SPECIAL EDUCATION IN JUVENILE COURTS

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SPECIAL EDUCATION AND
THE JUVENILE JUSTICE SYSTEM
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CHAPTER 10
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I have a BS in Education from Prairie View A&M University
I have been working with special needs children for the past 19 years.
Linda Noy has served as the Special Education Director in Round Rock ISD for last eleven years. Prior to that time, she was a Special Education Associate Director, Special Education Supervisor, Educational Diagnostician, Teacher, and Paraprofessional. She received an undergraduate degree from Southern Methodist University in 1970 with an endorsement in Secondary Social Studies. After graduation, Ms. Noy secured a position midyear in an Austin independent School District school chosen to pilot a new concept in special education designated as the "resource program".

There she discovered an unanticipated love for teaching students with disabilities. After ten years of teaching she earned a Master of Education in the area of School Administration from the University of Texas and acquired certified in school administration and supervision. During her masters program she participated as a full time intern with Dallas Independent School District as an Assistant Principal and Program Supervisor for Special Education. In recent years Ms. Noy has earned a certificate in mediation and trained as a coach for instructional leaders through the ESC XIII "Coaching for Instructional Leadership" program. She has served on numerous statewide committees for the TEA Continuous Improvement Plan process and has provided leadership through coaching and mentoring to aspiring special education administrators in the central Texas area.
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I. INTRODUCTION

No area of school law in more encompassed in federal law than special education law. However detailed special education law may be it is vastly unique and separate from the arena of juvenile courts. In Texas juvenile courts have exclusive original jurisdiction in all cases involving delinquent conduct or conduct indicating a need for supervision involving juveniles between the ages of 10 and 17. Under Texas law the definition of child encompasses juveniles between the age of 10 and 17 or individuals between the age of 17 and 18 who are alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision committed before becoming 17 years of age.

Basically, delinquent conduct is defined as conduct other than traffic offenses that violate either Texas or Federal penal laws punishable by imprisonment or by confinement in jail. Conduct indicating a need for supervision are offenses of a relatively minor nature such as misdemeanor offenses punishable by fine only or other offenses such as truancy or runaway offenses.

II. JUVENILE RIGHTS

When dealing with criminal offenses committed by juveniles that are either

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<th>Contempt of that court in:</th>
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<td>A. a justice or municipal court; or</td>
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<td>B. a county court for conduct punishable only by a fine;</td>
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<td>3. conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or</td>
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<td>4. conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).</td>
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(b) Conduct indicating a need for supervision is:

1. subject to Subsection (f), conduct, other than a traffic offense, that violates:
   A. the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or
   B. the penal ordinances of any political subdivision of this state;

2. the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;

3. the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

4. conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 484.002, Health and Safety Code;

5. an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code; or

6. conduct that violates a reasonable and lawful order of a court entered under Section 264.305.
delinquent conduct or conduct indicating a need for supervision (CINS), juveniles are afforded a penumbra of rights and constitutional protections. However expansive the constitutional protections afforded juveniles under both state and federal law may be conflicts exist when delving into the arena of school actions and children with special education needs and disabilities.

A. IDEA

The Individuals with Disabilities Education Act of 2004 (IDEA 2004) promulgates regulations and guidelines for addressing children with disabilities and misconduct in school settings. For example a determination must be made by a school authority to determine if a child’s conduct or misbehavior is related to his or her disability. This finding or “manifestation determination” requires review under a two prong analysis. Under the IDEA a child’s behavior is a manifestation of his disability when either:

a. if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or
b. if the conduct in question was the direct result of the district’s failure to implement the IEP.

This analysis is essential since if a determination of manifestation results in a finding that a child’s behavior or misconduct is a direct result of his disability then school officials are curtailed in disciplinary options.

Notwithstanding a school’s manifestation determination current juvenile law affords no such protection or defenses to delinquent behavior or conduct indicating a need for supervision. Defenses under Texas law to criminal offenses exist such as self-defense, necessity and use of deadly force.

B. MENTAL ILLNESS

When dealing with children with mental health issues juvenile courts have specific statutory provisions handling individuals with “mental illness.” The Texas Family Code utilizes the definition of mental illness that is used in section 571.003, Health and Safety Code which is defined as:

an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that: (a) substantially impairs a person’s though, perception of reality, emotional process, or judgment; or (B) grossly

5 See generally, In Re Gault, 387 U.S. 1, 18 L. Ed. 2d 527, 87 S. Ct 1428 (1967) (guaranteeing the right to counsel, right to notice, confrontation and privilege against self-incrimination in adjudication hearings); Tex. Fam. Code §54.03.

8 TEX. PENAL CODE §9.31.
9 TEX. PENAL CODE §9.22.
10 TEX. PENAL CODE §9.42.
impairs behavior as demonstrated by recent disturbed behavior.

The philosophy regarding mentally ill children in the juvenile justice system is that the juvenile should be first handled in the mental health system. This distinction or difference from the treatment of children with disabilities in the school system has substantial consequences. In the school system if a child’s misbehavior is determined to be a result of his “disability” then disciplinary action that can be taken by the school is limited. Contrast this same behavior in the juvenile justice system: a finding of manifestation of disability does not generally carry over to the juvenile justice system or serve as a defense to delinquent conduct or conducting indicating a need for supervision.

III. LACK OF RESPONSIBILITY FOR CONDUCT

The juvenile justice system in Texas not designed to be solely punitive when dealing with juveniles who have committed criminal offenses. Section 51.01 of the Texas Family Code provides as follows:

1. to provide for the protection of the public and public safety;

2. consistent with the protection of the public and public safety:

(A) to promote the concept of punishment for criminal acts;

(B) to remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and

(C) to provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct;

3. to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions;

4. to protect the welfare of the community and to control the commission of unlawful acts by children;

5. to achieve the foregoing purposes in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety and when a child is removed

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11 See, Tex. Fam. Code §51.01.
from the child's family, to give the child the care that should be provided by parents; and

6. to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

The provisions of the Texas Family Code involving “[L]ack of Responsibility for Conduct” address situations where a child should not be held responsible for his or her actions which amount to delinquent conduct or conduct indicating a need for supervision when the child is “at the time of the conduct, as a result of mental illness or mental retardation, the child lacks substantial capacity either to appreciate the wrongfulness of the child’s conduct or to conform the child’s conduct to the requirements of law.” This provision is the juvenile equivalent to the adult “insanity” defense however, it is much more expansive than the criminal definition of insanity. However if the child who is determined to have his misconduct or delinquent behavior be a manifestation of his disability meets this statutory definition then the provisions of Chapter 55.51 will serve as a defense to the child’s actions.13

IV. SUMMARY

Although a determination of whether a child has a special needs to comply with IDEA one must remember that this is a separate and distinct finding from findings utilized in juvenile court in delinquency proceedings. Accordingly, the same behavior that is found in the school setting to be a manifestation of a child’s disability can be the basis of a delinquency finding in juvenile court. Even though the school system and juvenile courts operate at times completely independent of each other it is important that when proceeding in juvenile court a practitioner is familiar with the disposition of school proceedings.

13 Lack of Responsibility for Conduct is a defense to prosecution in juvenile proceedings however it is important to note that this is an issue that is raised at trial and even if successful still requires that the juvenile court initiate proceedings for hospitalization.

12 TEX. FAM. CODE §55.51