



SCHOOL JUSTICE PROJECT

Access to Justice. Access to Education.

A Primer on the Importance of the Special Education Rights of Youth Defendants Amendment Act of 2019:

Why We Need Court-Appointed Special Education Attorneys in D.C. Superior Court's Adult Criminal Court Proceedings

I. Summary

Many young people under age 23 involved in D.C.'s adult criminal justice system do not have a high school diploma or GED. The majority of these court-involved young people have special education needs. Students with disabilities are entitled to remain in high school, working toward a diploma and receiving supports until the semester in which they turn 22.

Young people without high school diplomas represent some of the most educationally neglected in the District. They experience academic failure, school pushout, and periods of unenrollment. When they enter the adult criminal justice system, they are unenrolled in school (or enrolled in an inappropriate school) and do not have other educational services in place. To an outsider, the young person may appear to have given up on school, or may appear unwilling or unable to successfully achieve their educational goals. This is typically not the case. Many disengaged young people want to obtain a high school diploma or GED but have not had the opportunity to meaningfully engage in a program with appropriate supports.

Education attorneys represent young people by assisting in re-engaging with education, securing critical special education supports, and advocating for appropriate social services. Education attorneys contribute to judicial efficiency by providing youth-specific information to assist judges and other judicial officers in reaching a more informed decision. This leads to better outcomes for young people while incarcerated and throughout their return to the community.

Education representation is critical for ensuring access to education for court-involved young people. The introduction of the Special Education Rights of Youth Defendants Amendment Act of 2019 provides the opportunity to expand civil legal services to all District young people covered by the bill, ensuring that they can access educational opportunities.

II. Importance of Special Education Attorneys in Criminal Proceedings

Often times, when a young person appears in adult criminal proceedings, they are overwhelmed by the process and experiencing multiple traumas associated with incarceration/detention including: removal from the community, deprivation of mental health services, and disruption of daily life. Whether placed on pre-trial supervision in the community or held at D.C. Jail, many conditions of release are imposed on a young person that will inevitably disrupt daily routines, housing, services, and education.

We know that most young people involved in the criminal justice system do not have a high school diploma or credential (e.g. GED). We also know that this population experiences higher rates of special education needs, trauma, and mental health issues. Homelessness, poverty, and unremediated trauma and mental health issues are rampant. All of these factors collide, making educational attainment even harder to achieve. The result: A court-involved young person without a high school diploma or a path to a successful adulthood.

Because of siloed agency operations that may not share all relevant information about a young person, it is difficult to collect the records necessary to see a clear picture of the young person's educational history, abilities and limitations, disabilities, and future options. This can lead to inaccurate or incomplete pre-sentencing reports about a young person's educational history, needs, disability, and available programs.

This is where an education attorney's expertise is vital. Education attorneys serve multiple purposes: they can ensure that a young person can access educational opportunities whether in the community or while incarcerated; they can inform the court of a young person's specific needs and the programs available to meet those needs both in the community and in secure settings; and they can work with the court and relevant parties to develop individualized terms of release that allow a young person to participate in educational opportunities while complying with Court Services and Offender Supervision Agency's (CSOSA) mandates.

Education lawyers often form a mutual relationship of respect with the young person having represented them in years prior by serving as their advocate and a member of their team. They understand the person's needs and histories, and can articulate what the person requires for success as well as what the law guarantees. This results in a significant expansion of options available to the court when assessing the best options for the young person. The court is better able to understand why the person may not be in school, what mental health issues the person struggles with, and what services are available in the community.

III. Special Education Rights of Youth Defendants Amendment Act of 2019

The District of Columbia has historically paved the way for reforms in juvenile justice and access to civil legal services. For example, the District was the first (and only) jurisdiction to appoint education attorneys in the Family Court Division of the Superior Court of the District of Columbia. These attorneys play critical roles in the outcome of cases in the Family Court Division (e.g. Delinquency, PINS, Neglect, and diversion programs), yet young people involved in the Criminal Court Division do not have such a benefit, but exhibit the same (if not heightened) needs.

In 2018, Councilmember Grosso set out to convene a working group to focus on education issues affecting District residents in care—those involved in D.C.'s juvenile and criminal and foster care systems. Consisting of governmental agencies, attorneys, and service providers working with and for District residents in care, the working group's six month tenure culminated in a report on education for young people in the District's care.¹ The report identified barriers to education and proposed solutions for ensuring equitable access to education, one of which—the

establishment of a panel of special education attorneys available for appointment in adult criminal cases.

Introduced with eight co-sponsors, the Special Education Rights of Youth Defendants Amendment Act of 2019 (“the Act”), establishes a panel of special education attorneys to represent young people with identified special education needs who are before a judge in the Criminal Court Division. Council’s intent is for the legislation to help ensure that older students with special education needs are adequately represented, afforded an opportunity to earn a high school diploma, and are placed on a path to a productive and successful life.

The cost of incarceration of young people is both figuratively and fiscally too high. The Act is funded by the Office of Victim Services and Justice Grants and will not place additional financial burdens on the Court. Proponents of the Act are widespread and include: judges, defense attorneys, prosecutors, advocates and the families impacted.

There are a few proposed changes to the language of the legislation itself. Appended to this document is a redline of the bill with SJP’s recommended language modifications.