

Special Education Law Overview

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Disclaimer

- The following presentation is meant for education only and is not intended as, nor can it be relied upon as, legal advice or as a substitute for legal consultation and counseling.

Presentation Overview

- Special education law overview
 - What is special education?
 - Evaluation process
 - Eligibility
 - Extended school year services
 - Transition planning
 - Dispute resolution
 - School approaches to challenging behaviors
- Resources

Relevant Laws

- Individuals with Disabilities Education Act (IDEA), *20 U.S.C. Sec. 1400 et seq.*
- Section 504 of the Rehabilitation Act, *34 C.F.R. Part 104*
- State regulations

What is Special Education?



Who is eligible?

- The Individuals with Disabilities Education Act (IDEA) provides children (birth through 21) with disabilities access to a free appropriate public education through an:
 - Individualized Family Service Plan (IFSP)
 - Birth through age two (extended option in some states)
 - Individualized Education Program (IEP)
 - Three to 21 years of age

What is an IFSP?

- A document or written plan that focuses on the child and family and the services that the family needs to help them enhance their child's development.
- IFSP services are provided in the child's natural environment:
 - Home
 - Head Start
 - Daycare
 - Preschool

What does an IFSP include?

- A child's present level of functioning and areas of need
- Family information (including parental concerns)
- Results or outcomes expected to be achieved by the child and family
- Specific early interventions services your child will receive
- When and where the services will be provided

What is an IEP?

- A document that describes the special education and related services that the child is entitled to receive.

What is special education?

- An eligible child with a disability has the right to a free appropriate public education (FAPE) provided in the least restrictive environment (LRE).
- Special education is specially designed instruction to meet a child's unique needs.
 - Allows the student to access the general education curriculum
- Includes related services

What are related services?

- Transportation services (to/from school)
- Speech-language services
- Occupational therapy
- Physical therapy
- Counseling
- Social work services
- Psychological services
- School health/nurse services (nursing plan)

Who decides if a child with a disability needs help?

- An IEP team will determine eligibility.
- Members may include:
 - Parent(s)
 - General education teacher
 - Special education teacher
 - Service providers
 - School administrator

Evaluation Process

The evaluation process

- **Referral for an IEP**

- Children are first referred by their parents or school or local education agency (LEA) personnel (such as a teacher).
 - The referral should be made in writing.
 - The referral should be dated.
 - The parent should keep a copy of the referral.

The evaluation process, cont'd...

- Evaluation
 - The initial evaluation must be completed within 60 days of parental consent for evaluation or 90 days from the initial referral (whichever is sooner).
 - Includes:
 - ✓ Meeting with the IEP team
 - ✓ Determine if formal assessments are needed
 - ✓ Completion of assessments
 - ✓ A follow-up meeting with the IEP team to review the assessments and discuss eligibility

Assessments

- Assessments
 - In all areas of suspected disability
 - A parent must provide written consent for assessment(s)
 - Must be performed and explained by a professional

Assessments, cont'd...

- If a parent disagrees with the assessment results, they can request an independent educational evaluation (IEE) by someone outside of the school system:
 - The school pays for it, or
 - If the school system refuses, they must put the reason in writing and file for a due process hearing to show that their evaluation is appropriate.

Note about outside assessments

- IEP teams are required to consider, but not accept, assessments by outside providers.

Tips for the evaluation process

- Keep a copy of the letter requesting an evaluation and the consent for evaluation form.
- Keep a calendar or timeline for the evaluation process.
- Complete any rating scales requested by the school system.
- Keep a copy of the assessment reports in a binder.
- If you have outside evaluations, you may wish to share them with the IEP team.
- Provide written consent to the initiation of services if you agree with the proposed IEP.

Eligibility

Eligibility

- A student with a qualifying disability who because of the impairment, needs special education and related services.

Qualifying disabilities

- Autism
- Deaf-blindness
- Developmental delay (for students ages 3-7)
- Emotional disturbance/disability
- Hearing impairment, including deafness
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment, including blindness

Educational disability vs. medical diagnosis

- While a student may have a medical diagnosis, they may not meet the eligibility requirements for an IEP.
- Need to consider:
 - Educational impact
 - Need for special education and related services

If eligible...

- The IEP team must meet within 30 days of eligibility determination to develop an IEP.
- The LEA must implement the IEP as soon as possible after the meeting.
- An IEP meeting must be held at least once a year to review the child's progress and revise the IEP.

What does an IEP include?

- Present levels of academic achievement and functional performance
- Annual goals and short-term objectives (in most states)
- Related services (type, frequency, duration)
- Supplementary aids, services, accommodations, modifications, and programmatic supports

Educational placement

- The IEP team determines where the student will receive special education and related services.
- School systems must provide a variety of placement options.
- If the school system cannot find an appropriate public placement, then the school system must pay for the child to attend a private separate day school (i.e., a non-public special education facility).

Educational placement options

- From least restrictive to most restrictive:
 1. General education classroom in a neighborhood school
 2. Access to a “resource” room
 3. More than half the day in a “resource” room
 4. A self-contained class in a comprehensive school
 5. A self-contained class in a public separate day school
 6. A self-contained class in a private separate day school (i.e., a non-public special education facility)
 7. A residential facility
 8. Home and hospital instruction

Combination of options (e.g., having students access a self-contained class and a general education class)

Tips for IFSP or IEP development

- Bring a partner, friend, or spouse to the IFSP or IEP meeting with you if you think it would be helpful.
- If you do not understand a recommendation, ask questions to the professional who is making the recommendation for your child's IFSP or IEP.
- Take notes during the meeting, so that you can reference them later.
- Ask to record the meeting, if you would want to listen to it later or share information with a service provider.
 - Note: you should provide advance notice when possible. The school will likely also want to record the meeting.
- Request a break during the meeting, if you need it.
- Try to remain calm.

Extended School Year Services (ESY)



Extended school year (ESY) services

- The IEP team *must* consider if a student's IEP has goals related to critical life skills and:
 - regression /recoupment
 - degree of progress
 - emerging life skills or breakthrough opportunities
 - interfering behaviors
 - nature and severity of the disability
 - special circumstances
- Team *must* also determine if student's ability to make progress during the year is in jeopardy if he/she does not receive ESY.

Tips for ESY services

- The IEP team should hold a meeting before the end of the school year to determine eligibility for ESY services.
 - If the team does not schedule a meeting automatically, you should request an IEP team meeting in writing.
 - Request a meeting so that you have enough time to appeal the decision before ESY services begin.
- The IEP team should review eligibility for ESY each year.

Transition Planning

Transition planning and the law

- The IDEA indicates that all children with disabilities are entitled to “transition services,” also known as *transition planning*.
- Transition services are provided by the school to help students transition from high school to the adult world.

What is transition planning?

- A process that brings students and their families together with educators and other adult service providers to help plan and prepare students to leave school and enter a post-secondary school environment, such as adult day programs, employment, vocational school, and college.
- Must begin by age 16 under federal law.
 - Starts earlier in some states (e.g., age 14 in Maryland).

Transition planning

Diploma options

- High School Diploma
- Certificate of Completion
- General Education Diploma

Post-secondary options

- Adult day program
- Employment
- Vocational program
- College

Transition plans must...

Be results
oriented

Based on the
individual

Improve
academic and
functional
skills

Help transition
out of high
school

Goals for a transition plan

Academic skills

- Reading
- Written language
- Math
- Problem solving
- Comprehension
- Art or music
- Foreign language

Communication skills

- Requesting
- Following/giving directions
- Communicating information
- Understanding information

Social skills

- Answering a phone and making calls
- Displaying appropriate workplace behavior
- Learning how to protect themselves from victimization

Occupational & vocational skills

- Using a timecard
- Arriving to work on time
- Accepting instruction and corrections
- Using appropriate voice tone and volume

Goals

- A measurable postsecondary goal is an outcome that occurs after the person has left high school.
 - The student will...
 - NOT the student hopes to, plans to, or will investigate...
- The path toward achieving the goal occurs before the student leaves high school.

IEPs

- Must include documentation of:
 - Evidence of age-appropriate transition assessment
 - Appropriate measurable post-secondary goals in employment, education/training, and independent living, if appropriate
 - Annual IEP goal related to the student's transition services needs
 - Transition services
 - Courses of study that will reasonably enable the student to meet those postsecondary goals
 - Evidence that:
 - The student was invited to the IEP meeting
 - The parent, or student if they have reached the age of majority, provided consent to invite agency representatives if it is appropriate for representatives to be invited
 - The agency representative was invited to the meeting

Resolving Disputes

Prior written notice (PWN)

- After every IEP meeting, the IEP team should provide PWN.
 - Provided before the public agency proposes or refuses to initiate or change the identification or evaluation of the student.
- Important to formally document disagreements that arise during IEP meetings.

How do you resolve disagreements?

1. Request an IEP meeting to discuss concerns
2. Contact the Office of Special Education for the LEA
3. File a complaint with the state department of education
4. File a request for mediation in writing
 - An informal meeting with an independent mediator
 - Both parties must agree to mediate
5. File a request for a due process hearing
 - Formal and expensive proceeding
 - Resolution session as part of the process

Filing a state complaint

- Parents/advocates/attorneys can file a written complaint with the state department of education if they believe a child's rights have been violated. A copy of the complaint must also be sent to the local director/coordinator of special education.
 - Some states only consider procedural violations while other states consider both procedural and substantive.
- Examples of possible complaints:
 - Student did not receive services set forth in IEP.
 - LEA failed to conduct timely evaluations.
 - LEA violated discipline procedures.
- State's department of education must complete its investigation within 60 calendar days.
 - The 60-day period may be extended if the parent and school system agree to engage in mediation or other alternative means of dispute resolution.

Tips to resolve disagreements

- Explain your concern to the team and why you are concerned (give examples and provide documentation, if you have it).
- Touch base with your child's service coordinator or IEP chairperson regularly so they are not surprised by your concern.
- Always participate in your child's IFSP or IEP meetings.
- Contact parent support organizations in your state.
- Contact an attorney or advocate if you think you need additional help.

School Approaches to Challenging Behaviors

Unacceptable management methods

- Repeatedly suspending a student from school.
- A pattern of office referrals or other extended time away from instruction.
- Extended restrictions in privileges.
- Informal/undocumented suspension – calling a parent to pick their child up from school or sending a child home from school without a suspension.
- Shortened school days.
- Improper placement on home and hospital teaching (HHT).
- Repeatedly sending children home from school with a condition for return (e.g., threat or risk assessment or a psychological evaluation).

Strategies to address

- Request (in writing) an IEP, IFSP, or Section 504 plan meeting to discuss concerns.
 - Request the school team consider eligibility, if the child is not eligible.
 - Request updated assessments (e.g., functional behavior assessment (FBA), educational assessment, psychological assessment, etc.) to get clarity on what may be underlying the behavior.
 - If student has a behavior intervention plan (BIP), consider whether it is addressing the current behaviors.
- Document calls home, requests to pick child up from the school, communication about challenging behaviors, time missed from class, etc.

Resources

Achieving a Better Life Experience (ABLE) Accounts

- Allows a person whose disability began before age 26 to contribute money to an account (up to \$100,000) to save money without affecting most federally funded benefits based on need.
 - The money can be used for “qualified disability expenses,” including education, food, housing, medical bills, transportation, and job training.
 - Age of disability onset will be 46 effective January 1, 2026.
- [ABLE National Resource Center](#)
- MD legislation – ABLE information provided annually at IEP meetings

Resources

- [Center for Parent Information and Resources](#)
- [Council of Parent Attorneys & Advocates](#)
- [IDEA information](#)
- [Project HEAL resources](#)
- [Section 504 information](#)
- [Wrightslaw](#)

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Questions?

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We were all born with great potential.
Shouldn't we all have the chance to achieve it?

