates.<sup>144</sup> Because these programs avoid the repeated school transitions, poor services, and school push-out problems that youth face when placed in residential facilities, they also hold great promise for improving educational outcomes for youth adjudicated delinquent. The juvenile justice system should therefore evaluate, among other things, the benefits of community-based placements.

Initial structures should already be in place for such data collection. Title I Part D currently requires states to gather information about how youth progress over time.<sup>145</sup> It requires states to report not only on the progress of youth placed in juvenile justice facilities, but also on the degree to which they make the transition to public school, complete secondary school or its equivalent, obtain employment, and participate in postsecondary education and job training programs.<sup>146</sup> As Congress considers the ESEA reauthorization and accountability reforms as well as research opportunities under Title I Part D, advocates should set the stage for comprehensive data to be collected that can allow us to answer the hard questions—at the individual and aggregated level—about how to create positive educational consequences for youth adjudicated delinquent.

*ii. An Education Screen for Youth Adjudicated Delinquent: Tracking Compliance with Legal Entitlements*

In light of the significant disconnect between youth and their legal entitlements, data collected should track not only academic progress, reentry, and graduation outcomes, but also compliance with the education laws described above. One way to do this would be through an education screen that could both assist youth at the individual level and gather data for system-wide analysis.

The screen would cover all of the legal entitlements described above, including rights related to: (1) quality of education, (2) required hours, (3) required remedial services, (4) special education, (5) disabilities accommodations, and (6) reentry and transitions services. To assist professionals in identifying whether a student has unmet special education needs, for example, the screen could ask questions about a student’s academic history, behavioral issues, and mental health diagnoses. Certain responses would trigger professionals to seek an evaluation for the student. The screen would then track

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143. 20 U.S.C. § 7301(2)(H) (2006).

144. Soler, *supra* note 81, at 490–91.

145. No Child Left Behind Act of 2001, Pub. L. No. 107-110, Title I, §1431, 115 Stat. 1439, 1590 (2002).

146. *Id.*

whether the student is evaluated for special education, and if so the services the student receives in the institution and upon release. By tracking the needs of youth upon entry and upon release from the system, the screen would provide a strong data set to help evaluate system effectiveness. At the same time, it could lay the groundwork for changed practice. It could, for example, connect professionals with the information necessary to better link youth to services when they identify an eligible student.

A legal entitlements screen could build on the existing assessment tools used under Title I Part D. These tools generally provide information on a student's academic capacities and improvement, assessing, for example, their progress in math and literacy.<sup>147</sup> While they may provide a highly sophisticated measure of student academic needs and progress, they are not, in large part, designed to link youth with specific programs.<sup>148</sup> This is true even for the more innovative programs designed specifically to assess the needs of at-risk youth including youth adjudicated delinquent.<sup>149</sup> The California Alternative Schools Accountability Model (ASAM), for example, allows alternative schools, including those in juvenile justice facilities, to track the progress of highly mobile and at-risk youth in a number of areas relating to student learning readiness, transition, and academic performance.<sup>150</sup> While the model allows schools to track trends as a basis for identifying areas for improvement, it does not specifically link youth

147. For a list of assessments used in twenty-nine states in 2006, see Am. Inst. for Research, *Common Assessments Used in Neglected or Delinquent Programs*, NDTAC: TECHNICAL ASSISTANCE CTR. FOR THE EDUC. OF YOUTH WHO ARE NEGLECTED OR DELINQUENT, [http://www.neglected-delinquent.org/nd/data/assessment\\_CommonTests.asp](http://www.neglected-delinquent.org/nd/data/assessment_CommonTests.asp) (last visited Jan. 19, 2011) [hereinafter Am. Inst. for Research, *Common Assessments*]. For further information on these assessments see Am. Inst. for Research, *A Brief Guide for Selecting and Using Pre-Post Assessments*, NDTAC: TECHNICAL ASSISTANCE CTR. FOR THE EDUC. OF YOUTH WHO ARE NEGLECTED OR DELINQUENT, <http://www.neglected-delinquent.org/nd/resources/spotlight/spotlight200604a.asp> (last visited Jan. 19, 2011) [hereinafter Am. Inst. for Research, *A Brief Guide*].

148. See Am. Inst. for Research, *Innovative Models in California: Evaluation at N/D Sites*, NDTAC: TECHNICAL ASSISTANCE CTR. FOR THE EDUC. OF YOUTH WHO ARE NEGLECTED OR DELINQUENT (Apr. 2004), <http://www.neglected-delinquent.org/nd/resources/spotlight/spotlight1.asp>. See also *Program Summary- Alternative Schools Accountability Model*, CAL. DEP'T. OF EDUC., (Dec. 8, 2010) [hereinafter Am. Inst. for Research, *Innovative Models*].

149. See Am. Inst. for Research, *A Brief Guide*, *supra* note 147.

150. See, e.g., Am. Inst. for Research, *Innovative Models*, *supra* note 148; Letter from Emily Stover DeRocco, Assistant Sec'y, U.S. Dep't of Labor, to All State Workforce Agencies, Liaisons, and Trade Coordinators 14-15 (Feb. 17, 2006) <http://wdr.doleta.gov/directives/attach/TEGL17-05.pdf> [hereinafter Letter from DeRocco].

151. According to the California Department of Education, "The Alternative Schools Accountability Model (ASAM) . . . includes schools that serve pupils at high risk of dropping out or who tend to be highly mobile. Because of the high number of mobile pupils and the high incidence of pupils transferred by regular schools to ASAM schools mid-year, ASAM schools' test results are often left out of California's regular accountability system, the API system. This is because mobile pupils are typically not continuously enrolled long enough in the regular school for their test results to be represented in the school's API score. Beginning July 1, 2011, Education Code section 52052.1 will require that the API, as reported by the California Department of Education (CDE), include information regarding test scores and other accountability data of these pupils for the purpose of holding public schools accountable for engaging pupils in school, keeping them on track for graduation, and preparing them for success after high school, in college, or immediate entry into a career." CAL. DEP'T OF EDUC., INITIAL STATEMENT OF REASONS (Mar. 3, 2011), available at [www.cde.ca.gov/re/lr/rr/documents/assignpupilisr.doc](http://www.cde.ca.gov/re/lr/rr/documents/assignpupilisr.doc).

to services to address areas in which they need more assistance.<sup>151</sup> Similarly, the National Reporting System for Adult Education (NRS)—an outcome-based reporting system used in Title I Part D funded programs—urges teachers, program administrators, and states to use data on student performance to address student needs.<sup>152</sup> Relevant action steps are broad, including that youth should receive education at their level in each subject area, and that youth with educational deficiencies should receive remediation.<sup>153</sup> Facilities using the NRS or ASAM assessment tools could at the same time administer the more comprehensive screen proposed here.

Education screens could also build upon existing case management tools. For example, the Youth Level of Services Case Management Inventory (YLS/CMI) engages the juvenile justice field in gathering a wide array of information about youth in the system, both to predict the offender's risk of recidivism and to highlight areas for intervention to reduce risk.<sup>154</sup> Areas of assessment include education and employment, among others.<sup>155</sup> Because the YLS/CMI is a risk assessment tool, however, the education factors included are limited to items assessing specific education problems that relate to juvenile justice recidivism. These education problems include disruptive classroom behavior, disruptive behavior on school property, low achievement, problems in relationships with peers and teachers, and truancy.<sup>156</sup> Because the YLS/CMI was not designed with a focus on improving educational outcomes, it does not identify all educational issues, identify services, programs, or legal protections for which youth are eligible, or clarify steps professionals can take to assist youth in connecting with such resources and benefits. Similarly, a unified case-planning tool developed in Pennsylvania incorporates school reengagement questions into a broader case management plan.<sup>157</sup> Such tools could be strengthened by including the legal entitlements questions that would be required under Title I Part D.

An education screen could have a significant impact not only on data collection but also on individual case practice. Similar tools linking at-risk youth with needed education services have been shown to be highly effective in other contexts. For example, a successful education checklist developed for use by family court judges has been used to link youth in the foster care system with

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152. See Am. Inst. for Research, *Innovative Models*, *supra* note 148.

153. See Letter from DeRocco, *supra* note 150, at 14–15.

154. *Id.*

155. Delphine Gossner, Validation of the Youth Level of Service/Case Management Inventory with Saskatchewan Young Offenders 27 (2002), (unpublished A.B. thesis, University of Saskatchewan) (on file with Murray Library, University of Saskatchewan).

156. *Id.*

157. *Id.* See also KAN. JUVENILE JUSTICE AUTH., THE YOUTHFUL LEVEL OF SERVICE/CASE MANAGEMENT INVENTORY (YLS/CMI) SUMMARY, available at [http://www.jja.ks.gov/documents/LegislativeAffairs/2009LegislativeAffairs/LegAff\\_2009\\_CJJ\\_YLSsummary.pdf](http://www.jja.ks.gov/documents/LegislativeAffairs/2009LegislativeAffairs/LegAff_2009_CJJ_YLSsummary.pdf) (last visited Jun. 22, 2011).

158. See MACARTHUR FOUND., MODELS FOR CHANGE: SYSTEMS REFORM IN JUVENILE JUSTICE 2 (Nov. 2007) [http://www.modelsforchange.net/publications/119/Models\\_for\\_Change\\_Pennsylvania\\_Workplan.pdf](http://www.modelsforchange.net/publications/119/Models_for_Change_Pennsylvania_Workplan.pdf).

educational services to which they are eligible by law.<sup>158</sup> This checklist, originally developed by a nonprofit called TeamChild in Washington, encourages judges to pose questions in court about a diverse array of education matters including enrollment, attendance, school stability, special education services, extracurricular activities, and transition to adulthood.<sup>159</sup> The National Council on Family Court Judges conducted a qualitative survey to assess the survey's use.<sup>160</sup> Judges reported that the checklist guided their practice, serving as a reminder about key educational questions that might otherwise have gone unaddressed.<sup>161</sup> Quantitative research on the use of the checklist in Pima County, Arizona, further supported the efficacy of the checklist.<sup>162</sup> The research showed that after the court began using the checklist, it began addressing education issues as part of routine practice—with the judge addressing educational issues in 92% of the cases he reviewed.<sup>163</sup> Judicial orders, caseworker reports, and other related reports also began to change, addressing more regularly the categories of information contained in the checklist.<sup>164</sup> These changes resulted in better educational practices and student experiences.<sup>165</sup> School enrollment went up, with youth enrolled in school in 35% of the cases where they had previously not been, and educational assessments or evaluations were obtained in 23% of the cases where they had previously been unavailable.<sup>166</sup>

Amendments to Title I Part D could lay the groundwork for states to assess whether their juvenile justice systems are meeting the promise of rehabilitation through adequate education, and if not, could help them determine appropriate steps to address these issues. At the same time, an education screen used to implement data collection requirements could better link individual youth adjudicated delinquent with the educational services to which they are entitled.

## CONCLUSION

There are myriad negative “collateral consequences” of an adjudication of delinquency.<sup>167</sup> Carefully tracking the educational outcomes of youth who enter

159. NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, CASEY FAMILY PROGRAMS, & TEAMCHILD ADVOCACY FOR YOUTH, ASKING THE RIGHT QUESTIONS: A JUDICIAL CHECKLIST TO ENSURE THAT THE EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN FOSTER CARE ARE BEING MET 3-4 (2005), <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/EducationalOutcomes/2005educationchecklistfulldoc2.pdf>.

160. *Id.* at 7-11.

161. *Id.* at 4.

162. *Id.* at 6.

163. KIM TAITANO, CASEY FAMILY PROGRAMS, COURT-BASED EDUCATION EFFORTS FOR CHILDREN IN FOSTER CARE: THE EXPERIENCE OF THE PIMA COUNTY JUVENILE COURT (ARIZONA) 8 (2007), <http://www.casey.org/Resources/Publications/pdf/CourtBasedEducationEfforts.pdf>.

164. *Id.*

165. *Id.*

166. *Id.* at 8-9.

167. *Id.* at 8.

168. See, e.g., Michael Pinard, *Special Issue on Legal Representation of Children: The Logistical and Ethical Difficulties of Informing Juveniles about the Collateral Consequences of Adjudications*, 6 NEV. L.J. 1111, 1113-16 (2006) (documenting collateral consequences such as disqualification from residing in public housing, limitations on future employment including military service, lifetime sex offense registration, enhancement of future sentences, and expulsion from schools that have “zero-tolerance”

the system, however, provides one opportunity to pursue a positive outcome for greater education—and life—success in the long run. By collecting and analyzing this more comprehensive data, the federal government as well as individual states and programs can better assess the effectiveness of services they are currently providing, identifying areas for growth and improvement in their own provision of services. In addition, states armed with clear data from their education screens can identify their own priorities for program improvement. At the same time, the use of an education screen could immediately change practice to connect youth more expediently with the services to which they are eligible.

By promoting individual and systemic change, these changes to the ESEA and the accompanying practice recommendations hold promise for improving the long term progress toward academic success and graduation for adjudicated youth, and ultimately in opening additional opportunities for these youth to lead fulfilling and productive lives.

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policies); *see also In re J.W.*, 787 N.E.2d 747 (Ill. 2003) (lifetime sex offense registration); Army Regulations 601-210, ¶¶ 4-4, 4-32(5) (2007) (restrictions on military service); *Wallace v. Gonzalez*, 463 F.3d 135 (2d Cir. 2006) (upholding the Board of Immigration Appeals' consideration of prior juvenile adjudication in deciding whether to grant an alien's application for adjustment of status); CAMPAIGN FOR YOUTH JUSTICE, *Fact Sheet: Collateral Consequences*, available at <http://www.campaignforyouthjustice.org/fact-sheets.html> (noting collateral consequences for juvenile adjudication in the areas of voting rights, student financial aid, driver's licenses, employment, public housing, public assistance and food stamps, and adoptive or foster parenting).