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I. INTRODUCTION

K.C.,[1] a fifteen-year-old boy, attends public school in New York State and receives special education services for an "emotional disturbance."[2] As a result of his disability, K.C. has difficulty managing his behavior; he is easily frustrated and quick to anger. His disability has affected his education: His reading ability is below grade level, he has been suspended from school several times, and he has failed several classes. He missed thirty days of school in the ninth grade and is falling short of the credits needed to graduate high school. Consider the following hypothetical scenarios:

> **Scenario A:** During the school day, in the cafeteria, K.C. has a verbal argument with another boy. K.C. pushes the other boy to the ground and repeatedly punches and kicks him, causing injury. K.C. is suspended from school but not arrested.
>
> **Scenario B:** Over the weekend, at a park near K.C.'s home, he has a verbal argument with another boy who does not attend his school. K.C. pushes the other boy to the ground and repeatedly punches and kicks him, causing injury. K.C. is arrested and prosecuted in family court for misdemeanor assault and receives a dispositional outcome of juvenile probation.

In both scenarios, K.C.'s educational needs may have contributed to him engaging in violent conduct. And in both scenarios, K.C. would continue to attend school where educational services could help address his behavior and prevent future incidents. But due to a lack of coordination between the juvenile justice and education systems in New York State, the educational responses in each scenario could differ. In Scenario A, the school could be required to evaluate K.C. and provide or revise existing educational support or services. In Scenario B, the court may require that K.C. receive supervision, counseling, or other services outside of the school setting, but could not mandate that the school provide specific educational services.

Now is an opportune time for New York to explore ways to enhance educational services for students in the juvenile justice system. In 2018, New York raised the age of criminal responsibility from sixteen to eighteen years old for misdemeanors and most felonies.[3] As a result, the number of students involved in the juvenile justice

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1. K.C. is a fictional child in this article whose story represents the accounts of real-life students in New York.

2. Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

   > (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
   > (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
   > (C) Inappropriate types of behavior or feelings under normal circumstances.
   > (D) A general pervasive mood of unhappiness or depression.
   > (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

   34 C.F.R. § 300.8(c)(4)(i) (2017).

3. *See* S. 2009C, 2017–2018 Leg., Reg. Sess. (N.Y. 2017), https://legislation.nysenate.gov/pdf/bills/2017/S2009C; *Governor Cuomo Announces Raise the Age Law Now in Effect*, N.Y. St. (Oct. 1, 2018), https://

system could increase dramatically.[4] Many children who are arrested and become involved with the juvenile justice system have learning or other educational disabilities,[5] and are entitled to receive special education services in school.[6] New York family court judges presiding over juvenile delinquency cases can consider a student's educational performance and refer the student to mental health or social services outside of the school setting, but the court has limited authority to direct school officials or require specific services that would address a student's educational needs.[7] A student's involvement in the juvenile justice system could represent a court-to-school pipeline—a "catalyst to address educational needs."[8] In addition, promoting educational success and school accountability in these circumstances could help disrupt the "school-to-prison pipeline"[9] and ideally reverse its course.

This article explores how to meet the educational needs of students like K.C. by comparing educational responses in both the school discipline and juvenile justice contexts.[10] Part II considers possible school discipline responses for Scenario A, the

www.governor.ny.gov/news/governor-cuomo-announces-raise-age-law-now-effect; *see also* Raise the Age N.Y., http://raisetheageny.com/wp-content/uploads/2017/06/rta.billsummary.final_June-2017.pdf (last visited Dec. 24, 2018).

4. In 2017, New York State arrested 21,344 youths between the ages of sixteen and seventeen. *New York State Arrests Among 16-17 Year Olds*, Division Crim. Just. Servs. (Feb. 16, 2018), http://www.criminaljustice.ny.gov/crimnet/ojsa/youth-arrests/nys.pdf.

5. *See* Christopher A. Mallett, *Seven Things Juvenile Courts Should Know About Learning Disabilities*, A.B.A. (Jan. 9, 2018), https://www.americanbar.org/groups/child_law/resources/child_law_practiceonline/child_law_practice/vol_31/may_2012/seven_things_juvenilecourtjudgesshouldknowaboutlearningdisabilit; *see also* U.S. Dep't of Educ., NDTAC Factsheet: Youth with Special Education Needs in Justice Settings 1 (2014), https://neglected-delinquent.ed.gov/sites/default/files/NDTAC_Special_Ed_FS_508.pdf.

6. *See* Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401, 1414 (2017).

7. *See* N.Y. Fam. Ct. Act §§ 351.1(1), 353.2(2)(e) (McKinney 2018). In New York, family court has jurisdiction over all juvenile delinquency proceedings. *Id.* § 302.1(1). Family court judges can order the student to attend school and comply with school rules, as well as permit a probation officer to obtain information from the school. *Id.* § 353.2(2)(a), (3)(c). These proceedings and possible dispositional outcomes are described later in this article. *See* discussion *infra* Part II.

8. N.Y.C. School-Justice P'ship Task Force, Keeping Kids in School and Out of Court: Report and Recommendations 37–38 (2013), http://www.nycourts.gov/ip/justiceforchildren/PDF/NYC-School-JusticeTaskForceReportAndRecommendations.pdf.

9. *See* Deborah N. Archer, *Introduction: Challenging the School-to-Prison Pipeline*, 54 N.Y.L. Sch. L. Rev. 867, 868 (2009–2010) ("The school-to-prison pipeline is the collection of education and public safety policies and practices that push our nation's schoolchildren out of the classroom and into the streets, the juvenile justice system, or the criminal justice system.").

10. While this article focuses on New York State, the lack of coordination between the juvenile justice system and educational system is not uncommon in the United States. *See* Atasi Uppal, Championing the Potential of Youth on Probation: Critical Education Advocacy for Justice-Involved Youth 13 (2017), https://youthlaw.org/wp-content/uploads/2017/06/Championing-Potential-of-Youth-on-ProbationJune6.pdf ("Probation-supervised youth . . . receive less attention than their incarcerated peers when it comes to advocacy that will improve their education outcomes. . . . [T]he obstacles to system change seem to be the lack of data, inadequate local and state policies to address education barriers for probation-supervised youth, and the lack of funding and coordinated strategies

incident that took place in school, with the student facing a possible suspension but no arrest. Part III considers possible juvenile justice responses for Scenario B, the incident that took place outside of the school setting, with the student arrested and prosecuted for misdemeanor assault. Part IV considers several examples from other states, and evaluates alternative approaches that could give courts a role in promoting coordination between the juvenile justice system and schools, including: 1) involving schools directly in the process; 2) notifying schools about the juvenile delinquency proceedings; 3) ordering that out-of-school educational services be provided for the student; and 4) appointing an education advocate for the student. Part V concludes this article and proposes appointment of education advocates in appropriate cases, taking into account the interests of all of the parties involved.

II. ADDRESSING SCENARIO A: STUDENTS WITH DISABILITIES AND SCHOOL DISCIPLINE RESPONSES IN NEW YORK

Under the Individuals with Disabilities Education Act (IDEA), states receive federal funding to provide special education services to students with disabilities in accordance with federal requirements.[11] The IDEA requires that educational programming and services be provided to individual students with disabilities to ensure that they obtain a "free appropriate public education" (FAPE) in the least restrictive environment.[12] Students with disabilities should be educated together with other students "[t]o the maximum extent appropriate."[13] The IDEA broadly defines disability to include behavioral disorders as well as physical and learning disabilities that impede the learning process.[14] In order for a student to receive special education services, they must be evaluated by their particular school district.[15]

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for change."); *see also* Lisa M. Geis, *An IEP for the Juvenile Justice System: Incorporating Special Education Law Throughout the Delinquency Process*, 44 U. Mem. L. Rev. 869, 869 (2014) (recommending that special education law be incorporated throughout the juvenile delinquency process); Thomas A. Mayes & Perry A. Zirkel, *The Intersections of Juvenile Law, Criminal Law, and Special Education Law*, 4 U.C. Davis J. Juv. L. & Pol'y 125, 147–50 (2000) (discussing "concurrent jurisdiction" of school districts and juvenile justice systems); Janet Wagner, *JCA and IDEA: Getting Two Systems in Sync*, 28 DCBA Brief 14 (2016) (recommending enhanced coordination of the education and juvenile delinquency systems in Illinois). While this article includes examples from several states, a complete review of laws and practices in other states is beyond the scope of this article.

11. *See* §§ 1407, 1411, 1412.

12. §§ 1401(9), (29), 1412(a)(1), (5); *see also* Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 993–94 (2017).

13. § 1412(a)(5)(A).

14. The IDEA defines "child with a disability" as

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

§ 1401(3)(A).

15. *See* § 1414(a). A request for an evaluation may be initiated by "a parent of a child, or a State educational agency, other State agency, or local educational agency." § 1414(a)(1)(B). A school district may pursue

If a school district determines that a student has a disability, the Committee on Special Education (CSE), which includes the participation of the student's parent, develops an Individualized Educational Program (IEP).[16] The IEP includes detailed information about the student's "academic achievement and functional performance," the "special education and related services" that will be provided to the student, and annual progress goals stating how progress will be measured.[17] Related services may include psychological, social work, or counseling services provided "to assist a child with a disability to benefit from special education . . . ."[18] When a child demonstrates behavior that "impedes the child's learning or that of others," the IEP team should "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior."[19] The IEP is comprehensive and must: 1) be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances;"[20] 2) be reviewed annually to determine "whether the annual goals for the child are being achieved" and revised accordingly;[21] and 3) include, once

administrative proceedings to evaluate a student over the objection of a parent, but ordinarily may not provide special education services over a parent's objection. § 1414(a)(1)(D).

16. §§ 1412(a)(4), 1414(d). In New York, the CSE may include:

> (i) the parents or persons in parental relationship to the student; (ii) one regular education teacher of the student whenever the student is or may be participating in the regular education environment; (iii) one special education teacher of the student, or, if appropriate, a special education provider of the student; (iv) a school psychologist; (v) a representative of such school district who is qualified to provide or administer or supervise special education and is knowledgeable about the general curriculum and the availability of resources of the school district; (vi) an individual who can interpret the instructional implications of evaluation results; (vii) a school physician; (viii) an additional parent, residing in the school district or a neighboring school district, of a student with a disability . . . ; (ix) such other persons having knowledge or special expertise regarding the student as the school district or the parents or persons in parental relationship to the student shall designate, to the extent required under federal law; and (x) if appropriate, the student.

N.Y. Educ. Law § 4402(1)(b)(1)(a) (McKinney 2018).

17. 20 U.S.C. § 1414(d)(1)(A)(i); *see also* N.Y. Comp. Codes R. & Regs. tit. 8, § 200.4(d)(2) (2018).

18. 20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(a) (2017). In New York, related services may include "developmental, corrective, and other supportive services as are required to assist a student with a disability," such as parent counseling and training; school health services; school social work; and other appropriate support services. N.Y. Educ. Law § 4401(2)(k); N.Y. Comp. Codes R. & Regs. tit. 8, § 200.1(qq). Special education services may also include individualized or small group instruction within a larger class, additional instruction outside of the regular classroom, and smaller, specialized classes. N.Y. Educ. Law § 4401(2)(a); N.Y. Comp. Codes R. & Regs. tit. 8, §§ 200.1(ww), 200.6. In some circumstances, the school district may provide tuition for a private school that can provide the services needed. *See* N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(j).

19. 20 U.S.C. § 1414(d)(3)(B)(i).

20. Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017).

21. 20 U.S.C. § 1414(d)(4)(A)(i)–(ii). In New York, the CSE conducts the annual review. N.Y. Comp. Codes R. & Regs. tit. 8, § 200.4(f).

the student turns sixteen, "transition services" to prepare the student for life post-graduation.[22]

School officials may also conduct a Functional Behavioral Assessment (FBA) when developing an IEP.[23] Through the FBA, school officials consider "why the student engages in behaviors that impede learning and how the student's behavior relates to the environment."[24] The results of this process can then be used to develop a Behavior Intervention Plan (BIP), which is referenced in the IEP and reviewed annually.[25] The CSE must consider developing a BIP "when the student's behavior places the student or others at risk of harm or injury."[26] The BIP "includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior."[27] These programs and assessments are designed to address the root causes of a student's misbehavior and to prevent future incidents of misconduct.[28]

In Scenario A, if K.C.'s school were to respond to his misconduct by suspending him from school and assigning him to an alternative instructional setting for more than ten days, the school district would need to follow specific procedures that govern discipline for students with disabilities.[29] First, the school district would need to conduct a Manifestation Determination Review (MDR) to determine if K.C.'s misconduct was a manifestation of his disability.[30] If so, then the CSE would be

22. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

23. N.Y. Comp. Codes R. & Regs. tit. 8, § 200.4(b)(1)(v).

24. *Id.* § 200.1(r). This process involves the following:

> [T]he identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior (including cognitive and affective factors) and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.

Id.; *see also id.* § 200.22(a).

25. *Id.* § 200.22(a)(3), (b)(2).

26. *Id.* § 200.22(b)(1)(ii).

27. *Id.* § 200.1(mmm); *see also id.* § 200.22(b).

28. For more on FBAs and BIPs, see Stephanie M. Poucher, *The Road to Prison Is Paved with Bad Evaluations: The Case for Functional Behavioral Assessments and Behavior Intervention Plans*, 65 Am. U. L. Rev. 471 (2015).

29. In New York, students who are suspended must continue to attend school, and may be assigned to a different location for alternative instruction. N.Y. Educ. Law § 3214(3)(e) (McKinney 2018). These procedures may be required for a child who has been determined to have a disability, or for whom school officials are "deemed to have knowledge" of a disability. 20 U.S.C. § 1415(k)(5)(A)–(C) (2017); N.Y. Comp. Codes R. & Regs. tit. 8, § 201.5.

30. A "manifestation" finding could be made "if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement the IEP." 20 U.S.C. § 1415(k)(1)(E). This determination is made by a "manifestation team," including the parent, a school district representative, and "relevant members of the CSE as determined by the parent and the school district." N.Y. Comp. Codes R. & Regs. tit. 8, § 201.4(b).

required to conduct an FBA and develop a BIP, or to review any existing BIP and "modify it, as necessary, to address the behavior."[31] Even if not a manifestation, if K.C. were suspended for more than ten school days, he would "receive, as appropriate, a functional behavioral assessment [and] behavioral intervention services and modifications . . . to address the behavior violation so that it does not recur."[32] Thus, K.C.'s school could provide or revise existing services to help address his educational needs and prevent future misconduct.

III. ADDRESSING SCENARIO B: STUDENTS WITH DISABILITIES AND JUVENILE JUSTICE RESPONSES IN NEW YORK

Most juvenile delinquency arrests occur outside of school.[33] Unless there is some connection to the school that provides a basis for school discipline, the student arrested outside of school is not subject to suspension, and the school discipline procedures for students with disabilities described in Part II therefore do not apply.[34]

Assault is one of the most common juvenile delinquency charges in New York.[35] In K.C.'s Scenario B, if a court proceeding were commenced[36] he would be entitled

31. 20 U.S.C. § 1415(k)(1)(F)(i)–(ii); N.Y. Comp. Codes R. & Regs. tit. 8, § 201.3. If K.C. did not have an IEP in place, but a request was made for an evaluation, school officials would be required to conduct the evaluation "in an expedited manner." 20 U.S.C. § 1415(k)(5)(D)(ii); N.Y. Comp. Codes R. & Regs. tit. 8, § 201.6.

32. 20 U.S.C. § 1415(k)(1)(D)(ii); N.Y. Comp. Codes R. & Regs. tit. 8, § 201.10(d).

33. *Compare New York City Juvenile Justice Profile*, N.Y. St. Division Crim. Just. Serv. 1 (May 15, 2018), http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkcity.pdf (stating that in 2017, there were 4,099 juvenile delinquency arrests in New York City), *with Student Safety Act Reporting: 2017 in Review*, N.Y.C.L.U., https://www.nyclu.org/sites/default/files/full_year_2017.pdf (last visited Jan. 2, 2019) (stating that in New York City, in 2017, there were 1,242 "school-based arrests"). The 1,242 figure, which preceded implementation of the Raise the Age legislation, includes "adult" arrests of students aged sixteen and older as well as juvenile delinquency arrests. *Id.* This number includes "366 arrests (29% of total arrests in schools) [that] were for incidents that occurred off school grounds and had no relationship to the school." *Id.* One study concluded that 25.7% of 175 juvenile delinquency petitions filed in Bronx County Family Court over two three-week periods in 2011 and 2012 were "school-related." N.Y.C. School-Justice P'ship Task Force, *supra* note 8, at 9. Thus, more than 70% of the petitions filed in that time period were *not* school-related. *See id.* National data indicates that during the school year, the most common time of day for violent crime by youth under eighteen are the hours immediately after school. *Offending by Juveniles*, Off. Juv. Just. Delinq. Prevention (Oct. 18, 2018), https://www.ojjdp.gov/ojstatbb/offenders/qa03301.asp.

34. Students may be disciplined for off-campus conduct that "endangers the health or safety of students, substantially disrupts school operations or otherwise adversely affects the educational process." N.Y. State Sch. Bds. Ass'n, School Law 608 (Pilar Sokol et al. eds., 35th ed. 2014); *see also* N.Y. Educ. Law § 3214(2-a), (3)(a) (McKinney 2018).

35. N.Y. State Juv. Justice Adv. Grp., Annual Report 16 (2014), http://www.criminaljustice.ny.gov/ofpa/jj/docs/2014-JJAG-Annual-Report.pdf (finding that assault charges represented twenty-two percent of delinquency petition filings, and twenty-eight percent of misdemeanor petition filings).

36. After arrest, a juvenile delinquency matter is referred to the local department of probation to determine whether or not it is appropriate to "adjust" the matter, or resolve it without court action. *See* N.Y. Fam. Ct. Act § 308.1 (McKinney 2018) (describing "adjustment" and the circumstances in which adjustment is permitted). If a matter is not adjusted, it is referred to the "presentment agency" (the county attorney,

to a court-appointed attorney.[37] During the pendency of the proceeding, K.C. would most likely remain at home, possibly subject to conditions directed by the court.[38] Unless K.C. admits to the charges, the court would hold a hearing at which the presentment agency would be required to prove the charges beyond a reasonable doubt.[39] If the court were to find K.C. to be a juvenile delinquent and require "supervision, treatment or confinement," the court would determine an appropriate "disposition" or outcome for the case.[40] The court must order the "least restrictive available alternative . . . consistent with the needs and best interests of the [student] and the need for protection of the community."[41]

There are several possible dispositional outcomes of juvenile delinquency cases.[42] For a misdemeanor offense, the most restrictive disposition would be placement in a residential facility.[43] The least restrictive outcome, other than an outright dismissal of the proceedings, would be an "adjournment in contemplation of dismissal" (ACD) for up to six months, with the case to be dismissed at the conclusion of the period unless it is restored to the calendar.[44] The court could direct that K.C. comply with certain conditions and be supervised by the department of probation during this time.[45] Another dispositional option is for the court to order a "conditional discharge" and require K.C. to comply with certain conditions for up to a year, but without probation supervision.[46]

The most common dispositional outcome in juvenile delinquency cases is probation supervision,[47] which involves supervision by the local probation department

or in New York City, the Office of the Corporation Counsel), *id.* § 254(a), which would determine whether or not to file a petition in family court, *id.* § 310.1.

37. *Id.* § 249(a).

38. *See id.* § 320.5(3). A court may order detention if it finds there is a "substantial probability" a student would not appear at the next court date, or a "serious risk" that the student would commit an act of juvenile delinquency. *Id.*

39. *Id.* §§ 342.2(2), 345.1(1).

40. *Id.* § 352.1.

41. *Id.* § 352.2(2)(f)(iii). Additional requirements apply when the court orders that a youth be placed in a residential facility. *See id.* § 352.2(2)(b)–(d). Furthermore, in New York City, under the "Close to Home" legislation, the court must give "due consideration" to the results of the New York City Department of Probation's validated risk assessment instrument and process. *Id.* § 352.2(2)(f).

42. *See id.* § 352.2(1).

43. Residential programs include non-secure or limited-secure facilities. There is also the possibility of "restrictive placement" in certain circumstances in designated felony cases. *Id.* §§ 353.3, 353.5.

44. *Id.* § 315.3(1). An ACD technically is not a disposition; successful completion results in the case being dismissed and sealed. *Id.* §§ 315.3(1), 375.1(2)(c).

45. *Id.* § 315.3(2).

46. *Id.* § 353.1.

47. In 2017, 1,274 of 1,947 initial dispositions in juvenile delinquency cases (not including ACDs or violations of probation) were for probation; 480 were for residential placement; and 193 were for conditional discharge. *Statewide Juvenile Justice Profile*, N.Y. St. Division Crim. Just. Serv., 3 (May 15, 2018), http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkstate.pdf.

to ensure compliance with various court-ordered conditions.[48] Probation supervision may last up to two years, and may be extended for an additional year based on "exceptional circumstances."[49] Conditions of probation may include "attend[ing] school regularly and obey[ing] all rules and regulations of the school;" "avoid[ing] injurious or vicious activities;" "cooperat[ing] with a mental health, social services or other appropriate community facility or agency;" "meet[ing] with a probation officer when directed;" and "permit[ting] the probation officer to obtain information from the [child's] school."[50] Even though community-based dispositions like probation may directly concern the child's school, schools are not formally involved in the court-supervised rehabilitative process.[51]

As part of the process for determining the disposition in a juvenile delinquency case, the local department of probation is required to prepare a probation investigation report,[52] and may make recommendations to the court to be considered at a dispositional hearing, along with the presentment agency and the child's attorney.[53] When preparing the investigation report and dispositional recommendation, the probation officer may consider K.C.'s performance in school, school attendance, and school disciplinary history, along with his "previous conduct, family situation, any previous psychological and psychiatric reports, school adjustment, previous social assistance provided by voluntary or public agencies and [his] response . . . to such assistance."[54]

48. N.Y. Fam. Ct. Act § 353.2(3).

49. *Id.* § 353.2(6).

50. *Id.* § 353.2(2)–(3).

51. A community-based disposition means the youth would continue to live at home, as opposed to a juvenile residential program. If placed in a juvenile residential program, the student is entitled to receive educational services while in the program. *See* N.Y. Comm'n on Youth, Pub. Safety & Just., Final Report of the Governor's Commission on Youth, Public Safety and Justice: Recommendations for Juvenile Justice Reform in New York State 85–86 (2015), http://www.njjn.org/uploads/digital-library/ReportofCommissiononYouthPublicSafetyandJustice_0%20(1).pdf.

52. N.Y. Fam. Ct. Act § 351.1(1)–(2).

53. *See id.* §§ 350.4, 351.1(2-a), (2-b).

54. *Id.* § 351.1(1). State regulations further specify that probation officers assigned to juvenile delinquency cases should investigate "school adjustment, academic performance and conduct/special needs." N.Y. Comp. Codes R. & Regs. tit. 9, § 350.6(b)(2)(ii)(g) (2018). New York City probation officers use a risk assessment instrument called the Youth Level of Service/Case Management Inventory (YLS/CMI) to assist in making probation recommendations; risk points may be assigned based on school attendance and performance. Poor scholastic performance or behavior may result in a higher risk score and, consequently, a more restrictive recommended dispositional outcome. *See* N.Y.C. Admin. for Child.'s Servs., New York City Administration for Children's Services Close to Home: Plan for Non-Secure Placement 51–54 (2012), http://www.hivlawandpolicy.org/sites/default/files/Close%20to%20Home%20-%20Plan%20for%20Non-Secure%20Placement%20%28NYC%20ACS%2C%202012%29.pdf; N.Y.C. Dispositional Reform Steering Comm., Re-Envisioning Juvenile Justice in New York City 6–7 (2012), http://www.nyc.gov/html/prob/downloads/pdf/reinvisioning_juvenile_justice_report_revised.pdf. *E.g.*, R. D. Hoge & D. A. Andrews, YLS/CMI Profile Report (2004), http://downloads.mhs.com/ylscmi/yls-cmi-v5-profile.pdf.

In addition to the probation investigation report, the court may order a mental health evaluation. Among other things, this diagnostic assessment includes "psychological tests and psychiatric interviews to determine mental capacity and achievement, emotional stability and mental disabilities," as well as "a clinical assessment of the situational factors that may have contributed to the act or acts."[55]

When determining the dispositional outcome for K.C.'s case, the court would consider information and recommendations provided by the probation officer and the parties.[56] Courts have often cited to negative school factors when rejecting a student's request for an ACD and ordering probation supervision instead.[57] For example, in 2017 the Appellate Division upheld a juvenile delinquency adjudication and probation disposition for Brandon D., who assaulted a police officer arresting his mother.[58] The court noted that this incident was Brandon D.'s first offense, but found probation appropriate given "the nature of the incident, the Department of Probation's recommendation that appellant would benefit from probation, the appellant's poor school performance, and his [school] attendance and disciplinary record."[59] The Appellate Division has also cited positive school factors in cases in which they reversed probation dispositions and directed that ACDs be entered.[60]

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55. N.Y. Fam. Ct. Act § 351.1(1). The diagnostic assessment is required for cases involving "designated felony acts" as defined under the Family Court Act and can be ordered by the court in other cases as well. *Id.*

56. *Id.* § 350.4.

57. *See, e.g.*, *In re* Gregory R., 74 N.Y.S.3d 511, 512 (App. Div. 2018) (ordering twelve months of probation after considering "the serious and violent nature of the offense, which involved the use of a weapon, as well as the appellant's school disciplinary history and the probation department's recommendation"); *In re* Dzahiah W., 58 N.Y.S.3d 159, 160 (App. Div. 2017) (affirming denial of ACD given "the seriousness of the offenses, the probation department's recommendation, the appellant's poor school record and disciplinary issues at school, and the appellant's refusal to take any responsibility for her actions"); *In re* Elijah N., 45 N.Y.S.3d 794 (App. Div. 2017) (affirming probation disposition after considering the "extremely violent conduct in the underlying incident and the negative factors in his background, including his poor disciplinary and academic record at school"); *In re* Tanaja F., 47 N.Y.S.3d 120, 121 (App. Div. 2017) (upholding denial of an ACD for a first-time offense, considering "the recommendation in the probation report, the seriousness of the underlying acts, and the appellant's poor school record and disciplinary issues at school"); *In re* Danaysha D., 993 N.Y.S.2d 314, 315 (App. Div. 2014) (affirming probation disposition for assault in the third degree, where "[t]he underlying incident involved violence, and appellant's conduct and attendance at school, among other things, gave cause for concern"); *In re* Thomas N., 978 N.Y.S.2d 883, 884 (App. Div. 2014) (affirming probation disposition for assault in the second degree "in light of, among other factors, the seriousness of the offense, the recommendation made in the probation report, the appellant's excessive absences at school, and his poor academic performance").

58. *In re* Brandon D., 63 N.Y.S.3d 237, 237 (App. Div. 2017). Brandon D. was found to have engaged in conduct that, had he been an adult, would have amounted to "the crimes of assault in the second and third degrees, obstructing governmental administration in the second degree and resisting arrest." *Id.*

59. *Id.*

60. *See, e.g.*, *In re* Jonathan, 966 N.Y.S.2d 522, 525 (App. Div. 2013) (reversing denial of ACD disposition for assault due in part to the youth's "commendable academic and school attendance record"); *In re* Jonnevin B., 942 N.Y.S.2d 43, 44 (App. Div. 2012) (reversing probation disposition and granting ACD after considering that the youth "posed no behavioral problems and had been attending school without any

If K.C. were to receive a disposition of probation, the court could order him to attend school regularly and comply with school rules.[61] The court can further require that he "permit the probation officer to obtain information" from his school.[62] However, even if K.C.'s emotional disturbance disability contributed to his actions in assaulting another boy after a verbal argument, the court could not order modifications to K.C.'s educational plan, or that specific services be provided at K.C.'s school.[63]

In New York, family court judges may order state administrative agencies to carry out certain functions in some circumstances.[64] However, with respect to school districts, a family court judge may only require the school district to perform its responsibilities "to review, evaluate, recommend, and determine the appropriate special services or programs necessary" to meet the needs of a child with a disability under certain sections of the law.[65] Furthermore, the family court may only take this action "where it appears to the court or judge that adequate administrative procedure to require the performance of such duties is not available," and even then the court "shall not require the provisions of a specific special service or program."[66] Thus, notwithstanding the court's authority to order a student to attend school and comply with school rules, there are no statutory requirements for ensuring that a student receive services at school that would help the student comply, thereby increasing the risk that the student will not complete probation.[67]

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absences or further disciplinary issues" since moving to a stable foster home); *In re* Julian O., 915 N.Y.S.2d 264, 265 (App. Div. 2011) (reversing probation disposition and directing ACD when the youth was "generally doing well at school").

61. N.Y. Fam. Ct. Act § 353.2(2)(a). Similarly, school attendance may be required as a condition for a youth who remains in the community while fact-finding or dispositional proceedings are pending. N.Y. Comp. Codes R. & Regs. tit. 22, § 205.25(a)(1) (2018).

62. N.Y. Fam. Ct. Act § 353.2(3)(c).

63. *See id.* § 255.

64. *Id.*; *see also In re* Lorie C., 400 N.E.2d 336 (N.Y. 1980). Section 255 applies to all proceedings governed by the Family Court Act, including child welfare and some custody matters as well as juvenile delinquency proceedings. N.Y. Fam. Ct. Act § 255. For further discussion of the scope and limitations of section 255, see Jessica Jean Hu, *No Knights in Shining Armor: Why Separation of Powers Benefits Children and Social Services Systems*, 21 B.U. Pub. Int. L.J. 2011 1, 16 (2011–2012); N.Y. State Bar Ass'n, Task Force on Family Court: Final Report 41–42, 121–22 (2013), http://www.nysba.org/familycourtreport (recommending that section 255 be amended and strengthened).

65. N.Y. Fam. Ct. Act § 255.

66. *Id.* In 2008, the Appellate Division, Second Department reversed a family court order directing the New York City Department of Education to provide an IEP with a specific educational placement. *See In re* James A., 856 N.Y.S.2d 192, 192 (App. Div. 2008). The Appellate Division ruled that the family court had "exceeded its authority . . . and encroached upon powers granted to the DOE" under New York's Education Law. *Id.* at 192–93.

67. Joseph B. Tulman, *Disability and Delinquency: How Failures to Identify, Accommodate, and Serve Youth with Education-Related Disabilities Leads to Their Disproportionate Representation in the Delinquency System*, Whittier J. Child & Fam. Advoc. 3, 56 (2003) ("The simple requirement that, as a condition of probation, a child attend school—every day, every class—is, for many children with undiagnosed and unmet special education needs, an unfair and perhaps impossible condition.").

If K.C. were to successfully complete probation, his juvenile delinquency case would end.[68] However, if he were to fail to comply with the probation requirements, he could face a violation of probation proceeding, potentially leading to his probation being extended or revoked.[69] If probation were to be revoked, he could be placed in a residential facility.[70]

In summary, if K.C. were to engage in violent conduct outside of school, the court could consider K.C.'s school history, including his attendance, academic performance, and any prior disciplinary incidents. The court could not order that K.C.'s school address his educational needs or provide services, even if K.C. received a probation disposition that required him to attend school and comply with school rules.

IV. ALTERNATIVE APPROACHES FOR ENHANCING COURT-SCHOOL COORDINATION AND EDUCATIONAL OPPORTUNITIES FOR STUDENTS WITH DISABILITIES ON JUVENILE PROBATION

National studies have reported low academic achievement and high special education needs for juvenile justice-involved youth.[71] But under the current system, coordination between schools and the juvenile justice system is limited and often informal, and generally is not subject to judicial oversight. This represents a lost opportunity to address those needs and further the juvenile justice system's purposes in promoting rehabilitation and community safety.[72]

Enhancing educational opportunities for students involved with the juvenile justice system is also an important civil rights issue. In 2017, forty-five percent of the juvenile delinquency petitions filed in New York State were against black youth, who only accounted for seventeen percent of the total juvenile population.[73] In contrast,

68. The New York City Department of Probation reports that in the 2017–2018 fiscal year, the "successful completion rate" for juvenile probationers was sixty-four percent. N.Y.C. Mayor's Office of Operations, Mayor's Management Report 94 (2017), https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2017/2017_mmr.pdf.

69. N.Y. Fam. Ct. Act §§ 360.2–360.3.

70. *Id.* §§ 360.3(6), 352.2. In 2017, there were 677 violation of probation findings, including 297 cases when the court revoked probation and ordered residential placement. *Statewide Juvenile Justice Profile*, *supra* note 47, at 5.

71. Peter Leone & Lois Weinberg, Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems 10–12 (2010) (citing studies concerning academic achievement, juvenile delinquency and recidivism, and "the high rate of special education identification among incarcerated youth").

72. *See* Green v. Montgomery, 746 N.E.2d 1036, 1039 (N.Y. 2001) ("Delinquency proceedings are designed not just to punish the malefactor but also to extinguish the causes of juvenile delinquency through rehabilitation and treatment.").

73. *Statewide Juvenile Justice Profile*, *supra* note 47, at 1, 3. In 2017, 4,697 juvenile delinquency proceedings were filed, which encompasses children between ages seven and fifteen. *Id.* at 3.

twenty-eight percent of petitions were against white youth who represented fifty-one percent of the juvenile population.[74]

This section discusses several approaches that have been used to enhance coordination or educational supports for students on probation and considers some of the advantages and disadvantages of each approach.

A. Court Involves School Officials Directly in the Disposition Process

Some states have statutory mechanisms for including school officials in the dispositional process. In New Hampshire, the court has authority to join the school district as a party at any time "for the limited purposes of directing the school district to determine whether the minor is a child with a disability or of directing the school district to review the services offered or provided . . . if the minor has already been determined to be a child with a disability."[75] The court is required to order joinder if a residential placement disposition is being considered for the student, and otherwise may order joinder on its own initiative or at the request of one of the parties.[76] If the student has not been identified by the school district as having a disability, the school district must "treat[] the order as the equivalent of a referral by the child's parent for special education" and proceed accordingly in evaluating the child.[77] School district officials must report their findings back to the court, although the court does not have the authority to change an IEP.[78] In addition, the school district must "make a recommendation to the court as to where the child's educational needs can be met in accordance with state and federal education laws."[79] The court is not bound by this recommendation, but if the court does not follow it, "the court shall issue written findings explaining why."[80]

Some states involve school officials in the disposition process without making them parties to the proceeding. For example, in Florida, the court can order that a youth obtain an "educational needs assessment" before the court reaches a disposition.[81] This assessment may include "reports of intelligence and achievement

74. *Id.* The issue of disproportionate minority contact with the juvenile justice system is a problem nationwide. *See* Rebecca Fix, *Why Disproportionate Minority Contact Exists, What to Do*, Juv. Just. Info. Exchange (Apr. 16, 2018), https://jjie.org/2018/04/16/why-disproportionate-minority-contact-exists-what-to-do; U.S. Dep't of Justice, Disproportionate Minority Contact Technical Assistance Manual (2009), https://www.ncjrs.gov/html/ojjdp/dmc_ta_manual/dmcfull.pdf.

75. N.H. Rev. Ann. Stat. §§ 169-B:22(I), 169-B:16(III)(b). After finding a youth engaged in the offense charged, the court must determine whether the school district should be joined, and may not order a disposition without reviewing the recommendations of a school district that has been joined. *Id.* § 169-B:16(III)(b).

76. *Id.* § 169-B:22(I).

77. *Id.*

78. *Id.* § 169-B:22(II).

79. *Id.*

80. *Id.*

81. Fla Stat. Ann. §§ 985.18(2), 985.185(2), 985.43(2) (West 2018).

tests, screening for learning and other disabilities, and screening for the need for alternative education."[82] In addition, "representatives of the school system" who attend a youth's dispositional hearing must have "an opportunity to comment on the issue of disposition and any proposed rehabilitative plan."[83]

An advantage of directly involving schools in the court proceedings is enhanced coordination in addressing the student's needs that may have contributed to delinquent conduct. Involving schools could also promote accountability if school officials report on steps taken to provide services at the student's school. This coordination could also provide a strong foundation for continuation of services following the juvenile delinquency proceeding.

A possible disadvantage of involving school officials directly is the possibility that the process could infringe on the student's privacy and create problems at the student's school if anyone at the school uses or shares the information inappropriately.[84] Furthermore, while requiring regular appearances before the court would promote accountability for the school as well as the student, these appearances could lead to resources concerns since school districts would need to ensure that staff are available to participate. Also, the challenges of coordinating meetings or court appearances with multiple people (counsel for the parties, probation officers, school officials, and other personnel), as well as the process of conducting educational evaluations while the juvenile delinquency proceeding is pending, could lead to delays in the disposition process.[85]

Significantly, for students with disabilities, any participation of school officials in the juvenile delinquency process would need to be consistent with the detailed procedural requirements of the IDEA for developing, reviewing, and implementing IEPs, which do not contemplate family court involvement.[86] Furthermore, as a matter of policy, involving the court in prescribing specific services for students could be problematic if school officials are not parties in family court proceedings, as the court lacks expertise in this area.

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82. *Id.* § 985.18(2).

83. *Id.* § 985.433(4)(d).

84. *See* Jessica Feierman et al., *Stemming the Tide: Promising Legislation to Reduce School Referrals to the Courts*, 51 Fam. Ct. Rev. 409, 412 (2013) (suggesting that New Hampshire law "runs the risk of promoting school push-out, since school personnel may advocate for the court to remove difficult students," and arguing that "[t]he model might better serve the goal of school continuity if it contained an explicit presumption that youth should remain in their original school whenever possible, and if it limited the role of school personnel to discussing educational issues and school continuity").

85. In New York, dispositional proceedings ordinarily must commence no longer than ten days after a fact-finding order if a youth is in detention, and no more than fifty days after the fact-finding order if the youth has not been detained. N.Y. Fam. Ct. Act § 350.1(1)–(2) (McKinney 2018).

86. 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, 890–91 (2009–2010) ("Because the IDEA requires exhausting administrative remedies before appealing to a state or federal court, the juvenile court is not the correct forum in which to litigate IDEA eligibility and denial of a FAPE, nor is it the right forum to challenge the propriety of suspending and expelling students with disabilities.").

However, the family court judge could play a role by referring a student for possible evaluation by the school district.[87] In this sense, a juvenile delinquency finding and disposition could trigger a new educational assessment as well as educational planning for the student, similar to what may be required when a student is suspended from school.[88] Even if the school district's evaluation is not used to develop the court's disposition, the school district could still use the evaluation results to assess whether to provide additional services or programming for the student at school.[89] Furthermore, requiring the school district to report back to the court in writing would help to ensure that the parties are informed of the completion and outcome of the evaluation.

B. Court Notifies School Officials of Juvenile Delinquency Proceedings

Another approach to coordination between schools and courts would be for family court judges to provide schools with information about the juvenile delinquency proceedings. For example, the court could provide information learned in the disposition process relating to the educational needs of a student with a disability, or about conditions the student is required to meet for probation. Many states require that some form of notification of a juvenile delinquency arrest, adjudication, or disposition be provided to schools for certain offenses.[90] In some states, notice is specifically provided about a student's disposition of probation.[91]

Some states expressly limit the use of this information to providing educational support for the student as well as promoting community safety. For example, Pennsylvania law provides for automatic notification by probation departments to school principals of the nature of the delinquent act and the disposition of the case.[92] In the case of felony offenses, notification is also provided of "relevant information contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history and the supervision plan of the delinquent child."[93] The school principal or designee must notify the student's teacher about all such

87. *See* Mallett, *supra* note 5; Tulman, *supra* note 67, at 59–60 (discussing responsibilities of courts and probation officers).

88. *See supra* Part II.

89. *See, e.g.*, *In re* Johnny S., 896 N.Y.S.2d 842, 848 (Fam. Ct. 2010) (advising the Office of Children and Family Services of the youth's need for remedial education and the date by which he will require a new IEP while issuing a residential placement disposition).

90. According to the Juvenile Law Center, in 2014, at least thirty-three states permitted the release of information concerning a student's arrest or juvenile delinquency proceeding to school officials in some circumstances. *See* Riya Saha Shah et al., Juv. Law Ctr., Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement 16–17 (2014), https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf.

91. *See, e.g.*, Colo. Rev. Stat. Ann. § 19-2-925(5) (West 2018) (requiring courts to notify the school district when school attendance is a condition of probation).

92. 42 Pa. Stat. and Cons. Stat. Ann. § 6341(b.1)(1) (West 2018).

93. *Id.* § 6341(b.1)(2).

information received.[94] The statute further indicates that the information is provided "for the limited purposes of protecting school personnel and students from danger from the delinquent child and of arranging appropriate counseling and education for the delinquent child."[95] Similarly, New Jersey, which requires that law enforcement officials notify school principals of a delinquency disposition in some circumstances, provides that the information "shall be treated as confidential but may be made available to such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or for planning programs relevant to a juvenile's educational and social development."[96]

In New York, court notification to school officials is required only when a student returns to school after placement in a residential program with the Office of Children and Family Services.[97] To avoid prejudice against the youth, the notification "shall be used by the designated educational official only for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community."[98]

There can be benefits to sharing information between courts, other juvenile justice agencies, and schools.[99] The detailed information that is learned about the student during juvenile delinquency proceedings could potentially be helpful to school officials in evaluating whether a student needs additional services. It could also help in coordinating services for a student, promoting school safety, and possibly making it easier for the student to access services to the extent they can be provided through the school. Enhanced educational planning and coordination of services could help with the rehabilitative process and reduce the likelihood of recidivism by helping to re-engage the student in school.

But there are risks to sharing such information with school officials, too. The chief downside is the potential for adverse consequences for the student if the information is misused by the school or the student is improperly excluded from the school.[100] On the other hand, without a formal notification process, a school may still learn that a student is involved with the juvenile justice system if the student missed school for a court appearance or juvenile detention, from overhearing the student or others in the school talk about it, or if a probation officer calls the school to inquire about the student. A compromise might be for courts to share information

94. *Id.* § 6341(b.1)(4).

95. *Id.*

96. N.J. Stat. Ann. § 2A:4A-60(d) (West 2018).

97. "The court that has adjudicated such person shall provide notification of such adjudication to the designated educational official of the school in which such person is enrolled as a student." N.Y. Fam. Ct. Act § 380.1(3) (McKinney 2018).

98. *Id.*

99. For an excellent discussion of the risks and benefits of sharing juvenile delinquency information with schools, see Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. Rev. 520, 560–63 (2004).

100. *See id.*

with a designated school district liaison for the limited purposes of facilitating educational planning and promoting school safety; the liaison would determine what information, if any, should be shared with the student's school.[101] Furthermore, there could be a procedure for students to notify the court if schools misuse the information.

C. Court Directs Enhanced Educational Programming for Students Outside of the Regular School Setting

Another way to enhance educational opportunities for students with disabilities on probation would be to provide out-of-school educational programs as a supplement or alternative to school instruction. Florida contracts with AMIkids, Inc. and other non-profit organizations that provide day-treatment programs and offer educational and other programming for youth offenders who continue to live at home.[102] Florida law specifically provides that a court may order that a youth participate in a "day-treatment probation program" and "appropriate educational programs as determined by the district school board."[103]

There are pluses and minuses to such day programs. One advantage is they can provide intensive, specialized educational programming for students with significant educational and behavioral needs, which can help to prevent recidivism.[104] But if the program were tied to the student's probation disposition, the student would not stay in the program for the long term and would eventually need to return to his school.[105] At that point, there can be challenges for coordinating reentry and continuation of services. And, although less expensive than residential programs, day programs can be costly.[106]

If educational services were provided in an after-school program as opposed to a full-day program, the student could remain in the home-school environment, but the services may not be as beneficial as they would be if coordinated with the student's school. Also, unless the after-school program were near the student's school, it might be difficult for the student to attend, which could be considered a probation violation.

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101. Professor Henning made this recommendation, which is modeled after the New York law concerning students returning from OCFS facilities. *Id.* at 560–63, 593–610.

102. *See Education Programs*, Fla. Dep't Juv. Just., http://www.djj.state.fl.us/services/office-of-education/education-programs (last visited Jan. 5, 2019); *Juvenile Justice Day Treatment*, AMIkids, http://www.amikids.org/programs-and-services/juvenile-justice-day-treatment (last visited Jan. 5, 2019).

103. Fla Stat. Ann. §§ 985.433(8)–(9), 985.435(3) (West 2018).

104. *See Program Profile: AMIkids Community-Based Day Treatment Services*, Nat'l Inst. Just. (June 13, 2012), https://www.crimesolutions.gov/ProgramDetails.aspx?ID=253 (rating the program as "promising" based on a study of its impact on preventing recidivism); Dominique Chin, *Will the Juvenile Justice System Ever Learn? How Minors with Learning Disabilities Can Find Remedies in Problem-Solving Courts*, 55 Fam. Ct. Rev. 618 (2017) (proposing "problem-solving courts" with screening and treatment programs for students with disabilities).

105. The average stay in the AMIkids program as of 2012 was four to six months. *Program Profile: AMIkids Community-Based Day Treatment Services*, *supra* note 104.

106. In 2009, the AMIkids program costs were $9,356 per student, as opposed to $40,235 for each student completing a residential program. *Id.*

After-school programs would be less expensive than full-day programs, and could provide educational benefits to students. However, such programs would still not address any underlying need for enhanced services within the school setting.

D. Court Appoints Education Advocate for Students

Some students whose education needs are not being addressed may have the benefit of advocacy from their parents or attorneys, or may have probation officers who work constructively with their schools. However, some students may not have access to such advocacy resources. Some parents and delinquency attorneys may be unfamiliar with the IDEA requirements, or may lack the time and resources to work with the school to address the student's educational needs or to bring legal proceedings if necessary.

Some defense attorneys have the resources and training to advocate for students before the school district, or may partner with other organizations to provide these services. For example, the Juvenile Rights Practice of the Legal Aid Society in New York City has more than 200 employees and provides educational support for juvenile delinquency clients.[107] However, attorneys who do not work for large organizations, including private attorneys appointed as counsel pursuant to Article 18-B of the New York County Law,[108] may be less likely to have the resources or experience to engage in education advocacy. Thus, the likelihood that a student with a disability will receive legal educational advocacy services during a juvenile delinquency proceeding or while on probation may vary based on their region or by legal defense provider.

The benefits to education advocacy are significant. During a juvenile delinquency proceeding, a student's attorney may raise the student's education needs when arguing that the charges should be dismissed, that the dispositional outcome should be less restrictive, or that specific services should be provided through the juvenile justice system.[109] But an education advocate can also work with the student and the student's

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107. *Juvenile Rights Practice*, Legal Aid Soc'y, https://www.legalaidnyc.org/juvenile-rights-practice (last visited July 19, 2018).

108. N.Y. County Law § 722 (McKinney 2018).

109. For an excellent discussion of the many ways in which juvenile defenders can present information and arguments relating to a student's educational needs, particularly in cases when a student is arrested at school, see 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); *see also* Mallett, *supra* note 5; Advocates for Child. of N.Y., AFC's Guide for Court-Involved Students: Understanding the Education Rights of New York City Students in & Coming out of the Juvenile or Criminal Justice System (2017), http://www.advocatesforchildren.org/sites/default/files/library/court_involved_youth_guide.pdf?pt=1; Jonathon Arellano-Jackson, *But What Can We Do? How Juvenile Defenders Can Disrupt the School-to-Prison Pipeline*, 13 Seattle J. Soc. Just. 751, 788 (2015); Samantha Buckingham, *A Tale of Two Systems: How Schools and Juvenile Courts Are Failing Students*, 13 U. Md. L.J. Race, Religion, Gender & Class 179 (2013); Dean Hill Rivkin, *Decriminalizing Students with Disabilities*, 54 N.Y.L. Sch. L. Rev. 909 (2009–2010); Tulman & Weck, *supra* note 86; Mark Peikin, *Alternative Sentencing: Using the 1997 Amendments to the Individuals with Disabilities Education Act to Keep Children in School and out of Juvenile Detention*, 6 Suffolk J. Trial & App. Advoc. 139 (2001).

family outside of the juvenile delinquency proceeding to ensure that the student has an appropriate IEP that is being implemented so as to help the student to succeed academically and socially.[110]

Probation officers can help to work with schools, as can mentors or others providing services for students on probation. Enhanced communication between probation officers and schools can lead to better coordination of services between schools and the juvenile justice system.[111] Also, probation officers may recommend that a student be evaluated for special education or other services where appropriate.[112] However, probation officers are responsible for supervising students—not for representing them—and may be required to report violations of probation conditions to the court.[113] And a student may need legal assistance, particularly if a school has not been providing a student with mandated services.

The court itself, which may have significant information about a student's educational needs, can play a role in ensuring that a student receives educational advocacy services. In Los Angeles County, attorneys representing students in juvenile delinquency proceedings may request that the court appoint someone from a panel of education attorneys to assist with special education or other education matters.[114] In addition, California has detailed training and continuing legal education requirements for juvenile delinquency defense counsel, which includes training in "[g]eneral and special education, including information on school discipline."[115]

Appointing an education advocate provides a way to ensure that someone who is not part of the juvenile justice system works with the student, the student's parent, and the school to ensure that any needed evaluations are completed, that the student has an appropriate IEP, and that the IEP is implemented. This model promotes

110. *See* Mallett, *supra* note 5; Uppal, *supra* note 10; Interview with Marisa Halm, Dir., TeamChild Juv. Justice Project, Ctr. for Child.'s Advoc. (Aug. 8, 2018).

111. *See* Task Force on the Future of Prob. in N.Y. State, Report to the Chief Judge of the State of New York 67 (2008), http://www.criminaljustice.ny.gov/opca/pdfs/ocafutureofprobation report2008familycourt.pdf (recommending that local probation departments cultivate relationships and enhance collaboration with school districts, and train probation officers in special education laws and procedures); Tulman, *supra* note 67, at 58 (arguing for a proactive role for probation officers in addressing education issues).

112. *See, e.g.*, *In re* Isaiah B., 949 N.Y.S.2d 682, 684 (App. Div. 2012) (noting that probation would include an opportunity "to monitor [the youth's] education, including ensuring that he is in an appropriate school setting and receives tutoring (if deemed necessary)").

113. *See* N.Y. Fam. Ct. Act § 360.2 (McKinney 2018).

114. *See* Warren Inst. on Law & Soc. Policy, U.C. Berkeley Sch. of Law, Los Angeles County Juvenile Indigent Defense System: Report to the Los Angeles County CEO and Los Angeles County Auditor/Controller 26, 31 (2016), http://file.lacounty.gov/SDSInter/bos/bc/241526_ JuvenileIndigentDefense-FinalReport.attchment.bm.032816.pdf; *see also* Cal. Welf. & Inst. Code § 317(e)(3) (West 2018); Jesse Hahnel & Caroline Van Zile, *The Other Achievement Gap: Court-Dependent Youth and Educational Advocacy*, 41 J.L. & Educ. 435, 461–63 (2012). Court rules require that delinquency defense attorneys "advocat[e], within the framework of the delinquency proceedings, that the child receive care, treatment, and guidance consistent with his or her best interest." Cal. R. Ct. § 5.663(b) (West 2018).

115. Cal. R. Ct. § 5.664(b)(2)(L).

accountability for schools in providing services: An education advocate can pursue legal action, or recommend the student's family to do so, if needed. It also limits privacy concerns, as an advocate can decide whether to share information with the school based on the needs and interests of the student. By ensuring that services are provided to help address any educational and behavioral needs that may be contributing to the student's behavior, an education advocate can help prevent recidivism and promote safety.

With respect to cost considerations, appointment of an education advocate would likely not be needed in every case. It could be left to the court's discretion, and factors for the court to consider could be set out by statute. For example, appointing an education advocate could be appropriate when it is requested by defense counsel or on the court's own initiative when 1) the student has an IEP, but there is evidence from the probation investigation, the diagnostic assessment, or the nature of the incident itself that suggests that the student's educational needs were not being met; or 2) the student does *not* have an IEP, but there is evidence that suggests that the student has a disability and needs special education services. The costs of advocacy should also be weighed against the costs of providing residential programming for students who fail to comply with probation requirements. Any costs associated with additional services that the school district would need to provide would not be an "added" cost, since school districts are already required to provide special education services in accordance with the IDEA.[116]

Finally, education advocates would need to resolve any potential conflict between the student's interests and those of the parent. While the student is the client in the delinquency proceeding,[117] parental consent is ordinarily required for special education services.[118] An education advocate would need to work with both the child and the parent for any special education advocacy.[119] Ultimately, it may be better for someone other than the student's delinquency attorney to address any disputes, as the delinquency attorney's responsibility is to "zealously defend the child."[120]

V. CONCLUSION

New York State has a number of positive juvenile justice reforms in place. As New York implements the Raise the Age legislation, it should consider ways to enhance the family court's authority to take steps that promote educational opportunities for students with disabilities. Of the different approaches discussed in this article for students who receive community-based dispositions, specifically authorizing the court to appoint an education advocate in appropriate circumstances

116. *See* 20 U.S.C. §§ 1412–13 (2017).

117. N.Y. Comp. Codes R. & Regs. tit. 22, § 7.2(c) (2018).

118. 20 U.S.C. § 1414(a).

119. *See* Yael Zakai Cannon, *Who's the Boss? The Need for Thoughtful Identification of the Client(s) in Special Education Cases*, 20 Am. U. J. Gender Soc. Pol'y & L. 1 (2011) (discussing ethical issues involved in working with parents and children in special education proceedings).

120. N.Y. Comp. Codes R. & Regs. tit. 22, § 7.2(c).

and allocating resources for this purpose provides a way for a student's educational needs to be addressed without involving the court directly in the student's educational programming, and without raising some of the privacy concerns from courts notifying schools about juvenile delinquency proceedings. Addressing the educational needs of students with disabilities who are involved in the juvenile justice system is critical to reversing the school-to-prison pipeline—by creating a pipeline back to school.