



Student Discipline & Disrupting the School to Prison Pipeline

2024 Courage to Risk Conference

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Agenda

Disability Law Colorado

Applicable Laws

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Discipline & School Pushout

Restraint & Seclusion

Disrupting the School-to-Prison Pipeline

Disability Law Colorado

- Colorado's Protection & Advocacy System
- Nonprofit legal services organization
- Mission is to protect and promote the rights of individuals with disabilities through investigations, monitoring, direct legal representation, advocacy, education and legislative analysis.

Applicable Laws for Today's Discussion

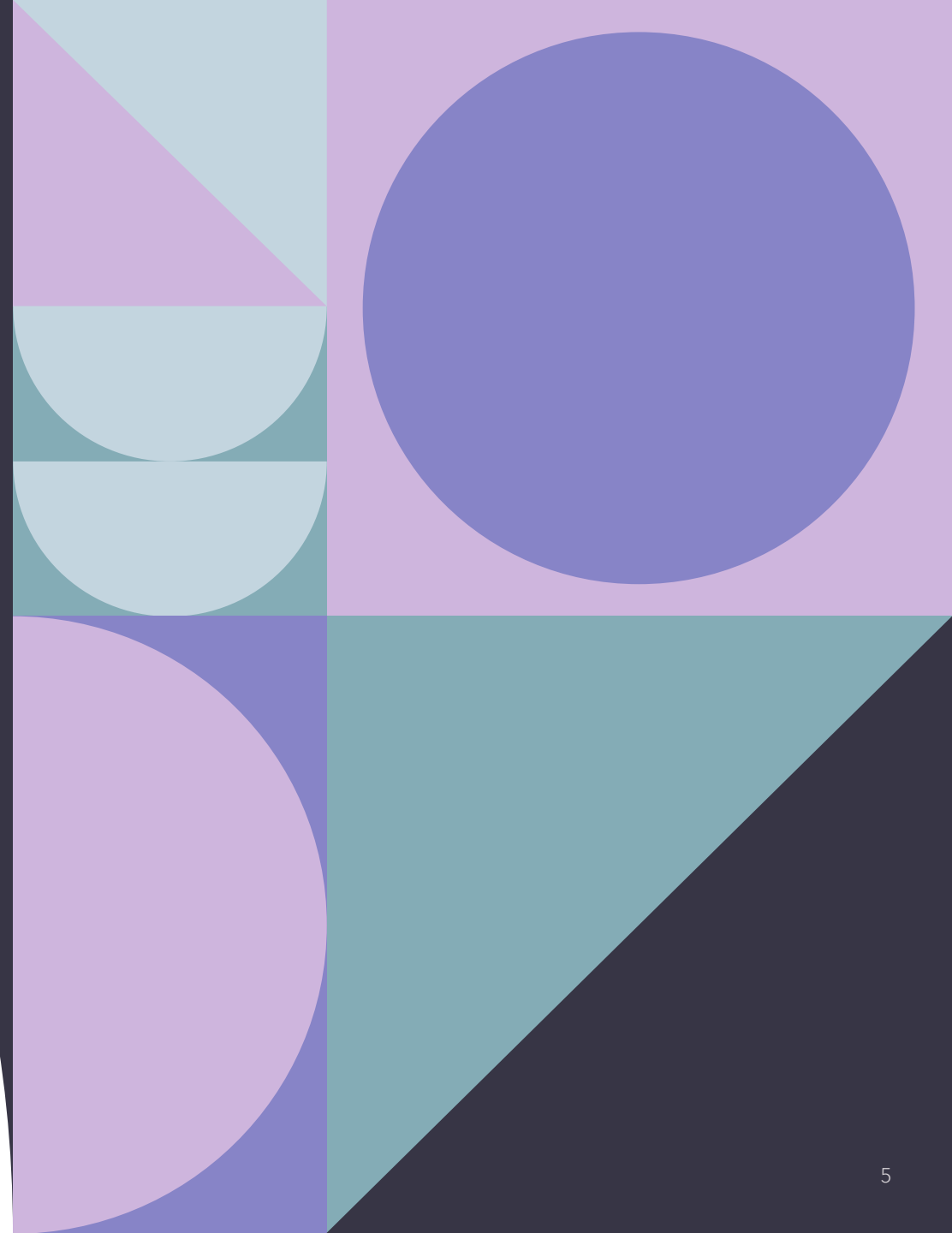
Federal

- Section 504 of the Rehabilitation Act (Section 504)
- Americans with Disabilities Act (ADA) Title II or III
- Individuals with Disabilities Education Act (IDEA)

State

- Exceptional Children's Education Act (ECEA)
- Colorado Anti-Discrimination Act (CADA)
- Protection of Individuals from Restraint and Seclusion Act (PPRA) (applicable to all students, not just those with disabilities)

Overview of the School-to-Prison Pipeline



What is the School-to-Prison pipeline?

- The school-to-prison pipeline refers to practices and policies that disproportionately place certain groups of students into the criminal legal system.
- Most commonly, these groups are students with disabilities, students of color, and students at the intersection of these identities.
- Harsh discipline and overuse of referrals to law enforcement contribute to the pipeline.
- Students with disabilities comprise less than 12% of high school students nationwide, but represent 75% of students restrained, 58% of students who are secluded, 25% of students arrested and referred to law enforcement, and more than 13% of students subject to out-of-school suspension.
- Since students with disabilities are disproportionately disciplined in school, they are more likely to enter the school-to-prison pipeline.

Statistics

The National Council on Disability estimates that as much as 85% of youth in juvenile detention facilities have a disability that could qualify them for special education services.

However, about 37% of youth in detention facilities nationwide are receiving special education services.

In the Division of Youth Services in Colorado, the percentage of students determined to be IDEA-eligible typically fluctuates between 20% and 30%, with some exceptions in both directions.

*This does not include IDEA-eligible students who are in DOC or County Jails.

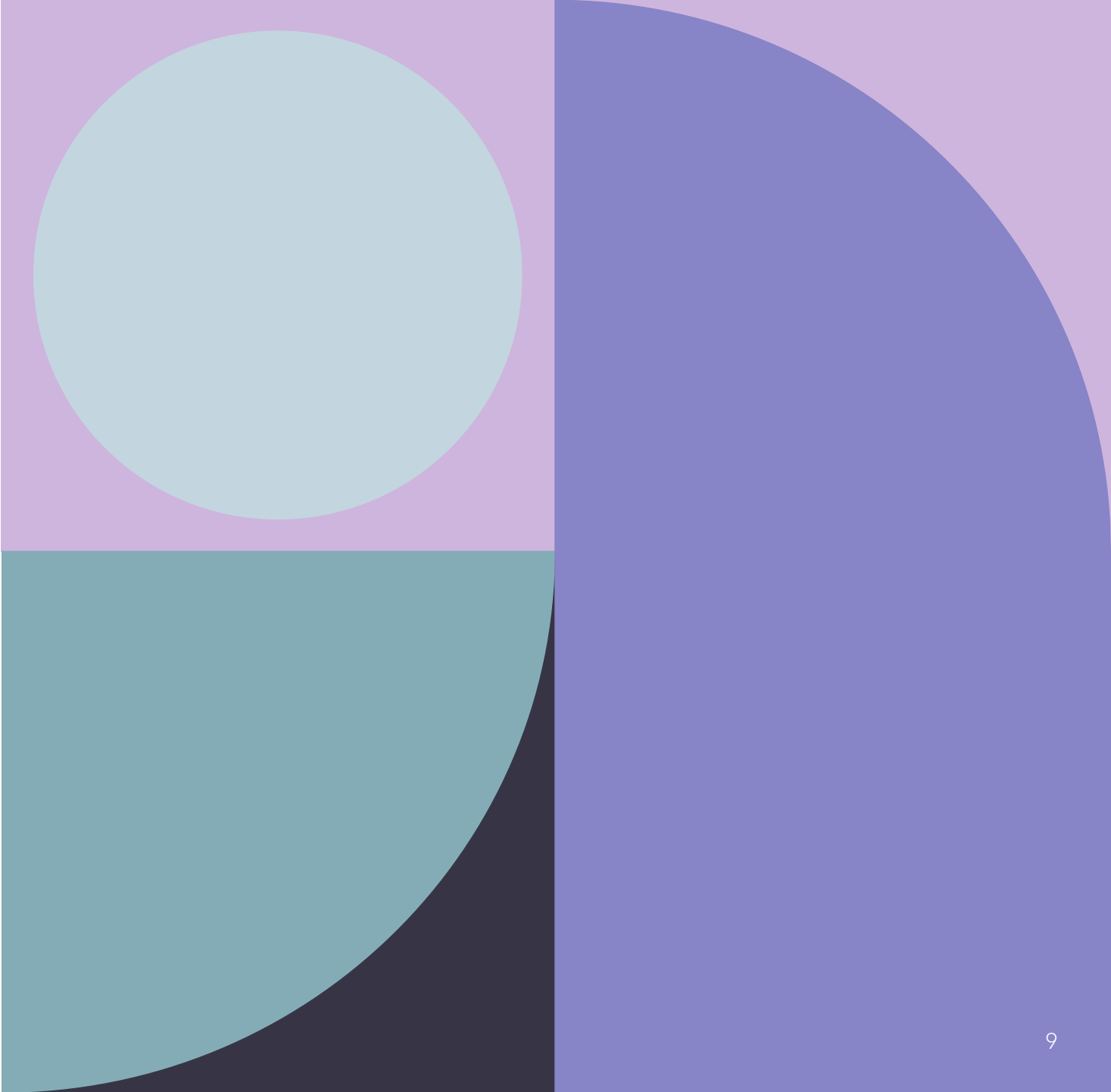
Why is this important?

- The IDEA and Section 504 provide students with disabilities the right to FAPE within the LRE.
 - Standard is different for IDEA & 504, but both have a FAPE requirement
- Many students with behavioral challenges may have a disability that would make them eligible for special education services, but these students are instead sometimes being more harshly disciplined and ending up in juvenile detention centers. These same students often later end up in adult jails and prisons.
- Students with disabilities deserve proper educational services both prior to and during incarceration.

“I think it all stems from not being given the help that I needed at school at the most important time. No one else’s decisions and no one else’s lack of support can put me here [in prison]. My own issues put me here. But I think it would have helped to have that stability and support in schools.”

Singer, Daliah. “School Discipline Can Lead Students into the Justice System” (2023), available at: <https://collective.coloradotrust.org/stories/school-discipline-can-lead-students-into-the-justice-system/>.

Discipline & School Pushout



Manifestation Determination Reviews (MDRs)

- Triggered when there is a change in placement of 10 or more days (aggregate for related behavior; counting partial days) (IAES allowed for up to 45 days if the conduct involved drugs, weapons, or serious bodily injury)
- Includes relevant members of the IEP/504 team
- Only two questions are discussed at the MDR:
 - Was the conduct caused by, or did it have a direct and substantial relationship to, the student's disability?
 - Was the conduct the direct result of the school district's failure to implement the IEP/504 Plan?
- NOT a meeting about whether the student understands right and wrong
- Must include all of student's disabilities, not just primary listed on IEP
- Must provide notice to parents to allow meaningful participation and give them opportunity to invite other relevant members

Informal Removals

In resolving complaints, both the U.S. Department of Education's Office for Civil Rights (OCR) and the Colorado Department of Education (CDE) have found that the right to a FAPE was denied to students who were informally removed from school in similar manners.



School calls parent to pick student up early every day, or most days



School will not allow student to return to school due to behavior issues, but does not label it a "suspension"



School sends student home for violating a school policy, but does not label it a "suspension"



These are Red Flags that a student might need an MDR if these "informal removals" or "informal suspensions" go beyond 10 days

Determining Whether a Change of Placement (including informal removals) is Disciplinary

Per Federal guidance, the IDEA's disciplinary procedures apply to a unilateral removal arising from a violation of a code of conduct unless ALL three of the following factors are met:

(1) The child is afforded the opportunity to continue to appropriately participate in the general curriculum;

(2) the child continues to receive the services specified on the child's IEP; and

(3) The child continues to participate with nondisabled children to the extent the student would have in the student's current placement.

After the MDR

- If the behavior was a manifestation of the disability OR a failure to implement the plan, the student may not be disciplined
- If the behavior was not a manifestation of the disability OR a failure to implement the plan, the student may be disciplined
 - If the student is on an IEP, still entitled to FAPE so they can make progress towards goals
 - If the student is on a 504 Plan, entitled to services student would get if they didn't have a disability
- Good idea to have an IEP or 504 meeting to discuss services
- Likely need to conduct a Functional Behavior Assessment (FBA) and/or review existing Behavior Intervention Plan (BIP)

Functional Behavior Assessments & Behavior Intervention/Support Plans

- If the student was having behaviors in school, the team should have conducted FBA and/or revised BIP if already existing (may be required even if they haven't gotten to the 10-day trigger for MDR - at the very least it is best practice and most likely to help teachers before behaviors escalate)
- Should focus on positive supports for the student (not just student will do x, y, z) - what are the adults around the child doing to support positive behavior?
- Red flags: behavior contracts, safety plans, escalation cycle management plans, risk and/or threat assessments, not conducting FBA or reviewing BIP after multiple behavior incidents - these may trigger need to consider FBA/BIP prior to 10-day trigger for MDR

Different Treatment

An individual with a disability was treated differently than an individual without disability under similar circumstances

The different treatment resulted in the denial or limitation of services, benefits, or opportunities for the individual with a disability

The recipient did not have a nondiscriminatory, non-pretextual reason for the different treatment

- Regardless of the numbers of days the student is out of school, this can come up in the context of discipline when a student with a disability is disciplined more harshly than a student without a disability who commits the same offense.
- It may also be an issue with regards to informal removals for students with disabilities.

Red Flags in Discipline Scenarios

- Not allowing student to return to school pending a threat assessment or signing of a safety contract, etc. beyond 10 days without holding MDR or despite finding that it was a manifestation of the student's disability (not within IAES exceptions)
- Not discussing all the student's disabilities and how it could have impacted behavior
- Not thoroughly discussing implementation of the student's plan with regards to the behavior resulting in removal
- Asking questions beyond the 2 allowed in determining whether to find it was a manifestation/failure to implement
- Not counting partial days of removal
- Not counting "informal" removals
- Not considering FBA/BIP until behavior has already escalated such that there is a significant removal, expulsion, etc. despite previous warning signs

How school discipline can contribute to the School-to-Prison Pipeline

- When children miss school, they fall behind socially and academically. They also miss critical opportunities to practice appropriate behaviors.
- Students who experience harsh or frequent discipline are more likely to end up in carceral settings as children and later as adults.
- Minor infractions that happen at school sometimes result in police involvement, which can be traumatic to children and result in increased behaviors. Potentially different treatment if students without disabilities do not have police called for similar behaviors.
- Students labeled as “bad” more likely to continue experiencing escalated behaviors because not getting adult support they need.
- Improperly conducted MDRs can result in removal from school that potentially entrenches the student in the road towards the school-to-prison pipeline.
 - Focusing on questions other than the two allowed.
 - Not consider ALL disabilities in determining whether it was a manifestation.
 - Not digging into whether the IEP was implemented.



Restraint & Seclusion

Types of Restraint

- **Chemical:** not allowed; this includes using things like Benadryl on an “as needed” basis to calm a student’s behavior
- **Mechanical:** not allowed; devices recommended by professional and agreed to by a student’s team and used in accordance with their IEP/504 plan are okay, including protective devices
- **Physical:** allowed in an emergency only; different reporting requirements for under 1 minutes, between 1-5 minutes, and over 5 minutes (Colorado law); federal law does not have a time distinction but instead carves out physical escort
- **Seclusion:** allowed in an emergency only; defined as a student being alone in a room from which egress is involuntarily prevented; DOJ has recently be requiring school districts to ban seclusion

Use of Physical Restraint & Seclusion

- Colorado state law specifies that restraints shall only be used:
 - In an emergency and with extreme caution; and
 - After the failure of less restrictive alternatives or a determination that such alternatives would be inappropriate or ineffective under the circumstances.
- Students may not be restrained in a prone (face down) position.
- If property damage is involved, restraint may only be used when the destruction of the property could possibly result in the bodily harm of the student or another person.
- Restraint and seclusion cannot be used as punishment, discipline, or to gain compliance from a student.
- Schools must ensure that students with disabilities are not physically restrained or secluded:
 - For behavior that would not result in the restraint or seclusion of peers without disabilities, or
 - Based on assumptions or stereotypes about disability.

Potential Impact on FAPE

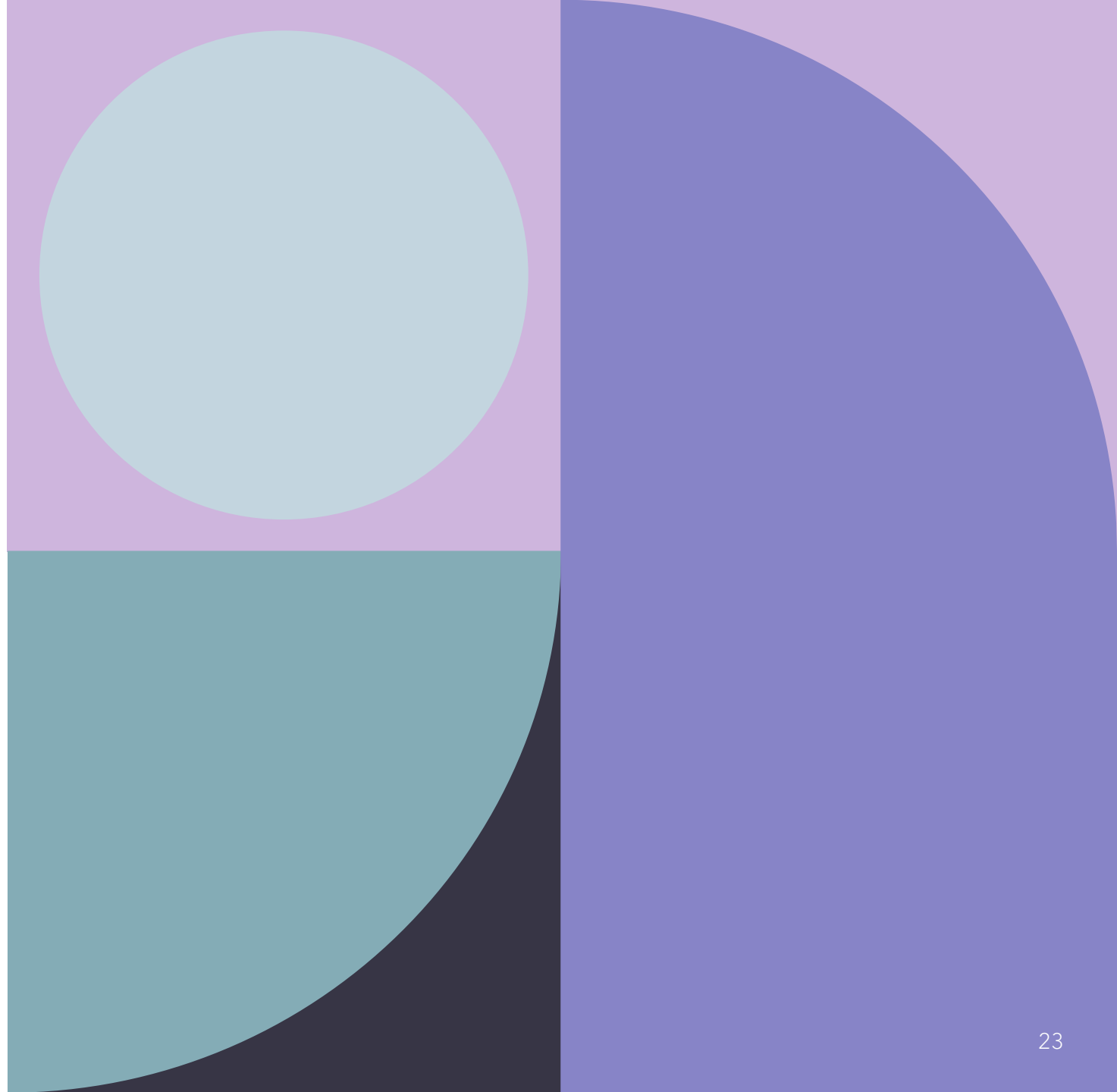
- For a student not identified as having a disability, instances of the use of restraint or seclusion may indicate the need to evaluate the student to determine whether the student has a disability.
- For a student already identified as having a disability, instances of the use of restraint or seclusion may:
 - Signal the need to re-evaluate the student;
 - Signal the need to conduct a functional behavioral assessment (FBA) and create a behavioral intervention plan (BIP) for the student;
 - Signal the need to review and revise services, accommodations, etc. for the student;
 - Cause the student to miss the delivery of general or special education or related services, which in turn, may need to be made up; and/or
 - Cause trauma that has an educational impact on the student (e.g., school avoidance, declining academic performance, etc.), and consequently, should be addressed

How the use of restraint and seclusion can contribute to the School-to-Prison Pipeline

- As we mentioned, students with disabilities comprise less than 12% of high school students nationwide, but represent 75% of students restrained, 58% of students who are secluded.
- Impact on FAPE increases likelihood of frustration with school work, leading to increased behaviors and more negative interactions at school.
- Experiencing restraint or seclusion can cause children to believe they are “bad” and deserve to be punished. Even though it cannot be used as discipline or punishment, that is how children often perceive it.
- Students who are subject to restraint and seclusion are more likely to end up in carceral settings.
- Experiencing restraint or seclusion in school can have lasting effects, including PTSD, that can increase behaviors and follow students who may end up in jail or prison.

“When I am escalated and guards put their hands on me, I flash back to being restrained in school growing up and this makes me have a more severe reaction and lands me with more charges.” - Former client who spent time in a county jail

Disrupting the School-to-Prison Pipeline



How can we disrupt this pipeline?

- It is never too late to request an evaluation for a student if there is a suspected disability, even if they are already incarcerated. Remember that child find is a proactive obligation. If a student is having behaviors at school, think about evaluating or re-evaluating and consider a functional behavior assessment and creating or revising a behavior plan.
- It is important to advocate for students experiencing harsh discipline at every level to try and stop students with disabilities from continuing to experience harsher and harsher discipline. Not doing so could lead to denials of FAPE and different treatment.
- If a youth gets in trouble at school or with the law, there may be an underlying disability for which they should be getting better, more appropriate services.
- Ensure MDRs are legally compliant and focus on supporting the student going forward.
- Instead of calling the police (except in most serious circumstances), focus on how to support the student and keep the disciplinary proceedings within the context of school.
- Focus on building relationships with students, not controlling them.

How can we disrupt this pipeline? (cont.)

- Limit the use of physical restraint and eliminate seclusion in schools.
- Update district, school, and classroom policies to focus on positive behaviors supports and relationship building with students.
- Ensure discipline and the use of restraint is not disproportionate for students with disabilities through reviewing district and school data on a regular basis.
- Provide trauma-informed training to staff on FAPE, LRE, MDRs, discipline, different treatment, and the use of restraint, as well as the harm to students caused by harsh school discipline.
- Utilize dispute resolution options, as appropriate, to address concerns, change policies, and obtain compensatory services for students.
 - Complaints cannot be filed anonymously, but OCR may keep the complainant's information confidential in certain circumstances. The state complaint process requires the complainant self-identify when the complaint is filed.

What if a student is incarcerated?

The Division of Youth Services (DYS), Department of Corrections (DOC), and County Jails:

- Are required to comply with Section 504, the ADA, and the IDEA, as well as similar state law, so they must provide FAPE to eligible students
- Must make reasonable accommodations and provide equal access
- For the provision of educational services, generally have the same requirements as public schools with an exception if there is a “bona fide security risk”
- Must identify and evaluate students for educational services under Section 504 and the IDEA
- Must provide a free appropriate public education based on student’s needs, not “what’s available in that facility”
- Have specific requirements around use of restraint and seclusion/isolation

Educational Services in County Jails

- IDEA-eligible youth (typically 18-21) with disabilities detained in county jails are entitled to special education and related services
- The AU in which a county jail is located shares the responsibility to ensure that each detained IDEA-eligible youth receives necessary special education and related services
- The county jail must notify the school district when an eligible student is in their facility
- The AU has an independent obligation to identify and serve IDEA-eligible youth and must ensure FAPE absent a request from the county jail
- More information and training can be found on CDE's website: [Youth in Correctional Facilities | CDE \(state.co.us\)](#)

What about students returning to public school after incarceration?

- Stigma around incarceration
- Bullying/harassment
- Help with reintegration
- Credit transfer & credit recovery
- IEP/504 plan not reflective of services received during period of incarceration
- Discipline, restraint & seclusion, police involvement
- Substance use
- Recidivism

Anything in the legislature we should support this year?

- Seclusion ban
- Abbreviated school days
- DYS Bill of Rights

Thank you!

Find more info at: [Fact Sheets | Disability Law Colorado](#)

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