

DisabilityRights



ARKANSAS

Legislative Task Force on the Best Practices for Special
Education

December 9, 2015

Debra Poulin, Legal Director
Cassie Howell, Staff Attorney
Samuel Kauffman, Staff Attorney

Disability Rights Arkansas

- Disability Rights Arkansas (DRA) is a private, non-profit organization designated by the Governor to implement the federally funded protection and advocacy system throughout the state.
- Every state and territory has a protection and advocacy system.
- DRA is federally funded.
- DRA is not part of the federal or state government.

DRA Mission Statement:

- To vigorously advocate for and enforce the legal rights of people with disabilities.

Disability

- Disability has a broad definition
- Disability includes physical and mental impairments
- Disability is defined differently by different statutes

DRA Priority Areas:

- Accessibility
- Community & Institutions (abuse/neglect; discharge planning; restraint and seclusion).
- Education
- Employment
- Juvenile Justice
- Prisons/Jails

Education Priority -

Students with disabilities will have access to appropriate accommodations and special education and to education in the least restrictive environment.

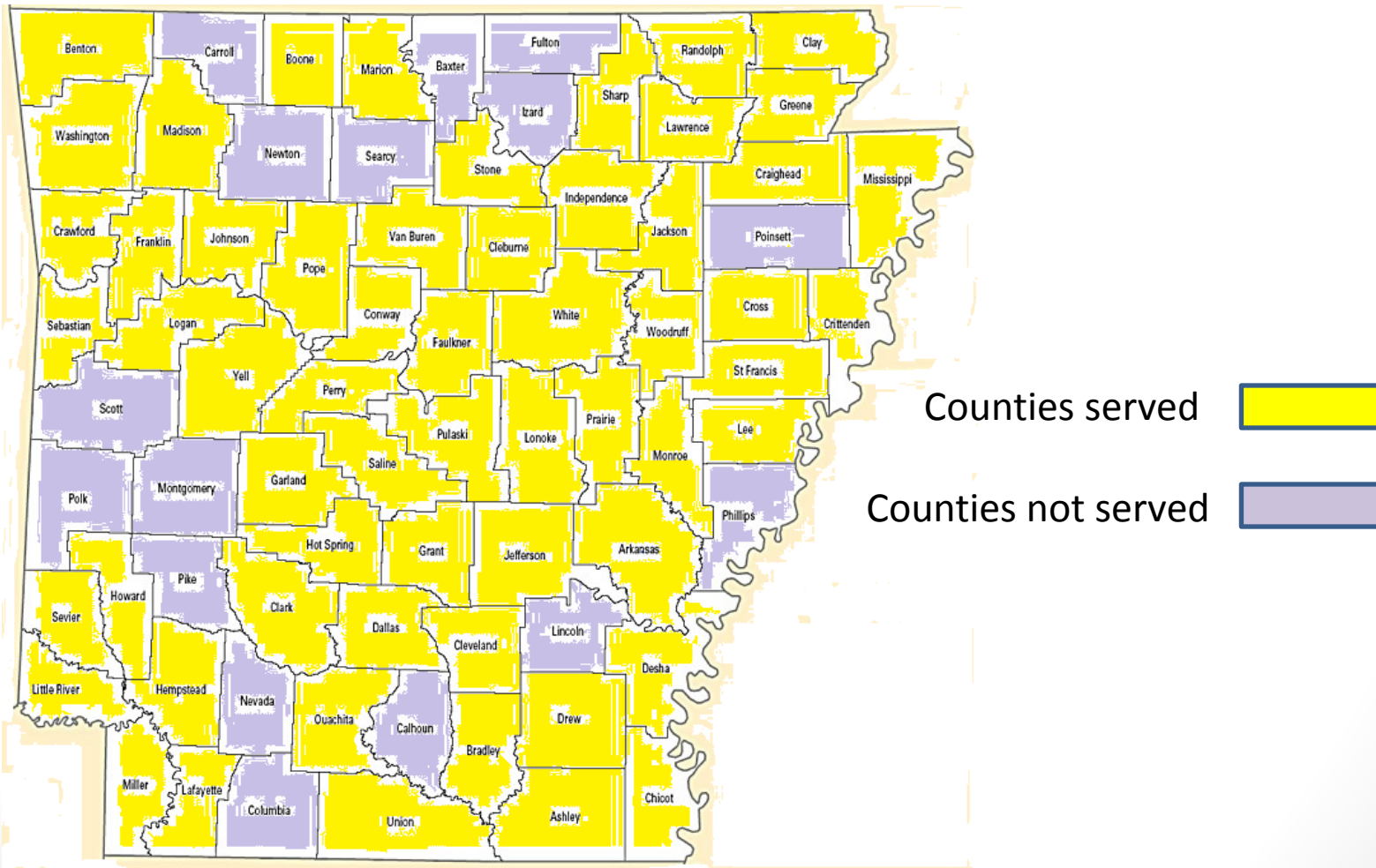
Education Objectives

- Students with disabilities will be promptly evaluated and identified as students with disabilities eligible for protection/services under Section 504 and the IDEA and have appropriate educational programs developed.
- Students with disabilities, including those at risk of commitment to DYS, will have access to appropriate accommodations, positive behavior supports, and individualized education programs as needed to protect them from restraint and seclusion, exclusion from school, and abuse and/or neglect in school.
- Students with disabilities will have access to appropriate transition planning and services and will understand their transition rights.

DRA Education Requests for Services FY 2015

Total Requests for Services	266
Evaluation/Identification	121
Health and Medical Supports	93
Behavior, Restraint/Seclusion, Exclusion, Abuse/Neglect	52

Education Outreach



Child Find

- Individuals with Disabilities Education Act (IDEA) requires that:
 - the state have policies and procedures in place to ensure ALL children with disabilities are identified, located, and evaluated, regardless of severity of their disability.
 - the state's plan include identification of homeless children, wards of the State, and those attending private school.

Child Find

- IDEA requires that the state also include children suspected of being a child with a disability in the evaluation/identification process, even if the child is advancing from grade to grade.

Arkansas Department of Education Regulation

- Section 3.00 addresses Child Find and mirrors the federal Child Find regulation
- Each local educational agency must develop and maintain a written child find plan
 - This must also document the annual child find activities

DRA's Work

- 121 cases involving Evaluation/Identification Issues in FY 15
- Our cases are from a variety of areas throughout the state

Identified Child Find Issues in Arkansas

- Students eligible under the category of Serious Emotional Disturbance being under identified
- Reluctance by districts to identify students
- Use of Response to Intervention for prolonged periods of time
- Inappropriate use of Alternative Learning Environments

Child Find Issues

- Serious Emotional Disturbance
 - Condition where a child exhibits one or more of the following over a long period of time:
 - Inability to learn not explained by intellectual, sensory, or health factors
 - Inability to build or maintain satisfactory interpersonal relationships with peers and teachers
 - Inappropriate behaviors/feelings under normal circumstances
 - General pervasive mood of unhappiness/depression
 - Tendency to develop physical symptoms/fears associated with personal/school problems

Child Find Issues

- Serious Emotional Disturbance
 - Many present with difficult/challenging behaviors
 - Many continue to progress from grade to grade and/or are academically strong
 - Many experience an increase in disciplinary action due to lack of or inadequate programming

Child Find Issues

- Response to Intervention
 - Multi-tiered approach used to identify and provide support for struggling learners
 - Programming is intended to be carefully monitored, with increasing intensive interventions in order to reach desired level of progress
 - Cannot be used to deny or delay formal evaluation under IDEA

Alternative Learning Environments

- Presented to parents as a structured environment that can better meet a child's needs than placement within the regular school setting
- Students often sent into ALEs without ever being identified or provided with special education and related services
- Some districts are not completing the required assessments, interventions, or plans prior to or upon placement within the ALE

What Parents Often Hear From Districts

- “Your child is too smart for an IEP.”
- “He can get all that he needs if he goes into the ALE.”
- “We do not have any funding to do that.”
- “You don’t really want your child in special education, do you?”
- “You should file a FINS.”

Child Find Examples

- Middle school student with multiple mental health diagnoses
- Parent repeatedly asked school for special education services
- Child was placed in ALE, where his behaviors continued to interfere with his education
- Had several acute/residential treatment stays
- Had multiple long-term suspensions and had been recommended for expulsion due to behaviors that were a manifestation of his disabilities
- The school never evaluated or identified until DRA became involved, despite numerous attempts by parent

Child Find Examples

- 2nd grade student with ADHD, seizures, oppositional defiant disorder
- Student removed from the class daily due to behaviors
- Parent repeatedly requested services for child
- School only offered RTI services—student began receiving RTI in kindergarten and was making little progress
- DRA became involved and was told that the district uses a discrepancy model
 - Described by school that the student's IQ and grades needed a large gap before other services would be warranted
 - DRA requested immediate comprehensive evaluation of student

Discipline Practices for Students in Special Education

DRA's Work

- To varying degrees, most of DRA's special education cases involve Behavior, Restraint/Seclusion, Exclusion, Abuse/Neglect Issues in FY 15
- Our cases are from a variety of areas throughout the state

Individuals with Disabilities Education Act

- Federal law
- Mandates that all students with disabilities have access to free appropriate public education in the least restrictive environment
- Includes a process known as Manifestation Determination Review

Arkansas Department of Education Regulations

- State Regulations – Section 11.00 of the ADE Special Education and Related Services Procedural Requirements and Guidelines
- Mirror federal law
- Also includes Manifestation Determination Review process

Manifestation Determination Review (MDR)

- Scenario: a student with a disability violates a code of conduct
- If the District proposes to change the placement of a child for more than 10 days (including suspensions), the District must conduct an MDR
- An MDR is designed to determine if the student's behavior is a manifestation of her disability or a failure of the District to implement the IEP
- The IEP Team makes this determination
- If the determination is yes, then the student should remain at her current placement

Arkansas Discipline Practice

- Failure by Districts to Conduct MDRs
- Reliance on Corporal Punishment
- Improper Use of Restraint/Seclusion
- Failure to Implement Properly IEPs and Behavior Support Plans

Arkansas Discipline Practice

- Reliance by Districts on Contracted Mental Health Providers
- Placement of Students with Disabilities in Alternative Learning Environments
- Use of FINS by Schools to Remove Students with Disabilities
- Use of Delinquency by Schools to Remove Students with Disabilities and Committing Students to DYS Custody

Arkansas Discipline Examples

- Student with Disabilities violated code of conduct, likely due to manifestation of his disability
- School brought Parent to school to inflict corporal punishment
- DRA recommended that Parent request Functional Behavioral Assessment and Behavior Intervention Plan

Arkansas Discipline Examples

- Student with Disabilities violated code of conduct, likely due to manifestation of his disability
- Student refused to stand up and go to class
- School responded by calling school resource officer, then law enforcement, and having child handcuffed
- In this case, the child was not arrested. In many others, however, the child is arrested and enters the juvenile justice system

Arkansas Discipline Examples

- Student with Disabilities complied with a teacher's instructions but became agitated
- Teacher responded by spraying mace into the student's face
- Teacher is charged with third-degree battery, possession of tear gas-pepper spray, and terroristic threatening

Arkansas Discipline Examples

- A nine-year old student with disabilities (Down Syndrome) was spitting on the school bus, violating the District's code of conduct
- The aide responded by assaulting the student, using latex gloves and tissues to cover his mouth and blocking his airway
- The aide was charged with aggravated assault

Reliance by Districts on Contracted Mental Health Providers

- Some districts enter into contracts with mental health providers
- Without their own school-employed mental health providers, many districts experience a disconnect in what the student needs in order to provide a free appropriate public education
- Districts and contracted mental health providers are either unable or unwilling to communicate effectively
- An appropriate plan is often not developed to address the student's individualized needs

Alternative Learning Environments

- Presented to parents as a structured environment that can better meet a child's needs than placement within the regular school setting
- Students often sent into ALEs without ever being identified or provided with special education and related services
- Some districts are not completing the required assessments, interventions, or plans prior to or upon placement within the ALE

Arkansas Discipline

Placement of students in disciplinary Alternative Learning Environments instead of identifying them as students with disabilities and providing needed specialized instruction, services, supports, and accommodations

- ❖ *Circumvents federal and state law requirements for students with disabilities*

Arkansas Discipline

Use of FINS by schools to remove students with disabilities with behavior issues from regular school setting instead of addressing need for specialized instruction, services, supports and accommodations

- ❖ *Circumvents federal and state law requirements for students with disabilities*

Arkansas Discipline

Use of delinquency by schools to remove students with disabilities with behavior issues from regular school setting instead of addressing need for specialized instruction, services, supports and accommodations

- ❖ *Circumvents federal and state law requirements for students with disabilities*

Restraint Guidelines

- Both the U.S. and Arkansas Departments of Education have issued guidance on the use of restraint in schools.
- These guidelines recommend that:
 - Every effort should be made to prevent the need for physical restraint;
 - Every student has the right to be treated with dignity and to be free from abuse.
 - Physical restraint should only be used when a student's behavior poses imminent threat of serious physical harm to self or others and should be discontinued as soon as this threat has passed.
 - Chemical and mechanical restraints should never be used in a school setting.

Restraint Guidelines

- These federal and Arkansas guidelines set some admirable standards regarding restraint
- However, without a law compelling districts to follow these guidelines, there are no enforcement mechanisms to ensure that our students are free from unwarranted restraints

Seclusion

- Arkansas has adopted regulations regarding seclusion in school
- “Time-Out Seclusion Room,” Section 20.00 of the ADE Special Education and Related Services Procedural Requirements and Guidelines
- Schools are instructed only to use seclusion if the student’s behavior is:
 - Destructive to property
 - Aggressive toward others
 - Severely disruptive to class
- Students are not to be secluded for general noncompliance or academic refusal AND only when less restrictive means of controlling behavior have proven ineffective

Best Practices

- Truly Comprehensive Evaluations
 - To fully understand the student's needs so that individualized programming can be developed and implemented
- Ongoing training with local educational agencies on compliance with federal and state law
- Early Intervention
 - Identifying students earlier to begin providing them with needed supports and services
 - Transition planning into kindergarten

Best Practices-Discipline

- Data Collection
- Local educational agencies adhering more to procedural requirements, i.e. MDRs
- Restraint/Seclusion
 - Enactment or strengthening of laws related to restraint and seclusion in schools
 - Banning the use of mechanical restraints
 - Prohibiting the use of dangerous restraint techniques
 - Limiting the use of restraints to only those situations involving immediate risk of physical harm

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