



# TEXAS RIOGRANDE LEGAL AID



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## CHILDREN WITH DISABILITIES

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

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A GUIDE FOR YOUTH & PARENTS



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A GUIDE FOR YOUTH & PARENTS

Sometimes, children with disabilities find themselves in front of a judge because of their behavior at school. Understanding education laws that apply to children with disabilities may help you defend yourself against a criminal charge. Education and criminal laws are complicated, and convictions have serious consequences. Justice of the Peace (JP) and municipal courts do not automatically provide you with a free lawyer, but you can ask the court to appoint you one. You can use the Child Defendant's Pro Se Motion for Appointment of Counsel and Order on Child Defendant's Pro Se Motion for Appointment of Counsel in this booklet to ask the court to appoint you a lawyer.

Texas RioGrande Legal Aid, Inc. (TRLA) provides free legal assistance to students from low-income households. To apply for our services, call 1-888-988-9996 or apply online at [www.trla.org](http://www.trla.org). TRLA cannot accept all cases. Even if we cannot represent you, we may be able to provide you with advice.

TRLA represents students not only in the courtroom, but also at school. A school's failure to provide a student with appropriate special education services may contribute to his or her misbehavior. Sometimes, when a school presses charges against you, it will also make a school disciplinary decision (such as sending you to alternative school). When it comes to school discipline, many students with disabilities and their parents do not know all of their rights under federal laws like the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), "Section 504" of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA). Call TRLA if you need help to challenge or appeal a decision to expel you or send you to alternative school, or if you are not receiving appropriate special education services.

This guide will provide you with information to help you to understand the laws, your options, and defenses. TRLA's Youth Guide Series includes other guides to help if you find yourself in a JP or municipal court. Those guides are specific to a criminal charge:

- Defending Against a Failure to Attend School Charge
- Defending Against an Assault Charge
- Defending Against a Disorderly Conduct Charge

If you are charged with a crime in JP or municipal court and you are a student with a disability, this guide is meant to be read in addition to one of the guides listed above.

In this guide, you will find answers to the following questions:

1. What should I know about education law?
2. What are some examples of a disability?
3. What if I am facing charges because of behavior related to my disability?
4. Should I tell the prosecutor and/or judge that I have a disability?
5. What should I take to court with me?
6. How much will a judge know about the law relating to children with disabilities?
7. Should I tell a jury that I have a disability?
8. What if I have not yet been determined eligible for special education services?
9. What other courtroom strategies can help my case?
10. Do I have other protections?
11. What if the judge orders me to do something that I cannot do?

### **1) What should I know about education law?**

It is important to have a basic understanding of the laws that benefit students with disabilities. The IDEA requires public schools to provide special education and related services to students whose disabilities negatively impact their educational performance. Even if you do not qualify for special education services, you may still be protected under “Section 504” and the ADA, which ban schools from discriminating against students with disabilities. “Section 504” and the ADA apply to all students with physical or mental impairments, regardless of whether their disabilities negatively impact their educational performance. Under those two laws, schools must provide reasonable accommodations, that is, change the way things are usually done, so students with disabilities have the same opportunity to benefit from school programs offered to students without disabilities.

At any time, your parent or school can request that you be evaluated for special education services under IDEA or accommodations under Section 504. Afterward, your school’s Admission, Review & Dismissal (ARD) or Section 504 Committee decides if you are eligible for special education services or accommodations. See #8 if you do not receive special education services but think you should.

### **2) What are some examples of a disability?**

- Emotional disability, including depression, bipolar disorder, anxiety, post-traumatic stress disorder, and oppositional defiance disorder
- Attention Deficit (Hyperactivity) Disorder, known as ADD or ADHD
- Learning disability
- Intellectual disability
- Autism
- Speech, Visual or Hearing Impairment
- Other health issues such as diabetes or asthma
- Orthopedic Impairment

### **3) What if I am facing charges because of behavior related to my disability?**

If you have a disability and are being charged with a crime for your behavior in school, you and your parent should immediately meet with your school, either formally through an ARD meeting or Section 504 meeting, or informally through a teacher-parent conference, to share concerns that your behavior is related to your disability. If the school agrees, it may be willing to ask the prosecutor to dismiss your criminal case.

Examples of when you may have disability-related behavior problems in school include:

- o You may be showing characteristics of your disability. For example, children with ADHD can seem restless and distracted.
- o Changes to medication may cause bad physical reactions or unusual behavior.
- o Changes to your Individualized Education Plan (IEP) or Section 504 Plan may lead to unexpected changes in behavior. (See more on IEPs/Section 504 Plans later in this guide.)

If you are in special education and you are removed from your classroom for more than 10 days in a school year (either consecutive days or in a pattern of suspensions that add up to more than 10 days), the school must notify your parent and hold a special meeting called a Manifestation Determination Review (MDR) to determine whether your behavior was linked to your disability. If the school did not do so, tell the judge that an MDR should first be conducted before continuing with the criminal case. There may be other situations where you deserve an MDR. Contact TRLA for more information.

The purpose of an MDR is to determine whether your misbehavior was either i) caused by, or had a direct and sizeable relationship to your disability, OR ii) the direct result of the school's failure to put into effect your IEP. If the answer to one of these questions is "yes," the school must reconsider your special education plan and cannot discipline you according to the Student Code of Conduct. In general, the school cannot place you somewhere else. Tell the judge and prosecutor if the school found your behavior to be a manifestation of your disability, and ask that your case be dismissed.

### **4) Should I tell the prosecutor and/or judge that I have a disability?**

Yes. It is especially important to educate the prosecutor and/or judge about your particular disability and the IDEA/Section 504 process if you believe your disability is at all related to the behavior that got you in trouble with the law. Also, tell them if you believe you are in court because your school failed to provide you with appropriate special education services, or discriminated against you because of your disability.

Talk to a prosecutor to try and get your case dismissed before going in front of a judge. In the best-case scenario, a prosecutor will dismiss the charges against you. If not, he or she may still consider your disability when deciding whether to offer a plea deal (agreement). It is wise to consider any plea offer. But, you have the right to reject a plea offer and go to

trial. For help, call TRLA at 1-888-988-9996 or apply online at [www.trla.org](http://www.trla.org). If you plan to ask TRLA for help, do so sooner rather than later. TRLA usually cannot help at the last minute.

### **5) What should I take to court with me?**

Go to court prepared to show the prosecutor and/or the judge the following documents, as they apply to you:

- a. Medical Records, including psychological, intellectual or behavioral evaluations and diagnoses.
- b. General School Records, if you think they help your case. For example, good grades or attendance may make a difference when the judge is determining appropriate consequences. You and your parent have the right to see your school records, and to make sure that they are accurate. If you believe that your records are inaccurate, ask the school to fix them before bringing them to court.
- c. Individualized Education Plan (IEP), which is the document that discusses how the school addresses your unique needs. The IEP is developed by the ARD Committee. Your parents are part of the ARD Committee. Sometimes, important information is in the “deliberations” of the IEP. You or your parent may want to point out that section to the judge.
- d. Section 504 Plan, which is the document that outlines the accommodations the schools provides for you. Like the IEP, a Section 504 Plan can give the judge a better sense of your challenges. (If you already have an IEP then you probably do not need a Section 504 Plan.)
- e. Functional Behavioral Assessment (FBA), which is an evaluation of you that the school uses to develop strategies for positive reinforcement and to create a Behavior Intervention Plan (BIP), if necessary.
  - An FBA is required in some situations. Even if an FBA is not required, you may still need an FBA because of frequent behavioral issues. If you do not have an FBA, tell the prosecutor and/or judge if you believe the school should have conducted one and if you think a BIP could have prevented the incident that brought you to court. If your parent asks the school to do an FBA, make sure the judge knows about that request.
- f. Behavior Intervention Plan, which explains the steps that the school should take to address your behavior. Tell the prosecutor and/or judge if you believe the school did not properly follow your BIP during the incident which led you to court.
- g. Documents from the MDR, if the ARD Committee said your behavior was directly connected to your disability or the school failed to follow your IEP. The MDR

documents could be evidence that criminal punishment is not the best way to deal with your misbehavior.

- Know that while the school generally cannot discipline you according to the Student Code of Conduct when your behavior is linked to your disability, a judge can still punish you under the law for a criminal violation. However, a judge may be more likely NOT to punish you if he or she knows that the school itself chose not to do so.
- Most laws require the State to show you had intent to commit the crime. If your actions were an accident or out of your control, you can argue that you had no intent to commit the crime. If true, that argument should be made in an MDR and in court.

Reminder: Here is a checklist of what records to bring to court, if they apply:

- Medical Records
- General School Records
- Individualized Education Plan
- Section 504 Plan
- Functional Behavioral Assessment
- Behavior Intervention Plan
- Documents from the MDR

## **6) How much will a judge know about the law relating to children with disabilities?**

You and your parent should be able to have a conversation with the judge about your disability. Under Texas law, a JP or municipal court judge who hears cases with juvenile defendants must complete training on special education law. Communicating with a judge about your disability is very important, because the person who filed a criminal complaint may not know about legal protections for children receiving special education services.

## **7) Should I tell the jury that I have a disability?**

Yes. The same reasons a prosecutor and/or judge should know about your disability also apply to a jury. Generally, neither a prosecutor nor judge will inform the jury for you. Special education law is complicated so it is best to explain terms that most jurors might not understand. If you go to trial, you can call a witness (for example, your doctor or therapist) to help explain your disability to a jury and how that disability was related to your behavior during the incident.

Prosecutors who are not fully informed about special education law, or about your particular disability, may give less weight to the effects of a disability. This is especially true if your disability is one that cannot be seen – such as an emotional disability. Prosecutors may argue to the jury that your disability cannot excuse you from misbehavior. If so, you can:

- Explain to the jury/judge your disability and how specifically it affects your behavior.
- Tell the jury/judge if the school agreed to provide you services/accommodations related to your behavior. You can also mention if the school failed to provide you with the agreed-upon services, or if the school has promised to do things differently in the future.
- Tell the jury/judge if you have been disciplined by the school. If so, you might argue that the school has handled the situation, and you have already faced a consequence.

### **8) What if I have not yet been determined eligible for special education services?**

Notify the judge if the school should have provided you with special education services but did not at the time of the incident that brought you to court. Under a rule called “Child Find,” schools must identify all children with disabilities who are in need of special education. You have all the rights (including the right to an MDR) that a child who is already in special education has, IF the school knew that you had a disability before the date of the incident. The IDEA says a school “knows” about your disability if:

- Your parent previously asked the school to evaluate you for special education;
- Your parent told the school in writing that you needed special education; OR
- A school staff member expressed concerns to an administrator or special education director that you might have a disability.

Similar protections may apply to you if you have a Section 504 Plan. Tell the prosecutor and/or judge if the school did not hold an MDR to determine if there was a link between your disability and the behavior that led to the charge against you. If you are not receiving services that you think you need, have your parent ask in writing for you to be evaluated for special education services. ALWAYS keep a copy of your written communication with the school and proof that the school received it.

### **9) What other courtroom strategies can help my case?**

You can request that the judge stop the process until more information is available. If you have the right to an MDR and the school has NOT yet provided you with one OR if you are waiting on other helpful information, such as your school records, you can:

- Ask the prosecutor to dismiss the charges for now (also known as “Dismissing Without Prejudice”) until there is more information about whether your conduct was connected to your disability. If there was no connection, the prosecutor will have the right to re-file the charges against you later.
- Ask the judge to delay your case (also called “Abating the Proceedings”) until after the school holds the MDR or provides your relevant school records.
  - o If the MDR shows that your behavior was connected to your disability, ask the judge to take “Judicial Notice” – that is, to take the results of the MDR as fact. If

that happens, the fact is then seen as true and cannot be challenged by a prosecutor.

### **10) Do I have other protections?**

The criminal complaint MUST state whether you are eligible for or receive special education. Also, the judge may dismiss your case if you have a mental illness or developmental disability AND are unable to:

- understand the court proceedings;
- assist in your own defense;
- appreciate the wrongfulness of your actions; OR
- modify your behavior to the requirements of the law.

You or your parent can tell the judge if you think the case should be dismissed for one or more of these reasons.

### **11) What if the judge orders me to do something I cannot do?**

Disabilities may limit your ability to complete community service or other tasks. If so, tell the judge. The judge can order a more appropriate consequence or decide to waive a requirement altogether. Judges can also waive fines and court costs if you are from a low-income household and doing community service would be a hardship to you.

Now, take a deep breath. You can do this. Good luck with your case!

**Texas RioGrande Legal Aid, Inc. (TRLA)** is a non-profit organization that provides free legal services to low-income residents in 68 counties of Southwest Texas. The TRLA Youth Guide Series is an initiative of TRLA's Juvenile Justice Team and supported by a grant from the Texas Bar Foundation. Please note that the TRLA Youth Guide Series is not meant as legal advice and the information it contains is subject to change as new laws are passed.

Texas RioGrande Legal Aid, Inc. 2013

CASE NO. \_\_\_\_\_

STATE OF TEXAS

v.

\_\_\_\_\_  
*Child Defendant*

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§  
§  
§  
§

IN \_\_\_\_\_ COURT  
*[court name and number]*

OF

\_\_\_\_\_ COUNTY, TEXAS

**CHILD DEFENDANT'S PRO SE MOTION FOR APPOINTMENT OF COUNSEL**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES \_\_\_\_\_, the Child Defendant in the above-styled and numbered criminal cause, and moves this Court to appoint me legal counsel pursuant to Texas Code of Criminal Procedure Article 1.051.

In support of this motion, I would respectfully show the Court as follows:

I.

- A. I am a \_\_\_\_ year old minor child and not able to represent myself in a criminal matter because I am not an attorney.
- B. My parents cannot afford to hire an attorney to represent me. If additional information is needed to verify my inability to retain an attorney, I request that the Court provide me with a hearing to determine whether I am indigent.

II.

In accordance with Texas Code of Criminal Procedure Article 1.051, an indigent criminal defendant is entitled to be appointed legal representation when such an appointment would be in the interests of justice. Due to my inability to represent myself, or to afford an attorney, it is in the interests of justice for me to be appointed legal representation.

Respectfully submitted,

\_\_\_\_\_  
CHILD DEFENDANT, *PRO SE*

Address \_\_\_\_\_

Telephone \_\_\_\_\_

CASE NO. \_\_\_\_\_

STATE OF TEXAS

v.

\_\_\_\_\_  
*Child Defendant*

§  
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IN \_\_\_\_\_ COURT  
*[court name and number]*

OF

\_\_\_\_\_ COUNTY, TEXAS

**ORDER ON CHILD DEFENDANT’S PRO SE MOTION FOR APPOINTMENT OF COUNSEL**

On this day came to be heard the Child Defendant’s Pro Se Motion for Appointment of Counsel, pursuant to Texas Code of Criminal Procedure Article 1.051.

**IT IS THEREFORE ORDERED, ADJUDGED AN DECREED** that the Child Defendant’s Pro Se Motion for Appointment of Counsel be

\_\_\_\_\_ GRANTED, and that legal counsel be appointed to the Child Defendant in accordance with this county’s procedures for representation of indigent parties and applicable law. This Court finds that the Child Defendant is a minor and Child Defendant’s parents do not have the financial resources to hire an attorney to represent the child in the above-styled and numbered criminal matter.

\_\_\_\_\_ DENIED to which the Child Defendant excepts. The Court finds that it does not have the discretion to appoint Child Defendant legal counsel in this case.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

