

INTRODUCTION TO SPECIAL EDUCATION LAW

Moderated by Jake McElligott, Esq., Hearing Officer
Office of Dispute Resolution

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Federal and State Special Education Law and Regulations

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794

- “No otherwise qualified individual with a disability in the United States . . . shall, solely because of his or her disability, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance”
- Applies to an “individual with a disability” - Any person who
 - (i) has a physical or mental impairment; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment
 - The disability, record of disability, or regarded-as disability must substantially limit one or more major life activities
 - Major life activities include learning, eating, seeing, walking, speaking, caring for oneself

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- Requires a school district to make reasonable accommodations for a qualified student
 - Service Agreements, as known as 504 plans, set forth the specific aids, services, and/or accommodations the student will receive
 - Does not include specially designed instruction
 - Evaluations and reevaluations are required, but the timeframes are less precise
 - Requires education with nondisabled peers to the maximum extent appropriate



Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

- Prohibits discrimination based on disability status in public services, public accommodations and services operated by private entities, and employment
- Applies same definition of an individual with a disability
- Provides similar protections and rights as provided under the Rehabilitation Act



Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, et seq.

- IDEA provides broader protections than Section 504
- Provides for specially designed instruction for qualified students
- Generally, IDEA provides an affirmative duty to provide education and services, whereas Section 504 is a prohibition against discrimination against persons with disabilities
- Provides for a different FAPE for students: an education comparable to that provided to nondisabled students



Hypothetical 1

David is a seventeen-year-old high school student who attends Exceptional High School in the Exceptional Public School District. He is a straight-A student. The school is a two-story building, and the student parking lot is on the edge of the high school campus and about a 4-5 minute walk from the school. David has been diagnosed with a chronic kidney disease that limits his ability to walk more than a short distance and to climb stairs.

Of the laws that were just discussed, which could apply here? Why?



Hypothetical 2

Chloe is a ten-year-old elementary school student who has been diagnosed with a rare genetic disorder. She has an intellectual disability as well as developmental and speech delays. Though she is in fourth grade, she is reading at a kindergarten to first grade level. She sometimes is disruptive in class because she yells loudly and demonstrates self-talking behaviors at unpredictable intervals.

Of the laws that were just discussed, which could apply here? Why?

Who is a Child with a Disability under the IDEA?

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- Children with disabilities from birth through age twenty-one (21) may be eligible under the IDEA
 - Children under three (3) qualify for Early Intervention if they:
 - Experience developmental delays in one or more of the areas of cognitive, physical, communication, social, emotional, or adaptive development; or
 - Have a diagnosed physical or mental condition with a high probability of resulting in developmental delay; or
 - Receive informed clinical opinion.

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- Children from three (3) years through school age can receive early intervention services if:
 - The student has a developmental delay or disability as defined by the IDEA; and
 - Because of this delay/disability, requires special education.
 - Eligibility under the IDEA for students who are ages five (5) to twenty-one (21) is a two-part test: (1) first, the student has a recognized disability; and (2) second, the student requires special education and related services

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- Disability classifications, 34 C.F.R. § 300.8(c)
 1. Autism
 2. Deafness
 3. Deaf-blindness
 4. Emotional Disturbance
 5. Intellectual Disability
 6. Hearing Impairment
 7. Multiple Disabilities
 8. Orthopedic Impairment
 9. Other Health Impairment
 10. Specific Learning Disability
 11. Speech or Language Impairment
 12. Traumatic Brain Injury
 13. Visual Impairment, including blindness

Child Find

- Local educational agencies (“LEAs”) must locate, identify, and evaluate all children who are reasonably suspected of having a disability who require special education
- Includes all children residing in the school district (including those attending private schools or residing in foster homes or residential facilities, and those who are homeless)

Initial Evaluation

- **Identification**: a referral for a special education evaluation due to the suspicion that the child may have a disability and may need special education, and a request for parental consent to evaluate the child (Permission to Evaluate or “PTE”)
- **Evaluation**: an initial evaluation (34 C.F.R. § 300.301) which is sufficiently comprehensive to identify all of the child’s special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified
- **Program and placement**: the development of an appropriate program and placement to provide the child with specially designed instruction and related services to meet the child’s needs

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- If parents refuse the initial evaluation, the Local Education Agency (“LEA”) may still evaluate if it requests a hearing to obtain a Hearing Officer’s decision ordering the evaluation
 - If a parent orally requests an evaluation, the LEA must provide the parent with the consent form within ten (10) calendar days of the request. 22 Pa. Code § 14.123(c).
 - The LEA has 60 calendar days (excluding summer) from the receipt of the parent’s signed permission to evaluate (“PTE”) form to complete the evaluation. 22 Pa. Code § 14.123(b)



Reevaluations

- May only occur not more than once per year unless the parent and the LEA agree otherwise, but must occur at least once every three years unless parent and LEA agree that a reevaluation is not necessary. 34 C.F.R. § 300.303.
- In Pennsylvania, students with Intellectual Disability must be reevaluated every two years. 22 Pa. Code § 14.124.



Hypothetical 3

John and Sarah, who reside in Exceptional Public School District, have a five-year-old daughter, Hannah, who is in kindergarten. They have been noticing that Hannah seems to have disruptive behaviors and a short attention span, and they believe that she lags behind other students in developing foundational reading and math skills. It is now May, and they are concerned about her success next school year. They decide to request an evaluation.

1. When must the school district complete the evaluation?
2. Assuming that Hannah is evaluated and found eligible to receive special education and related services in a category other than “Intellectual Disability,” when must she next be evaluated by the District?

The Individualized Education Program (“IEP”) 34 C.F.R. § 300.320



IEP: A written statement for each child with a disability that is developed, reviewed, and revised in a meeting with parents and relevant professionals, including the following components; includes:

- Present levels of academic achievement and functional performance
- A statement of measurable annual goals, including baselines
- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child

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- An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in other school activities
 - A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state- and district-wide assessments
 - The projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications

Least restrictive environment (“LRE”)

Students must be placed in the least restrictive environment so they are educated with nondisabled peers to the maximum extent possible and are provided with supplementary aids and services. 34 C.F.R. § 300.114; 22 Pa. Code § 14.102

Free Appropriate Public Education (“FAPE”)

- Case law, rather than the IDEA itself, provides an evolving definition of FAPE.
- Endrew F. v. Douglas County Sch. Dist. RE-1, 137 S.Ct. 988, 69 IDELR 174 (U.S. 2017)

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- An IEP must be reasonably calculated to provide meaningful educational benefit.
 - Benefit must be more than trivial, and be specific to that particular student's needs.
 - The IDEA does not guarantee that child has the opportunity to do their very best nor any other particular level of education. No obligation to provide the “best” program.
 - Rather, the IDEA promises eligible students an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student's circumstances.



Related services, 34 C.F.R. § 300.34

- Transportation
- Speech-language pathology
- Audiology services
- Interpreting services
- Psychological services
- Physical and occupational therapy
- Recreation, including therapeutic recreation
- Early identification and assessment of disabilities
- Counseling services, including rehabilitation counseling
- Orientation and mobility services
- Medical services for diagnostic or evaluation purposes
- School health services
- Social work services in schools
- Parent counseling and training



Written Notice and Procedural Safeguards

- Notice of Recommended Educational Placement (“NOREP”) - LEA must send parents written notice any time the LEA proposes to change or opposes changing the identification, evaluation, placement, or provision of FAPE for a student.
- LEA must also send a procedural safeguards notice explaining the parents’ right to agree or disagree with the proposed action, as well as their right to request a hearing or mediation.
- If parents disagree with the proposed change, they must reject the NOREP and choose either due process or mediation within ten days of receipt in order to maintain pendency.

Dispute Resolution

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- IEP Meeting
 - Independent Educational Evaluation (“IEE”) at public expense
 - Facilitated IEP Meeting
 - Office for Dispute Resolution (“ODR”) Consult Line
 - State Complaint with the Division of Compliance of the Bureau of Special Education
 - Mediation
 - Mediation is voluntary and may be declined
 - Attorneys may not participate in mediation

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- Due process hearing
 - After a complaint is filed, a Resolution Meeting is convened within fifteen (15) days of the LEA receiving notice of the parents' complaint and a representative of the public agency with decision making authority must be present
 - Statute of limitations
 - Hearings may be expedited in some cases such as disputes regarding Extended School Year (“ESY”) services or discipline
 - Expedited hearings have alternate timeframes



Remedies

- Parents and students may seek the following remedies as part of a due process hearing
 - Compensatory Education
 - Changes to IEP services
 - Tuition Reimbursement
 - Reimbursement for services or private assessments
 - Prospective Placement
 - Attorneys' fees and costs awarded to prevailing parties



Hypothetical 4

Maya, a student at Exceptional School District, has had struggles in school since first grade - she just couldn't seem to catch on to reading. Parent asked whether she needed extra help and Maya's teacher reassured her that Maya's skills would even out as she got older. She continued to struggle in second grade, and Maya's mother requested an evaluation. The District evaluated Maya and met all required timelines, but ultimately did not find that Maya had a disability. In third grade, Maya came home every day crying and saying that kids are teasing her when she is asked to read out loud. She started to refuse to go to school in the morning. In fourth grade, Maya had a great teacher who was willing to provide some one-on-one after school help and was able to stop the kids from bullying her. Maya seemed happier, but Parent still worried that Maya's skills in reading were not improving. Parent got a private evaluation that found that Maya has a specific learning disability and required services and supports. Parent found a school specializing in teaching students with specific learning disabilities and notified the District that she will be sending Maya to the school, unless Maya is offered an appropriate program. Maya started attending the school in 5th grade. After one year in the private school, Maya is reading at a 4.5 grade level as she enters 6th grade, but her grades are all over the place, ranging from As to Ds.



Questions to Consider

Parent has retained an attorney. Meanwhile, the District's Superintendent has learned through the grapevine that the parent may be filing against the District and is concerned about the District's potential liability, should the claim be successful.

1. What possible legal claims and defenses could be raised by the parties?
2. What remedies may the parent be considering?

Questions?

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