**WHAT IS SPECIAL EDUCATION AND WHAT ARE MY CHILD’S RIGHTS AS A STUDENT WITH DISABILITIES?**

**OVERVIEW OF THE LAW**

Special education exists to address the unique needs of a child that result from a disability, and to assure that students with disabilities receive all needed aids and services. Special education laws and regulations are meant to protect a student with disabilities and ensure that he or she gets the services and assistance that may be necessary to make effective progress. No doubt, you are concerned about how your child is doing in school, and beginning to realize that this system of laws and protections can be amazingly complex.

The FAPE Standard

The federal law that governs special education, is the Individuals with Disabilities Education Act (“IDEA”). This is the federal law requiring school districts to provide students with disabilities a Free and Appropriate Public Education (“FAPE”). The IDEA, however, does not expressly define what a FAPE is. Therefore, we must look to the courts for their interpretation of this term. [To see the entire text of the IDEA, https://sites.ed.gov/idea/statute-chapter-33/subchapter-i].

In the 1982 case of *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, the United States Supreme Court identified the following factors to determine whether a school district is providing a FAPE:

1. Whether the District's proposed program was designed to meet the student’s **unique needs**;
2. Whether the District's proposed program was designed to provide **educational benefit** to the student;
3. Whether the District's proposed placement was designed to provide the student with an education in the **least restrictive environment**; or
4. Whether the District's proposed placement **conformed** to the student’s **IEP**.

The Court also specified that a child with special needs is not entitled to the *best* possible education nor is a school district obligated to *maximize* the child’s potential. Parents are understandably confused and upset when they learn that districts are not obligated to assist students with special needs reach their full educational potential. Rather, school districts are legally obligated to ensure that special education students have meaningful access to the educational curriculum.

Therefore, when reviewing the educational program the school district has offered a child, Parents must ask themselves:

1. Does the educational program proposed by the school district, address my child’s unique needs?
2. Will the placement and services provide my child a measureable educational benefit?
3. Is my child being educated in the Least Restrictive Environment?
4. Is the District providing a program according to what is written in the IEP document to which I have consented?

If the answer to any ONE of these questions is “no,” then the District is likely not providing a FAPE to a student pursuant to the requirements of IDEA.

Least Restrictive Environment (LRE)

Understanding what the LRE is for a child is crucial in determining whether or not that child has been offered a FAPE. IDEA defines LRE as the District’s duty to ensure that:

1. To the maximum extent appropriate, children with disabilities… are educated with children who are nondisabled; and
2. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114(a)(2). [For full text of this law: <https://sites.ed.gov/idea/regs/b/b/300.114/a>]

According to this law, a child may not be placed in a more restrictive environment unless it is not possible for that child to be educated in a general education environment with appropriate supports or if the child’s needs and behaviors would negatively impact and hinder the education of the students in the classroom. Therefore, at all times possible, children with special needs must be placed in an educational environment with nondisabled peers and if they are not they are not being educated in the LRE, as required by law.

Whether or not a child is being educated in the LRE is just one prong used to determine if that child is receiving a FAPE, but it is a very significant and important area of law that must be considered and carefully analyzed at all times.

**HOW TO ACCESS YOUR CHILD’S SPECIAL EDUCATION RIGHTS**

The Evaluation Process

The Evaluation Process Before your child can begin receiving special education services they must be deemed eligible for an IEP (Individualized Education Program). The first step in determining eligibility is a thorough evaluation in all areas of known or suspected need. Evaluations, also called assessments in some states, provide valuable information regarding the nature and extent of your child’s disability as well as the impact the condition may have on his or her education. Evaluations should be conducted by highly trained diagnosticians and therapists utilizing a combination of standardized testing, documented observation, parent and teacher questionnaires and past reports if any. The findings of the evaluator should be presented in a formal report which is made available for use by the IEP team. The strengths and weaknesses identified through this process form the basis for your child’s present levels of performance, or your child’s baseline of functioning in each area of evaluation.

Evaluations are critical because they identify the nature and extent of your child’s disability. They will help identify your child’s areas of strength and weakness. If they are found eligible for special education with a qualifying condition under the IDEA, goals must then be written to assist your child in overcoming the identified problem areas. The evaluations will provide a starting place from which the progress towards the annual goals is measured. The determination of whether the district is offering your child an appropriate education depends on your child’s progress throughout the year. If the baseline or starting data is artificially low for the child’s ability, the district will likely be able to show that your child made some progress and therefore meet its burden under the law.

Your school district must initiate its initial assessment (for children with known disabilities) before the age of three. After these initial evaluations, the district will conduct, with very limited exception, a thorough reassessment of the child every three years thereafter. This reassessment process, commonly referred to as a triannual or triannual review, can often be as important as the initial review. The findings provide information on the child’s current strengths and needs, and can often be used as a possible basis to limit or even terminate services and sometimes even eligibility for special education. The three-year evaluation cycle is the minimum that must be done. In reality, given the complexities of child development, the dynamic nature of therapy, etc., it may be necessary to conduct assessments more frequently. The district may now be asked to conduct a new evaluation one time per year.

An evaluation may be requested by the parent, the school district, or other state agency. However, most requests for evaluation originate from the parent. Once a request has been made, an assessment plan must be made available for parent review and consent. The parents, as equal participants in this process, may request that the plan be expanded to cover additional areas of assessment or contracted if it covers inappropriate or unduly limited areas. If you are not sure, ask questions. It is the school district’s team’s job to help you access this system.

Once you and the school district’s team have arrived at a final and complete plan, you will be asked to sign and return the document. The district then has a limited time, generally 60 days from the date that the plan is approved by the parent, certain vacation periods exempted, to complete the agreed assessments and hold an IEP meeting to consider the findings. [Tip: Make sure that you keep a copy of the final version of the signed assessment plan together with proof of the date that you returned it to the district.] In special education, dates are very important as they directly impact your child’s rights under the law. Because of the numerous timelines involved, we suggest that parents put their request for an assessment and subsequent signed assessment plan in writing, dated and faxed with confirmation, to the district personally. We also suggest that families consider adding the following sentence somewhere on the face of the assessment plan: “Please provide copies of all DRAFT assessments within 5 business days of the IEP meeting.” This will ensure that you have access to the information ahead of the meeting.

The Role of the Independent Educational Evaluation (IEE)

The Independent Educational Evaluation (IEE) or parent secured evaluation serves as a second opinion in determining your child’s capabilities and needs. Parents have the right to obtain an IEE at any time during their child’s education, so long as the evaluation meets the IEE criteria established by the district. IEEs conducted by qualified persons and submitted to the IEP team for consideration must be considered alongside their district counterparts.

The law allows for parents to secure an IEE at public expense if they disagree with the school district’s evaluation. The right is conditional in that the district may refuse to pay for the IEE. However, when the district takes this position, it must initiate a due process hearing to defend its findings without unreasonable delay. Most districts are reluctant to file a due process against a parent and this is especially true where there is a strong possibility that its evaluation is flawed, inaccurate or incomplete. Like all communication with the district, when requesting an IEE, it is wise to put your requests in writing and deliver it in a manner that will produce a proof of receipt. [Tip: Emailing such a request allows for a date and time stamp which is important. You may also hand deliver your request to your child’s school in person, but if you do, make sure to take two copies, one for the school and one for you. Make sure that the school stamps your copy so that there is no dispute about the date your request was received.]

Evaluations are much like building blocks as they are the foundation of a solid plan that will allow your child to progress in his or her educational setting. Quality evaluations and accurate present levels ensure that goals are measurable year to year. Your child(ren) cannot afford to lose even one year of educational opportunity.

How My Child Is Determined Eligible for Special Education

To determine if a child is eligible for special education services, the school district must:

1. Draw upon information from a variety of sources, including tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and
2. Ensure that information obtained from all of these sources is documented and carefully considered. If a determination is made that a child has a disability and needs special education services, an IEP must be developed for the child.

(The requirements for special education eligibility are outlined in the federal regulations at 34 CFR: Part 300 section 306(c), for full text: sites.ed.gov/idea/regs/b/d/300.306/c)

Eligibility Categories

Federal law identifies the following categories of eligibility for special education:

* Autism
* Deaf-blindness
* Deafness
* Emotional disturbance
  + This category is often a catch-all for various mental health challenges
* Hearing impairment
  + This category refers to hearing loss not covered under the definition of deafness and this type of loss can change over time
* Intellectual disability
  + This is often the main category of eligibility for children with MPS II
* Multiple disabilities
* Orthopedic impairment
* Other health impairment
  + This category covers conditions that limit a child’s strength, energy, or alertness
  + MPS II will often fall under this category as a second category of eligibility
* Specific learning disability
  + This category covers a specific group of learning challenges which affect a child’s ability to read, write, listen, speak, reason, or do math (i.e., dyslexia, written expression disorder)
* Speech or language impairment
* Traumatic brain injury
* Visual impairment (including blindness)
  + This category includes partial sight and blindness
  + If eyewear can correct a vision problem, then it does not qualify

Many states have additional categories of eligibility. For a listing of eligibility categories by state, visit your state’s Department of Education website.

In order for a child to be found eligible for special education and related services, it must first be shown that the student is a “child with a disability,” and that as a result of the disability experiences, has difficulties accessing his or her education such that they are in need of special education and related services.

A child may be eligible for special education eligibility at birth. A child becomes eligible for preschool special education services at age three. Parents may request evaluation for special education at any time through the age of 22, providing that the student has not first graduated with a regular high school diploma. [For the full text of the law as it relates to this, please see: <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-B/subject-group-ECFR4c69ab8d340f516/section-300.102>]

Special Education and related services are to be made available to an eligible child on the basis of individual need. A school district may not limit or restrict services to a student simply on the basis of their eligibility category. Each program must be individually tailored to the child it serves.

**IEP PROCESS**

Once the evaluation process has completed, there will be an IEP meeting to discuss the results of the evaluation and what programs and supports your child qualifies for and needs in order to access their education. The purpose of the IEP meeting is to develop an annual individualized program for your child that offers the appropriate placement and services they need, as well as clearly identifies their present levels of performance in all academic and social/emotional areas and develops goals for their IEP team to work on.

On the day of the IEP team meeting, you will meet either at your child’s school or within the district offices. Each member of the team will introduce him or herself, and a roster will be passed around. All attending the meeting will sign the roster of attendance. A copy of the roster can be provided to you at the end of the meeting.

The following are **required** members of a child’s IEP team:

* Child’s parent(s)/guardian(s)
* At least one of the child’s regular education teachers
* At least one of the child’s special education teachers or service providers
* A school district representative *qualified* to provide or supervise the special education instruction, knowledgeable about the general education curriculum, and knowledgeable about the district resources
* Someone who is able to interpret the instructional implications of evaluation results
* Others who have knowledge or expertise about a child
  + This can be *any* individual that the parent(s) think necessary and appropriate to be present at their child’s IEP, including outside providers (i.e., a private speech and language therapist, psychologist), regional center employees/providers, advocate, friend, additional family member, etc.

NOTE: If a required member of a child’s IEP team is not present for the IEP meeting, *only* the parent has the authority to waive the requirement that they attend the meeting, which means that if the parent decides it’s acceptable for the meeting to take place without that member present, the parent has the authority to give permission for the meeting to continue without them. Similarly, the parent can decide the meeting must be rescheduled to a time where all required and necessary team members are present.

After introductions, the district must be sure that it provides parents with a copy of procedural safeguards. The team then works together to identify the student’s strengths and challenges, and determines the student’s present levels of performance (PLPs).

If you would like to tape the IEP you must notify the district that you will be doing so at least 24 hours prior to the meeting date. The rules on taping and notice may vary state to state. [Tip: It is very beneficial to audio record the meeting so that you can ensure the IEP document you are provided with clearly and accurately depicts what was said during the meeting. This also ensures that you can be focused on participating in the meeting rather than worry about taking detailed notes, as you can refer back to the recording for anything you may have missed or forgotten.]

Present Levels of Performance (PLPs) and Goals

As you are probably gathering by now, special education is loaded with many acronyms. Yes, your child’s starting place for his or her annual goals is called a PLP. The law (IDEA) requires that each IEP contain a statement of the student’s PLPs, including how the student’s disability affects his or her involvement and progress in the general education curriculum. PLPs are determined from assessments of the student’s achievements. The IDEA also requires that a student’s IEP document contain a statement of measurable annual goals that are based on the student’s present level of performance. Therefore, the IEP team must create a goal for each area of need (generally defined as an area of concern where the child falls below the skills that would be expected of a typical child of the same age.) These goals must be designed to 1) meet the child’s needs, 2) enable the child to be involved in and make progress in the general education curriculum, and 3) meet each of the child’s other educational needs that result from his or her disability. Your child’s goals should be achievable and appropriate for one academic year.

Authorizing the IEP

At the conclusion of the meeting, the district will have drafted a written education plan for your child. This written IEP document should include all of the findings of the team (including the parents’ ideas and suggestions). The document should clearly describe the offer of placement, services, and annual goals. The IDEA states that school district’s must obtain informed consent from the parent prior to providing special education and related services to the child. Therefore, you will be asked to sign the document. You should sign the document only when you have thoroughly reviewed the document and reached agreement with the district’s team, and you are certain that the plan is what will best serve your child’s needs. If you are unsure of the meaning of a part of the document and would like further time to consider the proposed IEP, you have the right to take a copy home and consider it outside of the pressures of the IEP setting. School districts are required to provide parents with a copy of the IEP document at no cost. [Tip: We recommend always taking the document home and reviewing it before signing, even if you think you are in agreement at the conclusion of the meeting. The document doesn’t always reflect what the team has orally agreed to in the meeting and taking the time to review the document for any inaccuracies and reflecting and/or discussing with anyone is always beneficial to ensure the best IEP has been created for your child for the academic year.]

When reviewing the IEP document, it is important to note that school districts are required to make written IEP offers that clearly define the offer (proposed placement and related services). A few things to consider when reviewing the IEP to determine if the IEP complies with the requirements above:

* Has the team created a goal to address each area of need as determined in the student’s PLPs? If not, has the IEP team explained how the existing goals meet all of the child’s needs?
* Are the goals measurable? A well-written goal must include well-defined terms, measuring periods, and types and numbers of prompts.
* Does the offer of services specify whether the student will receive individual or group-based instruction?
* Does the offer of services specify the frequency to be received per week or month (as opposed to per year)?
* Does the offer specify when and for how long the student will be mainstreamed (educated alongside typical kids) per day?
* Does the offer include appropriate accommodations and modifications of your child’s instructional material?

If you agree with some parts of the IEP and disagree with others, you can set out your concerns on a page provided in the IEP document. Should you disagree with the intensity, duration or type of services being offered, this is the time to mention those disagreements and present your supporting reasons. You may also attach a letter documenting your concerns. This is called a Partial Consent letter. This document could become the basis for further hearing (due process) on these issues. Upon receiving notice of your concerns/disagreements with the IEP, the district may provide you with a letter called a Prior Written Notice. This letter will document the district’s rationale for its proposed program and may also attempt to create the most appropriate recommendation for your child. Should you continue to disagree with the district’s rationale, you may request an IEP meeting to discuss your concerns.

Be sure to calmly state your concerns and disagreements. This will set the stage for collaborative problem solving.

My Child’s IEP is Out of Date

If you believe that your child’s IEP is out of date or somehow needs adjustment, consider sending a written request to the school district for a new IEP meeting. Generally, when a parent of a special education student requests an IEP team meeting, the school district must convene the meeting within 30 days of the written request. This IEP meeting is also called an Amendment IEP, and it permits the team to discuss your concerns and modify the IEP. Should you be unable to resolve your concerns at this IEP meeting, you still have the option of addressing your concerns through more formal means.

Types of Special Education Programs and Related Services

Special Education can include a variety of program and placements. The below programs are listed from least restrictive to most restrictive. (Restrictive is generally understood to define the degree of removal from children without disabilities.)

* General Education Program (GE): This term is used to describe a regular classroom setting and is comprised mostly of children without disabilities.
* Resource Specialist Program (RSP): This program is for students who need some special education support, but spend the majority of the school day in a GE classroom. Resource programs offer educational support to augment GE classroom instruction.
* Special Day Class (SDC): This term is used to describe a special education classroom for students with intensive needs that cannot be met by the GE or RSP program. A SDC provides for smaller classroom size and generally only serves children/students with disabilities.
* Private Special Education Schools (also called Non-Public Schools): This is a type of private school that exclusively enrolls children with special needs pursuant to an IEP, and is certified by your State’s Department of Education to provide special education and related services. Most Private Special Education Schools have master contracts with school districts to provide alternative special education and services that cannot be found in the local school district’s programs.
* Home School Program: At all times, parents have the right to educate their children, themselves in the home setting. However, this does not mean that a school district is relieved of providing home-schooled students who qualify for special education with the related services they require. There are many options. If you think that your child is a candidate for home schooling, explore your options with the school district. Often the district’s representative will be a valuable source for available programs and services.
* Residential Program: This program is for students who, due to severe needs, must be placed in a setting in which they are living away from their home and are receiving supervision and services 24 hours a day. If a child requires this type of placement, then this program, including non-medical care and room and board, must be provided to the child at no cost to the parents of the child.

The above mentioned program placements may also include specially designed services also called Designated Instruction and Services (DIS). DIS is known as “related services.” Such services may be required to help students benefit from their education. Related services include, but are not limited to, the following:

* Language and Speech Therapy Services
* Occupational Therapy
* Physical Therapy
* Adapted Physical Education
* Vision Therapy
* Assistive Technology
* Audiological Services
* Behavior Therapy
* Social Skills Training
* Recreation Therapy
* Counseling and Guidance
* Mental Health Services
* Health and Nursing Services
* Vocational Training
* Transportation
* Specialized services for low-incidence disabilities (Vision Loss/Hearing Loss/Orthopedic needs), such as readers, transcribers, and vision and hearing services.

The placement of a child in a more restrictive environment, such as a special day class, must not occur unless and until it can be shown that a child cannot be educated in a general education class with supports and services, or if his or her needs are such that the child being there will compromise the education of the other children in the class.

**I Disagree with My Child’s IEP. What are the Steps I Can Take to Resolve Disputes with the IEP?**

Informal Dispute Resolution (IDR)

Informal Dispute Resolution (IDR) is a process available where the parents and school district officials can meet to discuss the child’s needs and parents’ concerns. IDR is different from other forms of dispute resolution in that this process generally does not utilize the services of a court appointed mediator.

Mediation

Mediation in special education disputes involves the assistance of a court appointed mediator. The process is a voluntary one between the parties. The process is confidential.

Due Process Hearing Request

It is important to discuss your concerns and areas of disagreement with your school district before entering into the more formal due process procedure. True collaboration can often be the quickest and easiest way to solve a disagreement. However, if you cannot come to agreement with the school, you have the right to disagree with the school’s decisions concerning your child. Parents may request a due process hearing in situations where there is disagreement with respect to:

1. The special education eligibility category
2. The assessment results
3. The proposed placement, or the services

A Due Process Hearing is a formal, court-like process in which you and your school district each are afforded the opportunity to present your case to an impartial Hearing Officer. The Hearing Officer will issue a formal written decision. Parents will often seek the advice of an experienced representative.