

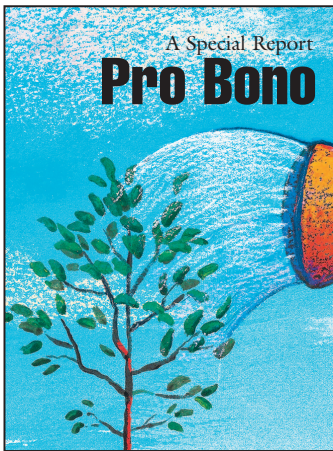
## Locked Up, Missing School

Youths entangled in the criminal justice system seek special education services.

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Children and young adults who become entangled in the criminal justice system have more than one problem on their hands. While they're awaiting trial either in the D.C. Jail or the Central Treatment Facility, many of them are also missing out on school.

Some young people need more than just traditional instruction;



they require special education services. But until recently, the District of Columbia had no effective structure in place to bring those services to them, even though federal law requires that the city provide these services. Even more important, because these students were deprived of meaningful educational instruction for many months as they awaited trial, they were actually punished before there was any finding of guilt. Imagine, in addition, what that does to rehabilitation efforts

if these young people are ultimately convicted.

### NOTHING FOR 16 MONTHS

Take, for example, the case of James, (not his real name) who was incarcerated in the D.C. Jail for 16 months without receiving any special education services. Before his arrest, James had attended a public high school where he received a myriad of services, including special education instruction, speech therapy, and counseling.

That all ended when he was locked up. For much of the 16 months, James received no educational services at all. When he did get some instruction, he was included with the general education students, but for only a couple of days a week and only a few hours a day. The little schooling he received did not begin to

meet his needs. Even though James was ultimately acquitted of all criminal charges and released, he lost 16 months of educational opportunity at a critical time in his development.

In 2003 attorneys from Steptoe & Johnson and the Public Defender Service for the District of Columbia took action to help youths like James. We filed a putative class action against the District of Columbia, the D.C. Public Schools (DCPS), and the D.C. Department of Corrections (DOC) in the U.S. District Court for the District of Columbia. The complaint alleged the District agencies had violated their obligations under the Individuals with Disabilities Education Act (IDEA) by failing to identify and evaluate special education students at the jail and the Central Treatment Facility (CTF) and by failing to provide these students with the special education and related services to which they were entitled.

Notably, from the onset of litigation, representatives for the District agencies acknowledged they needed to take action to become IDEA-compliant. Given this mutual understanding, why did it take well over two years to reach a settlement? The simple answer is, we wanted to be sure we agreed that the remedy put into place was legally compliant. By the same token, however, we quickly recognized that if we successfully persuaded the court to impose a special education plan on the District agencies that they had no hand in developing, and thus no investment in making sure the plan worked, we might win our case on paper but lose the opportunity to effect real change.

From the start, the federal judge presiding over the case, Ricardo Urbina, recognized the high stakes, noting that whether this case was successfully resolved would determine whether youths entitled to special education services at the jail "would come back out into the community either angry and ill-educated or optimistic and hopeful." At the judge's urging, we conducted site tours and had numerous meetings with the District's representatives to understand what the existing procedures actually were and to identify what the District agencies considered to be the restricting factors.

We encountered complications involving security considerations and general space restrictions, the average length of

stay of eligible students in the short-term facility, and questions about the responsibilities of both the DOC and the DCPS. Once we had a general understanding of the landscape, our consultants, Peter Leone and Stephen Steurer, met with staff and developed a curriculum, lesson plans, and other critical documents in close collaboration with those who we hope will ultimately use these materials. For the most part, the District's representatives were willing to accept the resources and guidance we offered. Additionally, the District obtained input from its consultants. The process was slow and time-consuming, and certainly not without expense, but resulted in real progress.

The parties went as far as they could go informally, but ultimately, we were still in a litigation posture, and neither party could fully commit to hammering out an agreement while the predictable discovery disputes and other litigation battles loomed. Because he wanted both sides to reach the ultimate goal of getting services for needy kids, Urbina refused to allow our case to devolve into a time-consuming and ultimately unproductive battle over the scope of document requests.

Instead he recommended mediation, hoping that a more structured alternative-dispute process would bridge the remaining gaps and allow for a more creative and flexible solution. Here, with the invaluable assistance of the assigned mediator, Richard Levie, the parties finally reached an agreement that should result in a compliant special education program for students in custody at the D.C. Jail and the CTF.

### **WHAT TO DO NEXT**

Where are we now? The DCPS and the DOC have drafted a procedures manual that describes the practical, concrete measures the District will take to set up a functional special education program at the D.C. Jail and the CTF. According to the

manual, the DCPS and the DOC will work together to promptly identify all eligible students.

One goal is to put together a committee of professionals to draft and revise individual education plans (IEPs) for students and, perhaps more important, to ensure the individualized services called for by each IEP are provided. Additional classroom space has been located. Special education will also be available, albeit on a slightly modified basis, for those students who cannot come to the classroom because of legitimate security concerns. Budgets will include funding for additional staff and educational resources. Finally, a plan is in place to help students to either transition back into the educational system upon release or complete their studies while in custody.

Our work is not over, however; the true test will be whether the services are actually delivered. We have the manual, which commits the District in principle to a special education plan that it has acknowledged is workable. The next step is to implement the plan the District itself has developed.

At this point we are optimistic that the District will succeed, but we have no illusions that the road to systemic reform will be smooth. Change, especially change involving multiple government agencies, can be difficult. Additionally, notwithstanding the District's good faith in designing the plan, some of the procedures may not work in practice. Competing demands for resources may also raise hurdles. Whatever happens, we will be watching, ready to step in if necessary, to ensure that James and others like him are provided the special education services they deserve while they are in the custody of the D.C. correctional system.

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