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Utilizing Prosecutorial Discretion to Reduce the Number of Juveniles with Disabilities in the Juvenile Justice System

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UTILIZING PROSECUTORIAL DISCRETION TO REDUCE THE NUMBER OF JUVENILES WITH DISABILITIES IN THE JUVENILE JUSTICE SYSTEM

The disproportionate number of juveniles with disabilities in the juvenile justice system is a complex, serious problem that permeates juvenile court systems across the nation. This article examines the nexus between students with disabilities and misbehavior and presents an innovative way to reduce the disproportionate number of students with disabilities in the juvenile justice system. Several academics have criticized the Individuals with Disabilities Education Act ("IDEA"),[1] addressing the ways in which juvenile defenders should utilize education records to advocate for juveniles with disabilities,[2] and addressing the disparate impact of the school-to-prison pipeline on students with disabilities.[3] Additionally, several academics have addressed the extensive authority and discretion prosecutors possess in exercising their charging decision.[4] However, there is no academic literature addressing

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[1] *See, e.g.*, Elisa Hyman et al., *How IDEA Fails Families without Means: Causes and Corrections from the Frontlines of Special Education*, 20 AM. U. J. GENDER SOC. POL'Y & L. 107 (2011) (discussing the obstacles that families without resources face in navigating the intricacies of the IDEA); Dean Hill Rivkin, *Decriminalizing Students with Disabilities*, 54 N.Y.L. SCH. L. REV. 909 (2009/2010) (discussing how the IDEA can guard against exclusion and criminalization of children with emotional and mental disabilities).

[2] *See, e.g.*, Lisa M. Geis, *An IEP for the Juvenile Justice System: Incorporating Special Education Law throughout the Delinquency Process*, 44 U. MEM. L. REV. 869 (2014) (discussing the role of juvenile defenders to ensure the needs of special education youth are met); Jason B. Langberg & Barbara A. Fedders, *How Juvenile Defenders Can Help Dismantle the School-to-Prison Pipeline: A Primer on Educational Advocacy and Incorporating Clients' Education Histories and Records into Delinquency Representation*, 42 J.L. & EDUC. 653 (2013) (discussing ways in which juvenile defenders can utilize special education laws to advocate for juveniles in the criminal justice system).

[3] *See* 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 (2009/2010) (discussing how failures of school systems channel students with disabilities into the juvenile justice system); Rivkin, *supra* note 1 (discussing the failures of the IDEA and how the school-to-prison pipeline impacts children with disabilities).

[4] *See* Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL

the ways in which juvenile prosecutors should utilize their extensive charging authority to reduce the disproportionate number of children with disabilities in the juvenile court system.

The lack of academic literature addressing the role that juvenile prosecutors should play in reducing the number of children with disabilities in the juvenile justice system is surprising because juvenile prosecutors are uniquely situated to help dismantle the impact that the school-to-prison pipeline has on students with disabilities. By exercising their discretionary charging authority, juvenile prosecutors can ensure children with disabilities are not prosecuted for minor offenses arising out of conduct that is likely a manifestation of their disability. This article examines the intersection between juvenile prosecutorial discretion, special education laws, and juvenile justice concerns. It also looks to reduce the disproportionate number of children with disabilities in the juvenile justice system by considering prosecutorial decision-making reform as a viable strategy. Specifically, this article sets forth proposed guidelines that provide an innovative and ambitious way in which juvenile prosecutors can significantly reduce the number of juveniles with disabilities in the juvenile court system, while simultaneously ensuring that those juveniles are also provided the services they are entitled to under the IDEA.

I. INTRODUCTION

Children with disabilities are overrepresented in the juvenile court system.[5] According to a recent study, of the thousands of children caught up in the juvenile justice system each year,[6] at least one in three of those arrested has a

L. REV. 383 (2013) (discussing the ways in which juvenile prosecutors should exercise their charging authority to lower the disproportionate number of youth of color in the juvenile justice system); Alan B. Salazar, *The Expanding Scope of Prosecutorial Discretion in Charging Juveniles as Adults: A Critical Look at People v. Thorpe*, 54 U. COLO. L. REV. 617 (1983) (discussing juvenile prosecutors prosecutorial discretion and charging authority under Colorado law).

[5] Pam Stenhjem, *Youth with Disabilities in the Juvenile Justice System: Prevention and Intervention Strategies*, NAT'L CTR. ON SECONDARY EDUC. AND TRANSITION (Feb. 2005), *available at* www.ncset.org/publications/viewdesc/asp?id=1929.

[6] According to a recent study, courts with juvenile jurisdiction handled an estimated 1,058,500 delinquency cases in 2013. M. Sickmund et al., *Easy Access to Juvenile Court Statistics: 1985-2013*, *available at*

disability.[7] These disabilities include specific learning disabilities, emotional disabilities, mental retardation,[8] and other speech or language impairments.[9] This study also indicates that students with emotional disabilities are three times more likely than their non-disabled peers to be arrested before leaving high school.[10] According to Diane Smith Howard, senior staff attorney for the National Disability Rights Network, "[k]ids with learning disabilities that are not properly remediated in a school setting start to dislike school, or act up at school, or do things to distract from the fact that they are not doing well" academically.[11]

When schools fail to meet their legal obligations under the IDEA to provide special education and related services to students with disabilities, behavioral problems are a likely result. Given the rehabilitative goals of the juvenile justice system and the overrepresentation of children with disabilities in the juvenile court system, prosecutors and other intake officers[12] should heavily consider each child's education records at the outset of the case to determine whether improved special education services are a better strategy to assist in rehabilitation. This article sets forth proposed prosecutorial guidelines that require dismissal of non-violent and status offenses when there is evidence that: (1) the misconduct is a manifestation of a disability; (2) the school district has failed to identify an eligible child for an evaluation; or (3) the school district has failed to provide adequate services to a juvenile pursuant to the IDEA.

Congress' purpose in implementing the IDEA was to preserve the rights of all children with special education needs

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http://www.ojjdp.gov/ojstatbb/ezajcs/asp/process.asp.

[7] *See* Jackie Mader & Sarah Butrymowicz, *Pipeline to Prison: Special Education too Often Leads to Jail for Thousands of American Children*, THE HECHNINGER REPORT (Oct. 26, 2014), *available at* hechingerreport.org/content/pipeline-prison-special-education-often-leads-jail-thousands-american-children_17796/.

[8] "Mental retardation" is the statutory language in the IDEA, however this terminology is no longer appropriate. *See* Hall v. Fla., 134 S. Ct. 1986, 1990 (2014) (acknowledging "mental retardation" is no longer appropriate terminology, and that rather "intellectual disability" should be used in its place).

[9] *See* Mader & Butrymowicz, *supra* note 7.

[10] *See id*.

[11] *Id*.

[12] For a discussion of the role that juvenile probation and intake officer should take, see *infra* Section IV.

to a "free appropriate public education."[13] Congress designed the IDEA to provide special education and related services to meet each child's unique needs and to prepare each child for "further education, employment, and independent living."[14] Before Congress enacted the IDEA, public school systems entirely excluded students with special needs.[15] Since the enactment of the IDEA, Congress has made substantial headway in developing laws to ensure that children with disabilities have access to public education. However, developing the law itself and effectively identifying and implementing adequate services for disabled students are entirely different tasks. Congress recognized this in 1997 when it revealed that despite several achievements in improving education for children with disabilities, it was "still less than satisfactory."[16]

In 1997, Congress amended the IDEA to include the following section:

> Nothing in this part [20 USCS §§ 1411 et seq.] shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.[17]

School districts used this amendment to authorize referrals of juveniles to the juvenile court system for any conduct the school districts believed might fall under some section of the criminal code. This amendment, coupled with other local, state, and federal policies that contributed to the school-to-prison pipeline, blurred the line between criminal conduct and routine school discipline and provided school districts with the necessary green light to refer students to the court system for minor offenses. For instance, rather than sending a student to the principal's office for disruptive behavior in the classroom, it is now routine for teachers and school officials to seek the assistance of law enforcement to remove the child.[18]

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[13] 20 U.S.C. § 1400(d)(1)(A) (2012).

[14] *Id.*

[15] *See* Geis, *supra* note 2 at 880.

[16] S. REP. NO. 105-17, at 2 (1997).

[17] 20 U.S.C. § 1415(k)(6)(a) (2006).

[18] *See* Michael Pinard, *From the Classroom to the Courtroom: Reassessing*

Another consequence of this amendment is it has made it increasingly difficult for juvenile defenders to successfully argue that a school district cannot report a child to law enforcement, even if there is evidence that the school district has failed to comply with the IDEA.[19] To counter the increased difficultly, there are several ways that juvenile defenders should utilize special education laws in their advocacy for juveniles with disabilities;[20] however, there are some things juvenile prosecutors can do better than juvenile defenders. For example, once a juvenile petition is filed and the juvenile prosecutor makes the decision to prosecute, the juvenile court is usually not the proper venue for a juvenile defender to seek enforcement of special education laws. Despite the amended section's impact on juvenile defenders, this section states nothing that prohibits juvenile prosecutors from making an independent determination of whether the conduct is a manifestation of a disability or whether a school district has failed to properly identify, evaluate, or implement adequate services for a juvenile pursuant to the IDEA. Given the extensive authority juvenile prosecutors possess in the juvenile court system, juvenile prosecutors should utilize their discretionary charging authority to make an independent determination of whether dismissal is appropriate pursuant to the proposed guidelines set forth in this article.[21]

II. THE IDEA

The IDEA, which was enacted in 1975, is a broad federal law creating extensive procedural and substantive rights for children with disabilities and their parents. In order to develop and implement these proposed guidelines, juvenile prosecutors must identify and consult experts on juvenile justice work and special education laws so they can be knowledgeable on the relevant portions of the IDEA. This article does not attempt to address the law in its entirety but it provides a brief overview highlighting the key points that directly intersect with juvenile justice issues.

Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities, 45 ARIZ. L. REV. 1067, 1108–13 (2001).

[19] *See* Rivkin, *supra* note 1 at 936–39.

[20] *See* Geis, *supra* note 2 at 898.

[21] *See infra* Section IV.

The IDEA guarantees all eligible children the right to a "free appropriate education" ("FAPE") in the least restrictive environment attainable; school districts are to ensure this right through "individualized education programs" ("IEP").[22] A school district violates the IDEA whenever it fails to comply with the Act's procedural protections, or when it fails to confer a substantive educational benefit to an eligible child.[23]

School districts receiving federal funds have an affirmative duty to identify, locate, and evaluate students with disabilities; this duty is often referred to as the "child find" obligation.[24] This obligation requires school districts to take affirmative steps to initiate the special education evaluation process for any child who might need special education services. Most states attempt to fulfill this obligation through mass screening, identification by school personnel, or requests by parents. Teachers and school officials have an ongoing duty to examine their students for any indication that a student may suffer from social, emotional, or behavioral disabilities that would render them eligible under the IDEA. Teachers and school officials are supposed to actively identify students who show one or more of the following symptoms:

(1) Consistently receiving poor grades;

(2) Failure to advance from grade to grade;

(3) Poor performance on standardized tests;

(4) Chronic attendance issues;

(5) Ongoing behavior problems or other mental health concerns,

(6) Repeated suspensions,

(7) Transfers from school to school,

(8) Difficulty staying focused or retaining information,

(9) Acting out in class, or

(10) Social skill deficits.[25]

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[22] 20 U.S.C. §§ 1400–01 (2006).

[23] *See* Mary G. Hynes, *Children with Disabilities in Detention: Legal Strategies to Secure Release*, 3 D.C. L. REV. 299, 301 (1995) (citing Bd. of Educ. of the Hendrick Hudson Sch. Dist. v. Rowley, 458 U.S. 176 (1982)).

[24] 20 U.S.C. § 1412(a)(3)(A) (2012); 34 C.F.R. § 300.111(a) (2013).

[25] Yael Cannon et al., *A Solution Hiding in Plain Sight: Special Education and Better Outcomes for Students with Social, Emotional, and Behavioral Challenges*, 41 FORDHAM URB. L.J. 403, 430–36 (2013).

Displaying one or more of the above-listed characteristics does not necessarily mean a student is eligible for services under the IDEA; however, it at least indicates that the student should have been identified and evaluated.

The IDEA fails to set forth a uniform standard to determine the extent of knowledge a school district must possess to trigger the child find obligation and courts have come to varying results. For instance, a District Court in the Eastern District of California held that the "child find obligation is triggered when there is there is reason to suspect a disability and that special education services may be needed to address that disability."[26] Alternatively, the Sixth Circuit Court of Appeals held that there must be evidence that "school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate."[27] The varying application of this standard, coupled with ineffective identification by teachers and school officials, contributes to the under-identification of students with disabilities that are eligible for services under the IDEA.

Once a school district identifies that a student may be eligible for services under the IDEA, the law imposes a duty on the school district to perform a comprehensive evaluation to determine if the student is IDEA eligible.[28] There are a number of different qualified individuals allowed to perform the initial evaluation, such as special education teachers, school psychologists, or licensed professionals outside of the school.[29] The evaluations vary depending on the student, but generally include one or more of the following: "academic achievement assessments, cognitive assessments (IQ), behavioral assessments, psychological evaluations, functional assessments of developmental skills (e.g., self-help skills, hygiene), vision and hearing evaluations, and speech and language

[26] *See* W.H. ex rel. B.H. v. Clovis Unified Sch. Dist., 2009 WL 1605356, at *14 (E.D. Cal. June 8, 2009) (citing Dep't of Educ., State v. Cari Rae S., 158 F. Supp. 2d 1190, 1194 (D. Haw. 2001) (citing Clay T. v. Walton Cty. Sch. Dist., 952 F. Supp. 817, 823 (M.D. Ga. 1997)).

[27] *See* Bd. of Educ. v. L.M., 478 F.3d 307, 313 (6th Cir. 2007) (citing *Clay T. v. Walton Cty. Sch. Dist.*, 952 F. Supp. 817, 823 (M.D. Ga. 1997)).

[28] 20 U.S.C. § 1414(a)(1)(A)–(B) (2005).

[29] Peter Leone et al., *Special Education and Disability Rights*, NAT'L JUVENILE DEFENDER CTR. & JUVENILE LAW CTR., 30 (2009).

assessments."[30] To complete the evaluation, the licensed professional must summarize all assessments done and provide a "cohesive" description of the student, including the student's current level of functioning, strengths, and limitations.[31]

School districts utilize evaluations to determine if a student has an enumerated "disability" which the IDEA defines as,

> [a child] with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services.[32]

At first glance, the disability definition seems straightforward; however, there are several important aspects of it that need to be discussed. First, in order to be eligible under this definition, the student must meet two prongs: (1) the student must suffer from one of the above-enumerated disabilities, which adversely affects his or her educational performance; (2) the student must need special education and related services. Additionally, if a student shows one of the following characteristics, that student may come within the "emotional disturbance" part of the disability definition:

> (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
>
> (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
>
> (3) Inappropriate types of behavior or feelings under normal circumstances;
>
> (4) A general pervasive mood of unhappiness or depression;
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> (5) A tendency to develop physical symptoms or fears associated with personal or school problems.[33]

Evident from both of the above-listed definitions is that the IDEA covers a wide-range of disabilities, including those that

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[30] *Id.* at 14. Additionally important, but outside the scope of this article, is the academic literature discussing the disparate impact the evaluation process has had on minority students. *See* Sarah E. Redfield & Theresa Kraft, *What Color is Special Education*, 41 J.L. & EDUC. 129 (2012).

[31] *See* Leone et al., *supra* note 29 at 14.

[32] 20 U.S.C. § 1401(3)(A) (2006).

[33] 34 C.F.R. § 300.7(c)(4) (2006).

are social, behavioral, and academic.

The next significant aspect of the disability definition is that it requires the enumerated disability to adversely affect the student's educational performance. However, courts have come to varying results due to the lack of a uniform standard in the IDEA. Litigation of this portion of the IDEA arises when a student's parent sues the school district for refusing to provide services to their child because despite evidence of a disability, the student still succeeds academically at least on some minimal level. For instance, the Ninth Circuit Court of Appeals held that despite substantial evidence that a student suffered from severe emotional issues, the "inappropriate behavior .†.†. does not amount to 'severe emotional disturbance' [under the IDEA] because it did not adversely affect her educational performance."[34] Conversely, an Illinois District Court held that "'[e]ducational performance' means more than a child's ability to meet academic criteria. It must also include reference to the child's development of communication skills, social skills, and personality . . ."[35] The varying application of this standard raises several important questions and the answer substantially changes based on the jurisdiction in which the child resides.[36]

Lastly, the disability definition requires that the student need special education and related services. A child who is eligible under the IDEA has access to a wide range of services free of cost to the student that are intended to meet the student's individual needs.[37] Special education services include any necessary adaptation to the content, methodology, or delivery of instruction so that the student can "meet the educational standards within the jurisdiction."[38] Related services include "transportation, and such developmental, corrective, and other supportive services . . . as may be required to assist a child with a disability to benefit from special

[34] R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist., 496 F.3d 932, 946 (9th Cir. 2007) (holding that the student's behavior did not fall within the purview of the IDEA because "a majority of her grades were 'A' or 'B'" and her "achievement test scores were similarly average or better.").

[35] *See* Mary P. v. Ill. State Bd. of Educ., 919 F. Supp. 1173, 1180 (N.D. Ill. 1996) *criticized by* A.J. v. Bd. Of Educ., 679 F. Supp. 2d 299, 308 (E.D.N.Y. 2010).

[36] The IDEA allows states to define educational performance for disabled students. *See* 34 C.F.R. § 300.

[37] *See* 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34 (2012).

[38] *Id*.

education . . . ."[39] Related services also provide students with a range of services including access to counseling from qualified social workers, psychologists, and guidance counselors[40] as well as access to parent counseling training,[41] psychological services,[42] and social work services.[43]

Once a student is deemed eligible under the IDEA, school districts must provide that student with an appropriate education by developing and implementing an Individualized Education Program ("IEP").[44] School districts must convene an IEP team that consists of a parent (assuming the parent is involved and would like to participate), a special educator, a general educator, a person qualified to explain the evaluation, a school administrator, and the child, when appropriate.[45] An IEP is a written document that is reviewed annually by the parent and the IEP team and sets forth the student's special education program, including the student's individual needs, goals, special education and related services, and evaluation criteria.[46] A material failure to properly implement a student's IEP is a denial of a free appropriate public education and is actionable under the IDEA.[47]

The IDEA also provides students with certain due process rights in school disciplinary procedures. It specifically sets forth guidelines for, and restrictions against, suspensions and expulsions in its manifestation determination requirement and stay-put provision. Congress codified the manifestation determination requirement in 1997; this requirement mandates that school officials determine whether a student's behavior was a manifestation of his or her disability before expulsion.[48] Manifestation hearings must be conducted for all students with disabilities, even if a request for an evaluation of

[39] 20 U.S.C. 1401(26) (2010).

[40] 34 C.F.R. § 300.34(c)(2) (2006).

[41] 34 C.F.R. § 300.34(c)(8) (2006).

[42] 34 C.F.R. § 300.34(c)(10) (2006).

[43] 34 C.F.R. § 300.34(c)(14) (2006).

[44] 20 U.S.C. § 1412(3)–(4) (2005).

[45] 34 C.F.R. § 300.321(a) (2007).

[46] *See* Mitchell L. Yell et al., *Special Education in Urban Schools: Ideas for a Changing Landscape Article: Individualized Education Programs and Special Education Programming for Students with Disabilities in Urban Schools*, 41 FORDHAM URB. L.J. 669, 671 (2013).

[47] Individuals with Disabilities Education Act, §§ 602(9)(D), 615(f)(3)(E)(i); *see also* 20 U.S.C.A. §§ 1401(9)(D), 1415(f)(3)(E)(i).

[48] 20 U.S.C. § 1415(k)(1)(E)(i) (2005); 34 C.F.R. § 300.530(e) (2006).

a child is made following the child's misbehavior.[49] Once an IEP team decides to remove a student from his or her current placement, a manifestation determination must be made within ten days.[50] If school officials determine that the conduct is a manifestation of the student's disability, the school district cannot expel or suspend the student for more than ten days and the school must consider implementing a behavioral intervention plan ("BIP").[51] However, if school officials determine the conduct is not a manifestation of the student's disability, then the school can impose discipline the same as they would for non-disabled peers—though the student must still have access to special education services.[52]

The stay-put provision states that "during the pendency of any administrative or judicial proceedings . . . the child involved in the complaint must remain in his or her current educational placement."[53] This provision maintains the status quo by requiring that a student's current IEP is kept in full force and effect throughout any legal or disciplinary proceeding. Congress intended for this provision "to strip schools of the unilateral authority they had traditionally employed to exclude disabled students."[54] However, there is an exception to this provision that allows school districts to remove students with disabilities who possess a weapon, possess, use, or sell illegal drugs, or inflict serious bodily injury on another student while at school.[55] If a student presents a serious risk of injury to self or others, the school district may place that student in alternative placement for up to forty-five days, even if the conduct is a manifestation of a disability.[56] Once the forty-five day period expires, that student must be returned to prior placement unless it is too dangerous to do

[49] 20 U.S.C. § 1415(k)(5)(A) (2005).

[50] 20 U.S.C. § 1415(k)(1)(E)(i) (2005).

[51] 20 U.S.C. §§ 1415(k)(1)(C), 1415(k)(1)(F)(i)–(iii)(2005).

[52] 20 U.S.C. § 1415(k)(1)(C) (2005).

[53] 34 C.F.R. § 300.518(a) (2006).

[54] Honig v. Doe, 484 U.S. 305, 323 (1988); *see also* Sch. Comm. v. Dep't of Educ., 471 U.S. 359, 373 (1985) (indicating that the purpose of the stay-put provision was "to prevent school officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings"); D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982) (describing the stay-put provision as an "automatic preliminary injunction").

[55] 20 U.S.C. § 1415(k)(1)(G) (2005); 34 C.F.R. § 300.520(a)–(c) (2002).

[56] 20 U.S.C. § 1415(k)(3)(B)(ii)(II) (2005).

so.[57]

The key portions of the IDEA highlighted in this section are particularly applicable to several juvenile justice concerns. However, the IDEA is an extensive law that provides several additional procedural and substantive rights to students with disabilities. All actors in the juvenile justice system would benefit from a more thorough analysis of the law in its entirety. Additionally, section 504 of the Rehabilitation Act[58] and the Americans with Disabilities Act ("ADA")[59] provide further protections for students with disabilities. Though these laws provide helpful insight in remedying the disproportionate number of juveniles with disabilities in contact with the juvenile justice system, they fall outside the scope of this article.

III. THE IDEA AND JUVENILE JUSTICE

Juvenile prosecutors should have a clear understanding of the relevant portions of the IDEA and work to integrate the special education principles into the juvenile justice system. Integrating these principles into the juvenile justice system will lower the likelihood of misbehavior among students with disabilities and significantly reduce the disparate impact that the school-to-prison pipeline has had on students with disabilities.

Congress created the child find obligation so that school districts had the affirmative duty to identify students with disabilities and provide appropriate services. When school districts fail to do so and a child ends up in juvenile court for conduct that is a manifestation of a disability, prosecution is not the appropriate first step. Rather, when school districts fail to identify a child with disabilities and that child commits a minor offense, the school should first be required to comply with the IDEA. Once a child receives appropriate services in school, it is far less likely that the child will misbehave. By utilizing their discretionary charging authority, juvenile prosecutors can independently determine whether the school district failed to identify a child with disabilities. Such a

[57] 34 C.F.R. § 300.521 (2002).

[58] Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2006).

[59] Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213 (2006) (amended 2008).

determination can remedy the district's failure to effectively fulfill the child find obligation. An independent inquiry also furthers the IDEA's principle of providing protections to children whose disabilities have not yet been identified. By acting in this capacity, juvenile prosecutors extend the child find obligation principle to the juvenile justice system while simultaneously creating additional safeguards to ensure children with disabilities receive appropriate services that address their underlying needs.

The IDEA also supports the notion that juvenile intake personnel[60] should investigate pre-court efforts to identify and address a child's special education needs. This special education principle should be extended to the juvenile justice system by actively identifying students with disabilities and initiating the special education evaluation process. The IDEA provides a wide range of services to students with disabilities that are specifically designed to assist and rehabilitate the student, as opposed to some of the more punitive consequences that often result from prosecution. Specifically, related services provide juveniles with several of the services traditionally ordered at a juvenile disposition such as counseling from qualified social workers, psychologists, and guidance counselors, as well as parent counseling training, psychological services, and social work services. By utilizing the services available under the IDEA to assist in rehabilitation, juvenile intake personnel can ensure that children with disabilities will be provided with appropriate services rather than being subjected to the stigma and psychological effects of going through the juvenile court system.

The IDEA's manifestation determination was created because Congress recognized it is wrong to punish a child for behavior that directly results from a disability.[61] Congress recognized that a disability, by definition, is not a child's fault and therefore behavior that manifests from that disability is not blameworthy.[62] Juvenile prosecutors should extend this principle to the juvenile court system by actively identifying and dismissing conduct that is a manifestation of a child's disability. Behavior that is a manifestation of a disability is not

[60] For a discussion of the role of juvenile intake personnel, *see infra* Section IV.

[61] *See* Anne Proffitt Dupre, *A Study in Double Standards, Discipline, and the Disabled Student*, 75 WASH. L. REV. 1, 18–23 (2000).

[62] *See id*.

blameworthy because juveniles with disabilities suffer from cognitive deficits that make them much more likely to engage in delinquent acts when compared to their non-disabled peers.[63]

Over the last several decades, developments in psychology and brain science have consistently shown fundamental differences between the juvenile and adult brain.[64] The United States Supreme Court has validated the scientific differences between juveniles and adults in a series of landmark juvenile justice cases.[65] The Court has held that juveniles are less culpable for their conduct because their brain is not fully developed, and as a result they exercise immature judgment, are more susceptible to negative peer influences, and act impulsively.[66] The cognitive differences between the adult and juvenile mind affect the juveniles' ability to make decisions, evaluate risks, exercise self-control, and consider long-term consequences.[67]

Brain development and cognitive deficiencies are an even more important consideration to determine culpability in the context of students with disabilities. Studies suggest that many juveniles with disabilities suffer from metacognitive deficits, which lessens the development of their ability to problem solve and increases the risk of delinquent and criminal behavior.[68] Studies also indicate that disruptive behavior of students with disabilities, especially those with unmet special education needs, is often a manifestation of their disability.[69] For instance, the U.S. Department of Education's Office of Civil Rights conducted a student survey in 2014, compiling data from 99% of Civil Rights Data Collection schools, including 43.5 students without disabilities and 6 million students with disabilities.[70] The study found that students who were eligible

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[63] *Id*.

[64] *See* MACARTHUR FOUNDATION, *A Primer on Criminal Law and Neuroscience*, 184 (Stephen J. Morse & Adina L. Roskies eds., 2013).

[65] *See* Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012); Graham v. Florida, 560 U.S. 48, 67 (2010); Roper v. Simmons, 543 U.S. 551. 568–69 (2005).

[66] *See Roper*, 543 U.S. at 569.

[67] *See* MACARTHUR FOUNDATION, *supra* note 64, at 193–94.

[68] *See* Mary M. Quinn et al., *Youth With Disabilities in Juvenile Corrections: A National Survey*, 71 EXCEPTIONAL CHILDREN 339, 340 (2005), *available at* helpinggangyouth.homestead.com/disability-best_corrections_survey.pdf.

[69] *See* Kevin P. Dwyer, *Disciplining Students with Disabilities*, NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS, *available at* www.wrightslaw.com/info/discipline.stud.dis.dwyer.pdf.

[70] *See* Office for Civil Rights, *Data Snapshot: School Discipline*, DEP'T OF EDUC.,

for special education under the IDEA are twice as more likely to receive an out-of-school suspension than their non-disabled peers.[71] Juveniles with disabilities who are not receiving special education services in school likely suffer from cognitive deficiencies that diminish their ability to make good decisions and to understand the consequences of their actions.[72] This special education principle should be extended to the juvenile justice system and students with disabilities should be provided with a free appropriate education before being prosecuted for disruptive behavior.

Additionally important to this context is the disparate impact that the school-to-prison pipeline and zero tolerance policies have had on students with disabilities. Over the last several decades, many states enacted "get tough" legislation in response to increased criminal activity among juveniles in an effort to deter juveniles from, and punish them more severely for, committing crimes.[73] This legislation led to changes in school policies including the creation of zero tolerance policies, which has changed traditional school discipline into something that looks a lot like the adult criminal justice system. School discipline policies often do not take into account students with disabilities. For these students, suspensions and expulsions are often the entry point into the juvenile justice system.[74] According to the U.S. Department of Education's Office of Civil Rights, schools referred 260,000 students to law enforcement in 2012. The majority of these referrals were for school-related offenses.[75]

Zero tolerance policies are predetermined by school districts to impose non-discretionary disciplinary consequences for certain conduct. Many zero tolerance policies include the most

OFFICE FOR CIVIL RIGHTS: CIVIL RIGHTS DATA COLLECTION (March 2014), *available at* ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf.

[71] *Id.*

[72] Important to this context, but outside of the scope of this article, is that some courts have held that delinquent behavior is not a manifestation of a juvenile's disability, but rather a conscious decision. *See* Fitzgerald v. Fairfax Cnty. Sch. Bd., 556 F. Supp. 2d 543, 561–62 (E.D. Va. 2008) (holding that a student's conduct was simply a bad decision, rather than a result of his disability).

[73] Katherine Lazarow, *The Continued Viability of New York's Juvenile Offender Act in Light of Recent National Development*, 57 N.Y.L. SCH. L. REV. 595, 603 (2012/2013).

[74] *See* Mader & Butrymowicz, *supra* note 7.

[75] *See* Gary Fields & John R. Emshwiller, *For More Teens, Arrests by Police Replace School Discipline*, WALL ST. J., Oct. 20, 2014 at A12.

serious misconduct, but many also include disrespect and non-compliance with school rules. The latter often leads to a disproportionate number of suspensions and court referrals of special education students.[76] When these policies were first created, the purpose was to ensure student safety at school. However, school districts have misused these policies to criminalize school behavior and to exclude students from school for minor offenses that pose little or no safety threat to others.[77] For instance, 4002 students were arrested during school at the Houston Independent School District in 2002.[78] Of those student arrests, 17 percent were for minor offenses such as "disruption" and 26 percent were for disorderly conduct. [79] This means that this school district called upon law enforcement to arrest approximately 1720 students at school for minor disciplinary conduct that traditionally would have been dealt with by a trip to the principal's office or lunch detention. Additionally important, due to increased punitive disciplinary policies and the involvement of law enforcement for minor misbehavior, students indicate they now feel less safe at school,[80] which directly contravenes the initial purpose of developing the policies.

The benefit of extending these special education principles to the juvenile justice system is exponential. Juvenile prosecutions must be sensitive to the needs of these youth and recognize that students with disabilities are much more likely to experience behavioral problems at school resulting in suspension, expulsion, and court referral. Juvenile prosecutors should utilize their authority to merge the goals of the juvenile justice system and the IDEA so that students with disabilities remain in the classroom whenever possible and alternative remedies are exhausted before prosecution. The proposed prosecutorial guidelines set forth in the following section create

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[76] *See* Mader & Butrymowicz, *supra* note 7.

[77] *See* Fields & Emshwiller, *supra* note 75 (discussing how students are referred to juvenile court for minor school misconduct such as "throwing an eraser, chewing gum, wearing too much perfume .†.†. .").

[78] *See Education on Lockdown: The Schoolhouse to Jailhouse Track*, ADVANCEMENT PROJECT 15 (March 2005), http://b.3cdn.net/advancement/5351180e24cb166d02_mlbrqgxlh.pdf; *see also* Leone et al., supra note 29, at 5.

[79] *See* Leone et al.*, supra* note 29, at 5.

[80] *See* S. Robers et al., *Indicators of School Crime and Safety*, U.S. DEP'T OF EDUC. 74 (2012), nces.ed.gov/pubs2013/2013036.pdf.

an innovative way to achieve these goals.

IV. THE PROPOSED GUIDELINES

Special education principles should be integrated into the juvenile justice system through the development of prosecutorial guidelines. These guidelines should begin to reduce the disproportionate number of children prosecuted for disability related conduct. Procedurally, the proposed guidelines should include three steps. First, the proposed guidelines should require the juvenile prosecutor to make an independent inquiry. Similar to the IDEA's manifestation determination requirement, the inquiry determines whether the conduct is a manifestation of a disability such that the juvenile should undergo an evaluation. Next, the proposed guidelines should require the juvenile prosecutor to request that the school district complete an evaluation of the juvenile, pursuant to the IDEA.[81] Finally, the proposed guidelines should require the juvenile prosecutor, with the evaluation in hand, to decide whether dismissal or prosecution is appropriate. These steps will significantly reduce the impact of the school-to-prison pipeline on students with disabilities, thus reducing the number of disabled juveniles that end up in prison. It will put pressure on school districts to consider reworking their school discipline policies and it will force school districts to closely consider any decision to elevate a school disciplinary sanction to court referral.

The substance of the proposed guidelines should set forth two things. First, they should set forth a list of disability indicators ("indicators") for juvenile prosecutors to look for in a juvenile's education records. Prosecutors would determine if the conduct is a manifestation of a disability or if the school district failed to identify, evaluate, or provide adequate services to a juvenile pursuant to the IDEA. Second, guidelines should set forth what offenses are eligible for dismissal. Over time, the

[81] The IDEA provides that upon a request for an initial evaluation of a student, the school district must obtain parental consent to evaluate the child, and perform the evaluation within sixty days to make a determination whether the child is eligible for special education. *See* 20 U.S.C. § 1414(a)(1)(C)–(D) (2005); 34 C.F.R. §§ 300.300, 300.301(c) (2007). However, some state special education laws establish alternate timelines for the evaluation of students. *See, e.g.*, MASS. ANN. LAWS ch. 71B, § 3 (LexisNexis 2013) (establishing a timeline of thirty school days for completion of the initial evaluation).

decline in prosecution of juveniles who meet both of these requirements will significantly influence the patterns of arrest and referral. The guidelines will incentivize school districts to more effectively identify, evaluate, and provide services to students with disabilities before behavioral issues arise.

The first section of the proposed guidelines setting forth indicators to identify conduct of a potential disability extends both the child find obligation and the manifestation determination principles to the juvenile justice system. To practically implement this section, juvenile prosecutors must obtain each juvenile's entire school record at the outset of every case. The Family Educational Rights and Privacy Act ("FERPA"), which applies to all States receiving federal funds through the spending clause of the United States Constitution, explicitly allows education records to be released without parental consent to the juvenile justice system if they are needed to effectively serve the juvenile before adjudication.[82] To reduce unnecessary delay in obtaining school records, juvenile prosecutors should reach out to school district record departments to ensure they understand their role in providing records. In theory, it should not be difficult for the juvenile prosecutor to obtain entire school records at the outset of each case.

To develop the list of indicators, particularly helpful sources include the child find obligation, the disability definition from the IDEA, and behavioral health studies.[83] Studies indicate that the following behavioral health issues are especially associated with an increased likelihood for disciplinary actions and court referral:

- emotional and behavioral disorders,[84]
- learning disabilities,[85]
- affective disorders,[86] and

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[82] 20 U.S.C. § 1232(g)(b)(1) (2013).

[83] For a discussion on the child find requirement and the disability definition, see *infra* Section II.

[84] Students with emotional and behavioral disorders often exhibit a number of characteristics, including frustration, anger, or depression. These students also typically perform poorly academically. *See* Emily Morgan et al., *The School Discipline Consensus: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System*, THE COUNCIL OF STATE GOV'T JUSTICE CTR., 136 (2014).

[85] Students with learning disabilities often exhibit confidence issues and have difficulty concentrating and following directions. These students also typically repeat grades and are involved in disciplinary incidents. *Id.* at 136–37.

[86] Students with affective disorders often exhibit depression, anxiety or bipolar

- alcohol and substance abuse.[87]

For instance, the proposed guidelines should explicitly include the following indicators:

- consistently poor grades,
- failure to advance from grade to grade,
- poor performance on standardized tests,
- chronic attendance issues,
- ongoing behavior problems or other mental health concerns,
- repeated suspensions,
- transfers from school to school,
- difficulty staying focused or retaining information,
- acting out in class, or
- social skill deficits.

The list of indicators should ensure the proposed guidelines account for the wide-range of disabilities covered by the IDEA, including those that are social, behavioral, and academic. A cursory review of a juvenile's education records should reveal if any of the indicators are present.

To determine whether the conduct is a manifestation of a disability, juvenile prosecutors should take into consideration the indicators present, the circumstances surrounding the alleged conduct, and the extent to which any causal connection can be drawn between the two. Whenever necessary, juvenile prosecutors should seek assistance from social workers, psychologists, or other licensed professionals within the community to help assess whether the conduct is a manifestation of the child's disability. Additionally, juvenile intake officers, who often perform the initial evaluation of a juvenile, should look for any behavioral, social, or academic disabilities that may have caused the juvenile to misbehave. Where it is evident that a causal connection exists between the conduct and a potential disability, the juvenile prosecutor should request that the school district perform an evaluation pursuant to the IDEA.

The second section of the proposed guidelines should explicitly set forth what conduct will be eligible for dismissal. In determining what conduct should be included, juvenile

disorder. These students often exhibit mood changes, irritability and aggression. If a student suffers from an untreated affective disorder, it is highly likely that student will be disruptive in class. *Id.*

[87] Oftentimes, students with disabilities develop substance abuse issues. *Id.*

prosecutors need to consider their role in the juvenile justice system. As the "gatekeeper" to the juvenile justice system, juvenile prosecutors hold incredible power and discretion to evaluate and fulfill the needs of juveniles to the greatest extent possible without compromising the safety and welfare of the community.[88] Because one of the central duties of the juvenile prosecutor is to protect the public, the proposed guidelines should exclude violent offenses that occur on school grounds unless the circumstances indicate the juvenile did not intend to harm himself, his peers, his teachers, or other school officials. To determine what crimes are sufficiently violent that their exclusion from the proposed guidelines would be necessary, juvenile prosecutors should seek guidance from other statutes within their jurisdiction.[89] Most state criminal codes provide a definition of violent crimes that would not classify, for example, a schoolyard fight resulting in a simple assault charge as a crime of violence. Rather, crimes of violence generally include the most serious of offenses, such as murder or first degree criminal sexual conduct, and the proposed guidelines should explicitly exclude those crimes. The proposed guidelines should set forth a bright line rule excluding all sufficiently violent offenses, but the prosecutor should retain discretionary authority if circumstances arise such that excluding one of these offenses would lead to an absurd result.

The discretionary exception to the violent crime exclusion is necessary because there have been several accounts where school districts referred students to the juvenile court for violent crimes even though the conduct was not violent at all.[90] For example, a Texas high school referred a student to the juvenile court for unknowingly possessing a ten-inch kitchen knife in his car on school property because under the school's

[88] James C. Backstrom, *The Role of the Prosecutor in Juvenile Justice: Advocacy in the Courtroom and Leadership in the Community*, 50 S.C. L. REV. 699, 703 (1999).

[89] For instance, the South Carolina expungement statute uses a violent crimes definition from another state statute to include the offenses of murder; attempted murder; first degree assault and battery by mob, resulting in death; first and second degree criminal sexual conduct; criminal sexual conduct with minors; assault with intent to commit criminal sexual conduct; assault and battery with intent to commit criminal sexual conduct; assault and battery with intent to kill; kidnapping; attempted armed robbery; carjacking. *See* S.C. CODE ANN. § 16-1-60 (2012).

[90] *See* Derek W. Black, *The Constitutional Limit of Zero Tolerance in Schools*, 99 MINN. L. REV. 823, 824–25 (2014); *see also* Sheena Molsbee, *Zeroing Out Zero Tolerance: Eliminating Zero Tolerance Policies in Texas Schools*, 40 TEX. TECH. L. REV. 325, 326–27 (2008).

zero tolerance policy, possession of a knife or other weapon was cause for immediate expulsion for one year and court referral.[91] The school district found the student's explanation that his grandmother had suffered from a stroke over the weekend and he had been transporting her kitchen appliances from her home to Goodwill irrelevant to its disciplinary decision.[92] Under normal circumstances, the proposed guidelines would exclude the offense of carrying a weapon on school grounds because it would likely fall under the crimes deemed sufficiently violent. However, if similar circumstances arose, juvenile prosecutors should exercise discretion to determine if dismissal would still be appropriate even though the alleged offense would ordinarily be excluded.

The proposed guidelines should include dismissal of status offenses and non-violent offenses that are manifestations of a disability unless there is evidence that the juvenile is a risk to self or others. A "status offense" is conduct that is illegal for a child to engage in due to his or her age, but would not be illegal for an adult to engage in because the actual conduct does not violate state criminal law.[93] Status offenses generally include "running away, school truancy, curfew violations, and alcohol possession."[94] Many states additionally include a "catch-all" offense such as incorrigibility (which means the child is beyond the control of the parents) or disruptive behavior within the definition of status offenses.[95] Non-violent offenses include offenses that would normally violate state criminal law, despite the juvenile's age, but do not involve violence. For instance, typical non-violent offenses would generally include minor property damage, petite theft, disturbing school, simple assault, and drug possession.

Status offenses generally arise in one of two contexts on school grounds. First, a school district may refer a student to the juvenile court for a status offense under the "catch-all"

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[91] *See Molsbee,* 40 TEX. TECH. L. REV. at 326–327.

[92] *Id*.

[93] Tracy J. Simmons, *Mandatory Mediation: A Better Way to Address Status Offenses*, 21 OHIO ST. J. ON DISP. RESOL. 1043, 1044 (2006).

[94] *Id.* at 1046.

[95] *See, e.g.,* ALA. CODE § 12-15-201(4)(d) (1975) (including "beyond control" within the definition of status offense); IND. CODE ANN. § 31-37-2-4 (West) (including habitually disobeying reasonable and lawful commands within the definition of status offense); S.C. CODE ANN. § 63-1-40 (2008) (including "incorrigibility" within the definition of status offense).

provision for disruptive behavior or for school truancy. Second, the juvenile court may have previously classified the juvenile as a status offender, and because of that classification, the court may have ordered the juvenile to follow several rules, such as attending school, obeying teachers, and following the school's code of conduct. If a juvenile subsequently violates any of his or her court orders, the juvenile may face a delinquency adjudication in the juvenile court for contempt of the prior court order. According to the Office of Civil Rights 2014 Data Collection, "students with disabilities represent a quarter of the students who are referred to law enforcement or subjected to school related arrests, while representing just 12% of the student population."[96]

Status offenses should be included in the proposed guidelines because they are often symptomatic of larger issues the child faces at home, school, or in the community, and they tend to be less of a reflection of the child's risky behavior and more of an indication of unmet mental health, educational, or family needs. The focus should shift from punishing the student to determining the underlying issue and implementing adequate services to reduce the likelihood of future misconduct.

Inclusion of alcohol and drug possession in the proposed guidelines will likely be controversial because it conflicts with the IDEA's manifestation hearing standards, which allow school districts to discipline students with disabilities the same as their non-disabled peers for drug possession, use, or both.[97] However, alcohol and drug possession should be included because the National Center on Addiction and Substance Abuse at Columbia University released a study indicating there is a direct correlation between youth with learning disabilities or behavior disorders and substance abuse.[98] The study indicates that the risk factors for youth substance abuse are similar to the behavioral effects of learning disabilities, such as "reduced self-esteem, academic failure, depression, and the desire for social acceptance."[99] A similar study also

[96] *See* Office for Civil Rights, *Data Snapshot: School Discipline*, *supra* note 70 at 7.

[97] *See infra* Section II.

[98] Joseph A. Califano, Jr. et al., *Substance Abuse and Learning Disabilities: Peas in a Pod or Apples and Oranges?*, THE NATIONAL CENTER ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIVERSITY, 7 (Sept. 2000).

[99] *Id*. at 8.

indicates that students "with depression are four times as likely as those without depression to develop a substance abuse addiction, and those with anxiety are twice as likely to develop substance abuse issues."[100] Including drug and alcohol offenses in the proposed guidelines will not only help ensure the student receives proper services in school pursuant to the IDEA but it will also identify substance abuse issues and provide access to treatment.

If a juvenile is already receiving services under the IDEA, the education records will indicate that and the juvenile prosecutor will receive a copy of the current IEP. The mere fact that a juvenile is receiving services under the IDEA should not necessarily negate the juvenile's eligibility for dismissal. Rather, the prosecutor's guidelines should provide that where a juvenile is already receiving special education services under the IDEA, the juvenile prosecutor should exercise discretion to determine if dismissal would still be appropriate given the circumstances of the case and the current services in place. In making this determination, juvenile prosecutors can utilize their knowledge of the services available under the IDEA, as well as their knowledge of IEPs, to determine if the current services are adequate. Under such circumstances, juvenile prosecutors should exercise discretion to determine if the student's behavior is a manifestation of a disability, such that prosecution of the juvenile would be inappropriate.

The proposed guidelines set forth in this section provide juvenile prosecutors with standards that should significantly reduce the number of children with disabilities prosecuted for conduct that is a manifestation of a disability. The proposed guidelines will incentivize school districts to actively identify, evaluate, and provide services to eligible children, which will reduce the likelihood that children with disabilities misbehave. Addressing the needs of children with disabilities, rather than subjecting them to prosecution, will further both the goals of the juvenile justice system and the IDEA, as well as benefit society as a whole.

[100] Emily Morgan et al., *The School Discipline Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System*, THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER, 138 (2014).

V. ADDITIONAL CONSIDERATIONS

The goal of the proposed guidelines is to reduce the number of juveniles prosecuted for conduct that is a manifestation of a disability. Juvenile prosecutors stand in a unique position to accomplish this goal because of the immense authority and power they hold in deciding whether to prosecute an individual. However, other state actors can assist in accomplishing this goal. For instance, all states set forth juvenile intake procedures usually conducted by juvenile probation officers or a juvenile specific state agency. While the intake procedures vary considerably among states, the employees conducting the initial intake of a juvenile are usually required to consider a series of factors so they can advise the juvenile prosecutor regarding whether prosecution is appropriate.[101] During the intake process, juvenile probation officers often consider the juvenile's prior record, school attendance, conduct, home environment, and any mental health or substance abuse problems. Juveniles with disabilities often do not make a good first impression at their initial intake meeting and their behavior is interpreted as inappropriate.[102] Juvenile probation officers often do not recognize inappropriate behavior as a manifestation of a juvenile's disability as it is often hidden in the juvenile's cognitive deficiencies, such as the inability to effectively communicate. Juvenile probation officers should receive training, similar to juvenile prosecutors, so that they can assist in identifying conduct that is likely a manifestation of a child's disability.

Juvenile probation officers are extremely important when a juvenile's conduct is not eligible for dismissal under the proposed guidelines, but the juvenile presents several indicators that the conduct is a manifestation of a disability. Under such circumstances, juvenile probation officers should ensure that the juvenile prosecutor is aware of the underlying disability and that the juvenile receives proper services throughout the adjudication process. Bringing a disability to the forefront of a juvenile's case will likely have a significant impact on several prosecutorial decisions, such as whether to

[101] *See, e.g.,* S.C. CODE ANN. § 63-19-1010 (2008).

[102] Sue Burrel & Loren Warboys, *Special Education and the Juvenile Justice System*, U.S. DEP'T. OF JUSTICE 8 (July 2000) https://www.ncjrs.gov/pdffiles1/ojjdp/179359.pdf.

waive a juvenile to adult court, recommendations made at disposition, and so on.

VI. CONCLUSION

The disproportionate number of juveniles in contact with the juvenile justice system with unmet special education needs is a complex, serious issue that requires an innovative and ambitious approach. The proposed guidelines aim to promote the rehabilitative purpose of the juvenile court system, further the underlying goals of the IDEA, and lower the number of juveniles with disabilities in the juvenile court system. In a society that emphasizes and rewards academic success and achievement, it is critical that juveniles with disabilities have the proper services and tools necessary to become successful, independent adults. The proposed guidelines seek to utilize the extensive authority and discretion of juvenile prosecutors to ensure juveniles with disabilities are not prosecuted for conduct that is a manifestation of their disability, while simultaneously ensuring that students with disabilities are provided proper services pursuant to the IDEA.

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