

THE ROLE OF THE JUVENILE DEFENDER IN DISMANTLING THE SCHOOL-TO-PRISON PIPELINE

Juvenile Defender Conference ■ UNC School of
Government ■ August 17, 2012

Agenda

- Story sharing
- Overview of the school-to-prison pipeline
- Obtaining education records
- Using education records

Story Sharing

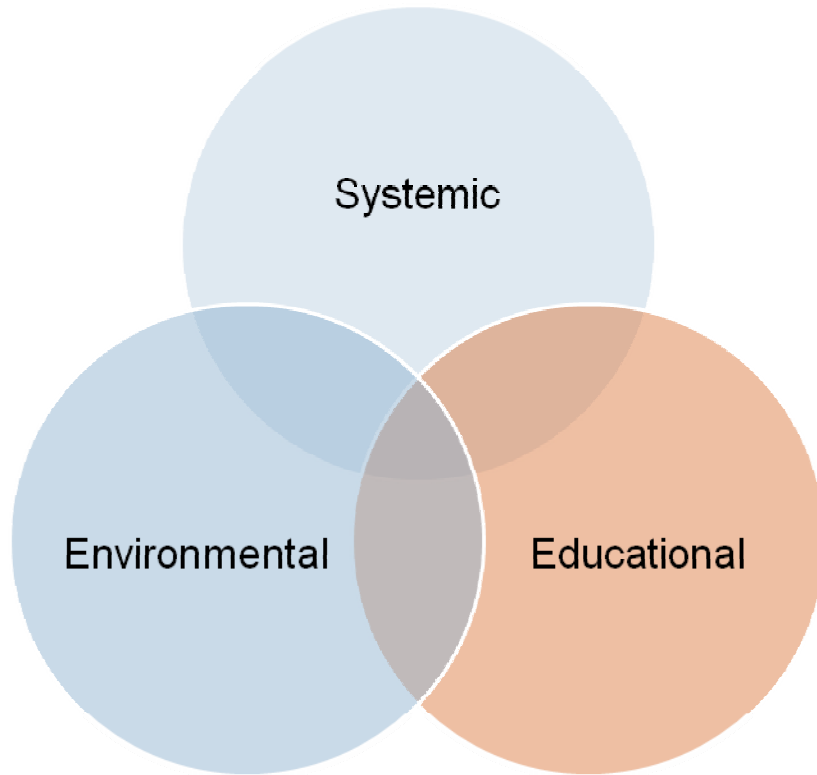
- I have had a case involving a referral from school to the delinquency system.
- I have requested and used a client's education records in delinquency representation.
- I have represented a delinquency client in a suspension hearing, IEP Team meeting, or otherwise done individual education advocacy for a client.

Definition

- A system of laws, policies, and practices that pushes students out of school and into the juvenile and criminal systems

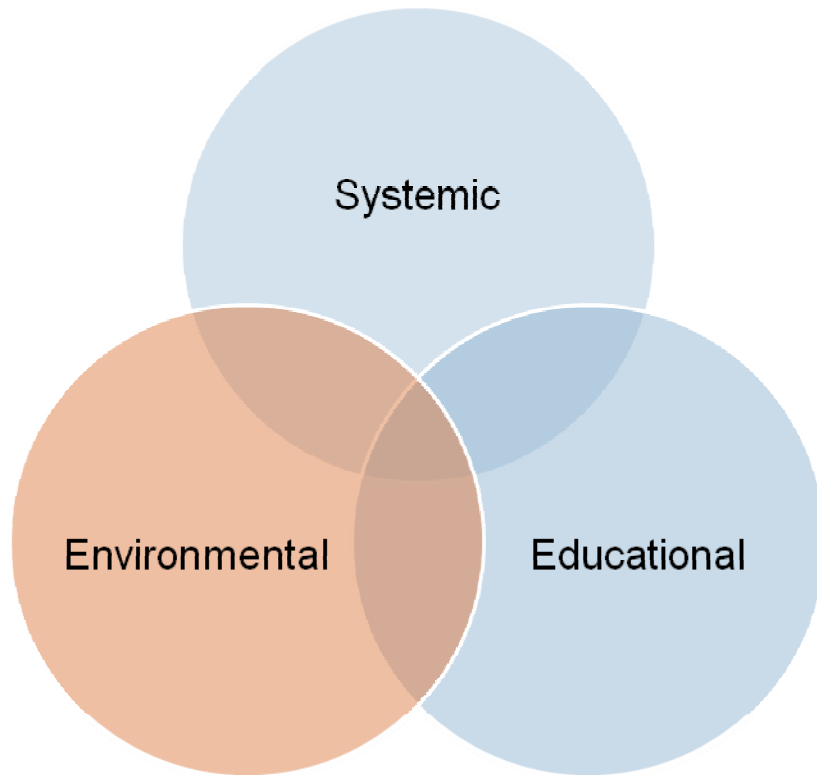


Causes: Educational



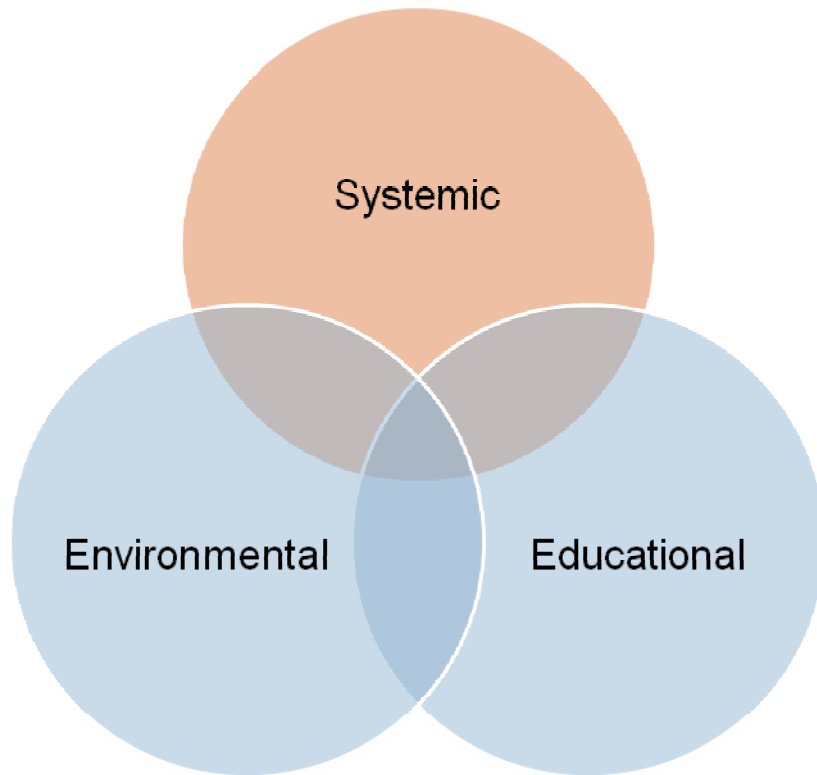
- Resource starvation
- Overcrowding
- Academic failure
- Over-policing
- Lack of training
- High-stakes testing
- Lack of services
- Suspension and expulsion

Causes: Environmental



- Poverty
- Lack of parental support
- Unmet mental health needs
- Unmet medical needs
- Violence
- Abuse and neglect
- Food insecurity
- Housing instability
- Lack of adequate legal services

Causes: Systemic



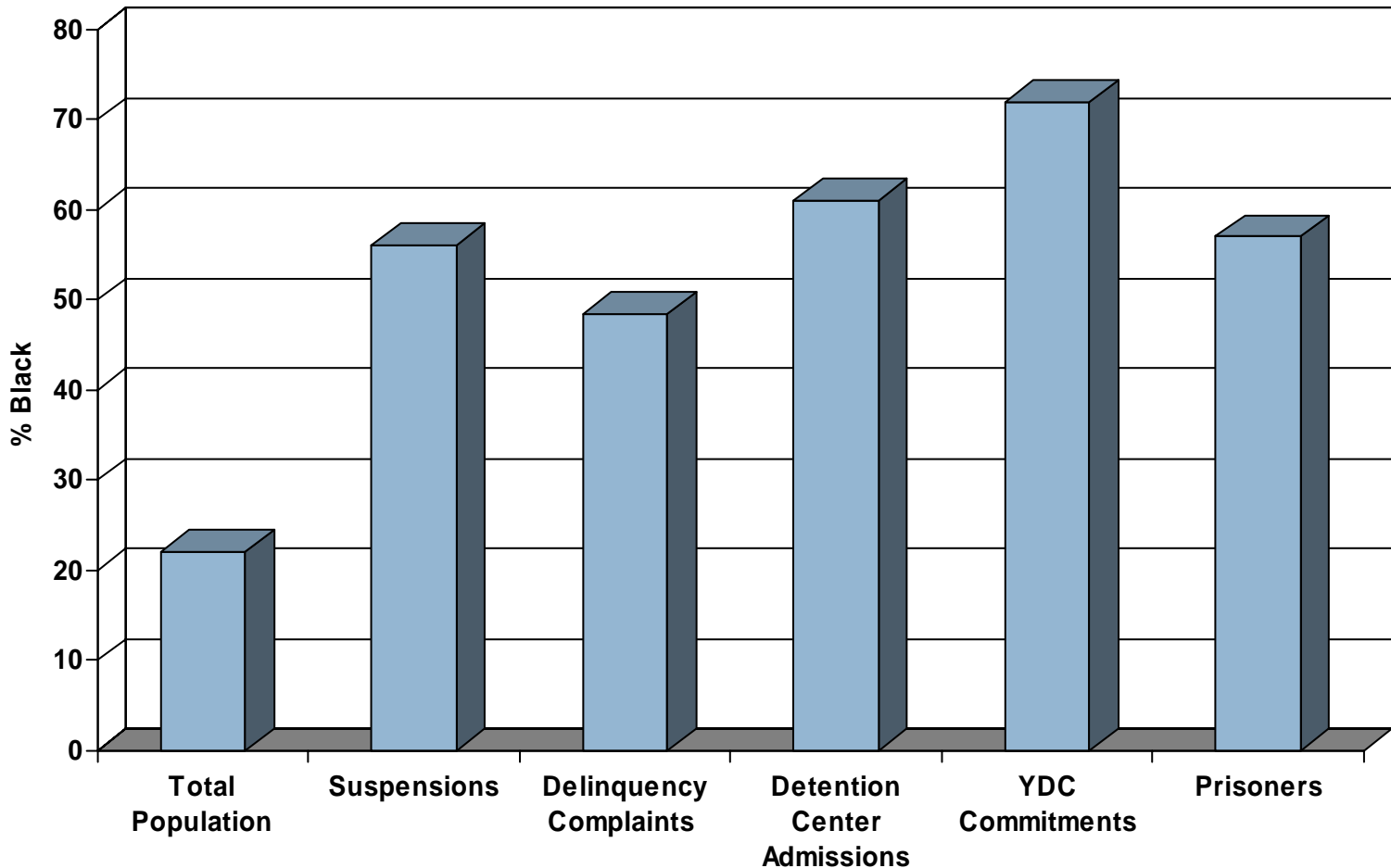
- Racism
- Classism
- Sexism
- Ableism
- Xenophobia
- Homophobia
- Culture of fear
- Culture of control

Why: Ethical Duty

- The school-to-prison pipeline...
 - ▣ Disproportionately impacts students of color, students from low-wealth families, and students with disabilities
 - ▣ Compromises public safety
 - ▣ Is expensive
 - Policing
 - Incarceration
 - Lost economic productivity

Why: Ethical Duty

Racial Disparities



All data from CY2011, exceptions suspensions, which are from school year 2010-11

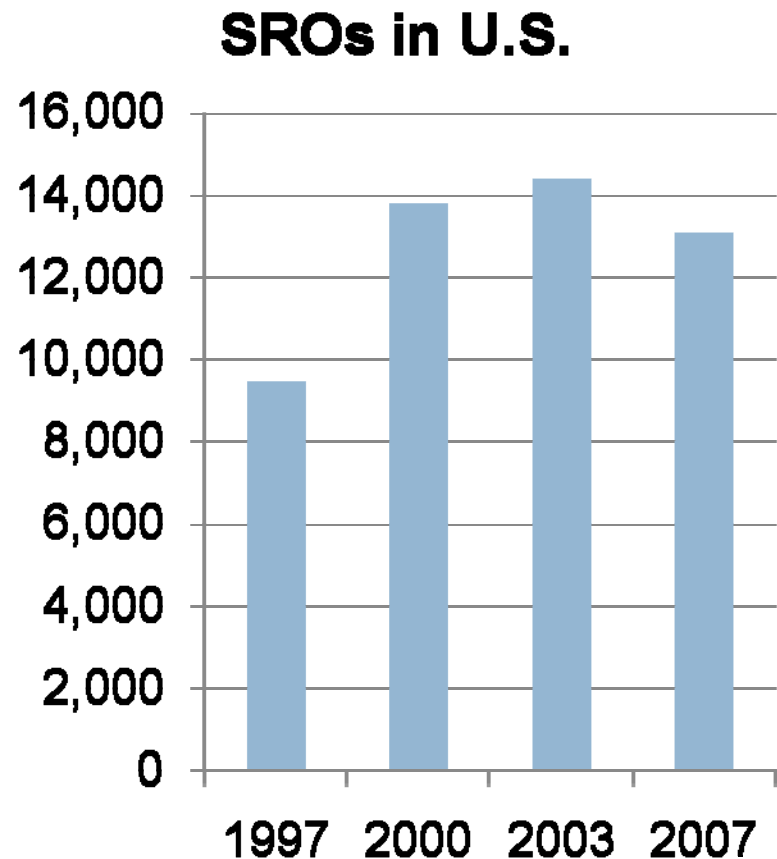
Why: Ethical Duty

Prison Industrial Complex

- NC ratio of spending per prisoner vs. spending per pupil = 3.85
 - Source: Children's Defense Fund (2007)
- 307 YDC commitments 5,240 detention center admissions in CY2011
 - Source: NC DJJ
- 10,586 juveniles on probation and 625 on post-release supervision in CY2010
 - Source: Public records request
- 38,381 prison inmates, 100,013 probations, and 3,505 parolees as of 8/14/12
 - Source: Division of Adult Correction
- 19,880 county jail inmates (2009)
 - Source: North Carolina Association of County Commissioners
- Average yearly cost of prison incarceration (FY 2010): \$27,747
 - Source: NC Department of Public Safety
- The NC Jail Administrators' Association has a "Corporate Partner Program"
 - Source: www.ncjaa.org/corporate-partner-program

Why: School Policing-U.S.

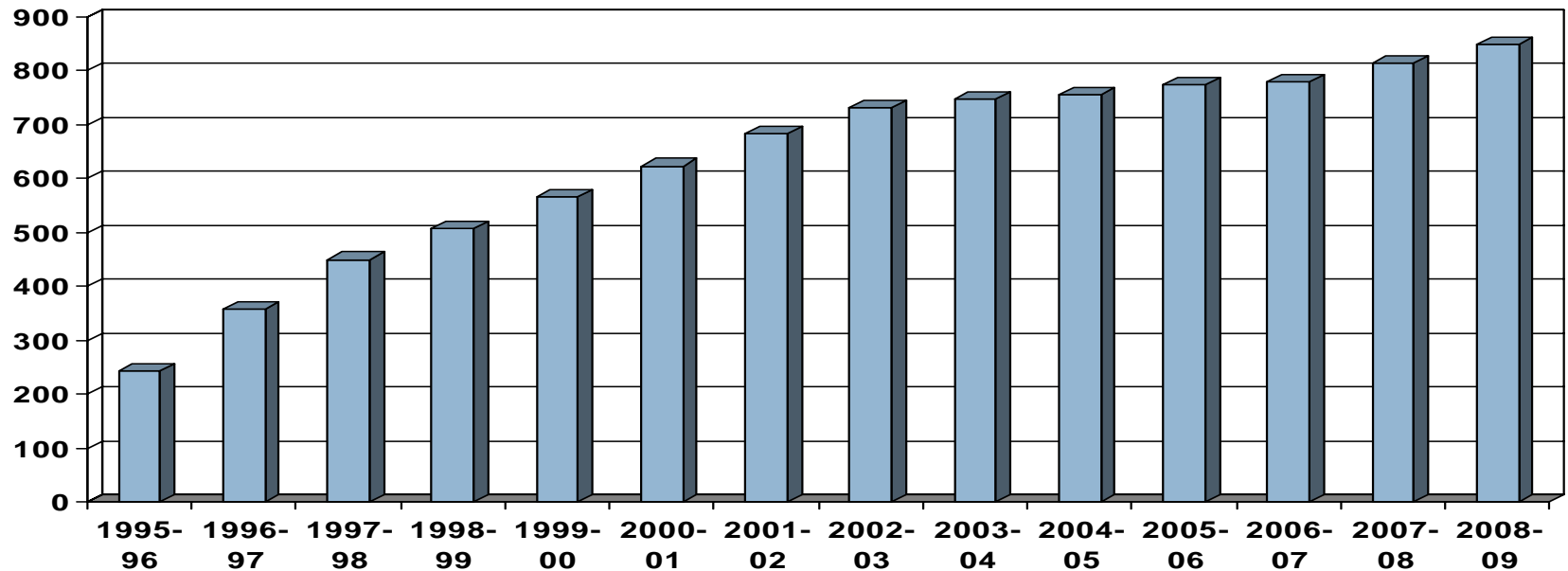
- National estimate by Nat. Ass'n of SROs (2010): 17,000



*Source: Bureau of Justice
Statistics*

Why: School Policing-NC

SROs in NC



- 16,118 school-based delinquency complaints in CY2011
 - 43% of delinquency complaints filed

Why: School Policing

- Expensive
 - ▣ E.g., in Wake Co., each SRO costs \$80,000+/yr.
- Physical harm
 - ▣ TASERs, pepper spray, excessive force
- Emotional/psychological harm
 - ▣ Fear, intimidation, suspicion, control, alienation
- Educational harm
 - ▣ Undermine educators, missed “teachable moments”
- More court involvement for young people
 - ▣ Stigmatization, immigration problems, missed school, ineligibility for student loans, eviction from public housing, reduced employment opportunities

Why: Best Practice

- NJDC's *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems*
 - #9: "The public defense delivery system advocates for the educational needs of clients" and "recognizes that access to education and to an appropriate educational curriculum is of paramount importance to juveniles facing delinquency adjudication and disposition."

Why: Professional Duty

- Model Rules of Professional Conduct
- Preamble
 - ▣ Article 2
 - Advisor
 - ▣ Article 4
 - Competent, prompt, and diligent
- Rule 1.1
 - ▣ Competence
- Rule 1.3
 - ▣ Diligence

How: Learn Education Law

- Continuing legal education
- Wrightslaw
- ABA publications
- Publications of education law organizations
- Education law text books
- Law review articles

How: Obtain Education Records

- Family Educational Rights and Privacy Act (FERPA)
- Ed records are those:
 - Directly related to student; and
 - Maintained by school system
- Ed records aren't those of law enforcement agency, unless:
 - Maintained by school system; or
 - Created exclusively for non-law enforcement purposes (e.g., suspension hearing)
- Protects students' records
 - Generally can't share personally identifiable info. about other students
- Provides access to students' records
- Parents and "eligible students" (over 18) have right to review records
- Requests for records must be fulfilled w/in 45 days
- Send signed authorization to principal
- Remedy for failure to provide: Complaint U.S. DOE's Family Policy Compliance Office

How: Obtain Education Records

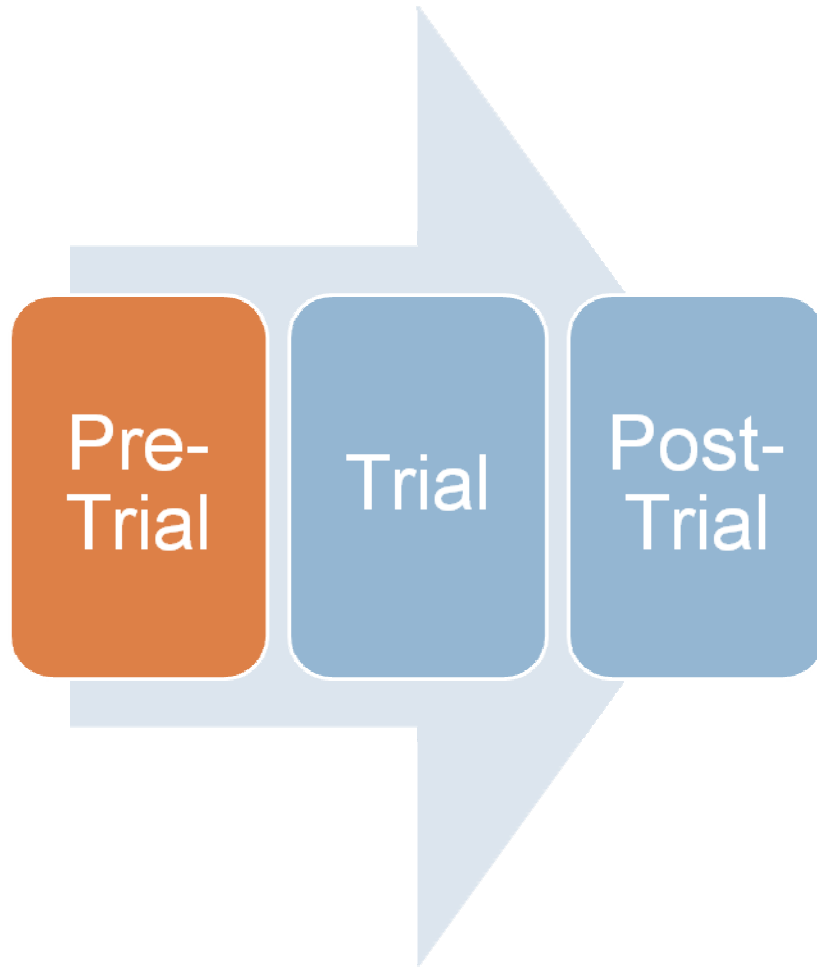
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graph TD; A[Obtain authorization] --> B[Send request]; B --> C[Follow up];
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Obtain authorization

Send request

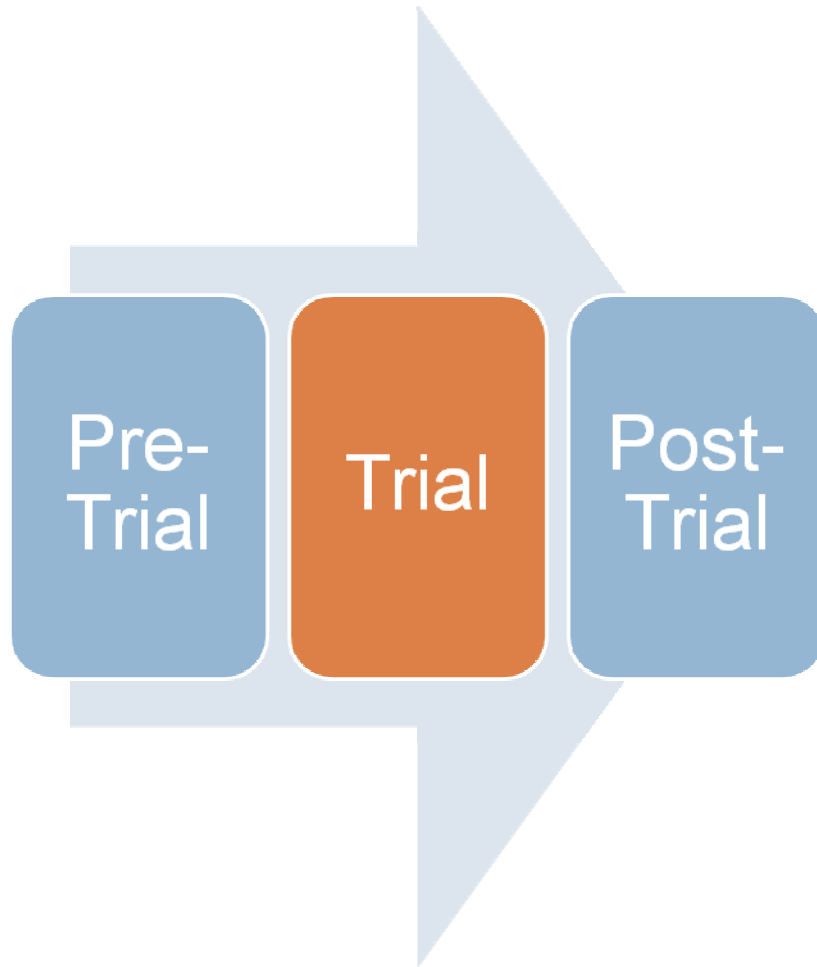
Follow up

How: Use Pre-Trial



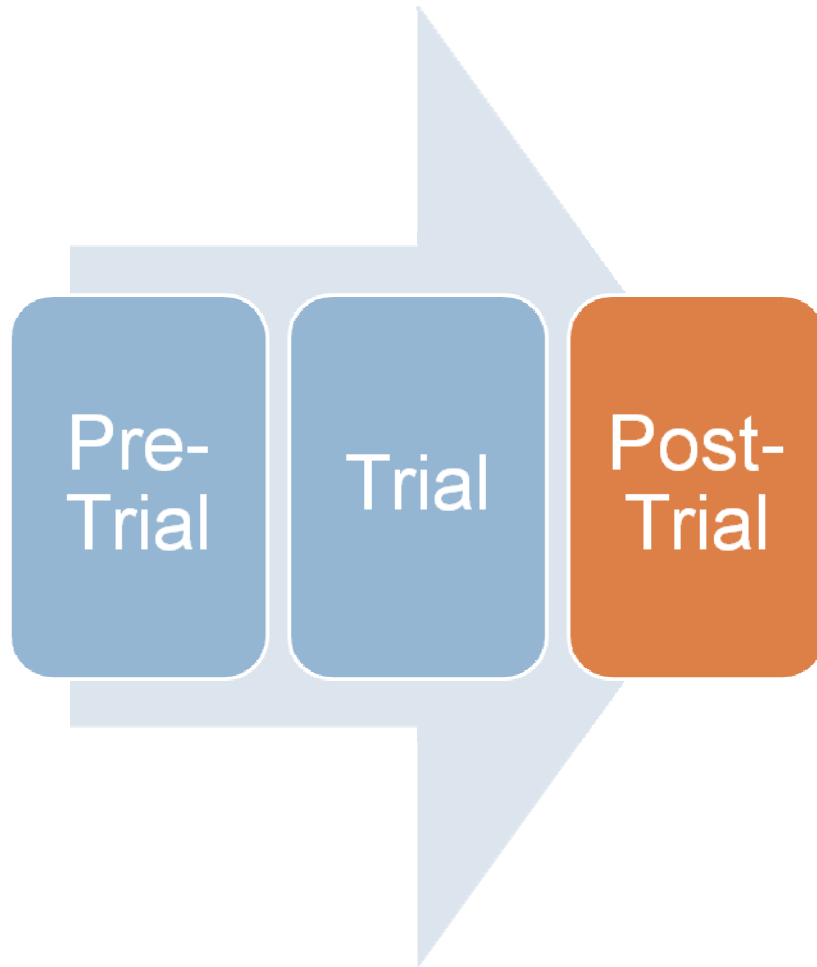
- Client interviewing
- Negotiation
- Capacity to proceed
- Custody hearings
- Suppression
- Transfer

How: Use During the Trial



- Self-defense, defense of others, etc.
- Cross-examine and subpoena school officials
- Intent/ *mens rea*
- Insanity
- Dismissal in interest of justice
- Unclean hands for school-based complaint

How: Use Post-Trial



- Disposition
 - ▣ Pre-disposition report
 - ▣ Identify witnesses
 - ▣ Diminished culpability
 - ▣ Avoid confinement
 - ▣ Avoid unrealistic probation terms
- Services in facilities

How: Make Referrals

- ACLU of NC
- Advocates for Children's Services (Legal Aid of NC)
- Council for Children's Rights
- Disability Rights NC
- Duke Children's Law Clinic
- NCCU Juvenile Law Clinic

How: Education Advocacy

- Academic failure
 - ▣ Request interventions
 - E.g., PEP
 - ▣ File grievance
- Special education
 - ▣ Request evaluation
 - ▣ Request services
 - ▣ Attend IEP Team meetings
 - ▣ File a petition for judicial review
 - ▣ File a state complaint
- Suspension and expulsion
 - ▣ Appeal
- Discrimination
 - ▣ File complaint with U.S. Dept. of Education, Office for Civil Rights
- Enrollment

How: Education Advocacy- Special Education Law

- Evaluation
 - If parent suspects child has disability, request eval in writing
 - School must conduct eval, meet to discuss results, determine eligibility, and create IEP (if eligible) w/in 90 days
 - Eval must cover all areas of suspected disability
 - Examples of disabilities: attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), conduct disorder, specific learning disability
 - Parent generally must consent to eval
 - Parent has right to free, independent eval if disagree w/ WCPSS' eval
- Individualized Education Program (IEP)
 - Plan to meet individual needs of child
 - Includes placement, goals, services, accommodations, etc.
 - Child eligible to have IEP if:
 - Has physical or mental disability that interferes with learning; and
 - Needs specially designed instruction to make educational progress
 - Parent has right to be part of Team that creates and monitors IEP
 - Right to translation and interpretation, if needed

How: Education Advocacy- Special Education Law

- Least Restrictive Environment (LRE)
 - Student must be educated with non-disabled peers to greatest extent appropriate
- Free and Appropriate Public Education (FAPE)
 - Student must get “special education” and “related services” that allow the student to:
 - Benefit from instruction provided under the IEP; and
 - Make “reasonable progress”
 - Student has right to FAPE even during long-term suspension or expulsion

How: Education Advocacy- Special Education Law

- If student suspended for > 10 school days, must have:
 - ▣ Manifestation Determination Review (MDR)
 - IEP Team meets to decide if misbehavior was:
 - Caused by or directly and substantially related to disability; or
 - A direct result of school's failure to implement IEP
 - If either is the case, generally child can't be suspended
 - ▣ If the misbehavior was a manifestation, the IEP Team must create (still a good idea even if not a manifestation):
 - Functional Behavioral Assessment (FBA)
 - Determines causes of behavior problems
 - Identifies ways to prevent behaviors
 - Behavior Intervention Plan (BIP)
 - Identifies supports or strategies to improve behavior
 - Establishes steps to be taken when misconduct happens
 - Identifies consequences for misconduct

How: Speak Up!

- Media
 - Press releases
 - Letters to the editor
 - Op-eds
 - Articles and stories about cases
- Social media
 - Twitter
 - Facebook
 - Blogs
- Presentations
 - Community meetings
 - Services providers
 - Student and parent groups
- Policy advocacy
 - State legislature
 - State board of education
 - Local board of education
- “Beneath the yoke of barbarism one must not keep silence; one must fight. Whoever is silent at such a time is a traitor to humanity.” – Stefan Zweig
- “Silence encourages the tormentor, never the tormented.” – Elie Wiesel
- “To tell the truth is to become beautiful, to begin to love yourself, value yourself. And that's political, in its most profound way.” – June Jordan
- “We live in an age in which silence is not only criminal but suicidal...for if they take you in the morning, they will be coming for us that night.” – James Baldwin
- “A time comes when silence is betrayal.” – Martin Luther King, Jr.

Review: To-Do List

- Learn education law
- Request education records
- Review education records
- Use education records
 - ▣ Pre-trial
 - ▣ During trial
 - ▣ Post-trial
- Advocate for client's educational needs or make appropriate referral
- Speak up

National Resources

- Advancement Project
 - www.advancementproject.org/our-work/schoolhouse-to-jailhouse
- ACLU
 - www.aclu.org/racial-justice/school-prison-pipeline
- Charles Hamilton Houston Institute at Harvard
 - www.charleshamiltonhouston.org/Projects/Project.aspx?id=100005
- Civil Rights Project at UCLA
 - <http://civilrightsproject.ucla.edu/research/k-12-education>
- Dignity in Schools
 - www.dignityinschools.org/
- NAACP Legal Defense and Education Fund
 - www.naacpldf.org/case/school-prison-pipeline
- National Economic and Social Rights Initiative
 - www.nesri.org/programs/education
- Southern Poverty Law Center
 - www.splcenter.org/what-we-do/children-at-risk

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