



**THE INDIVIDUALS WITH DISABILITIES ACT -
A PRIMER FOR BOARD MEMBERS**

PRESENTERS

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Individuals With Disabilities Education Act

- The Individuals With Disabilities Act (“IDEA”) is a federal statute that requires state and local educational agencies to provide 20 U.S.C.A. §1415 *et seq.*, appropriate programs and related services to qualified students with disabilities.
- The IDEA was reauthorized in 2004 in a statute entitled the Individual With Disabilities Education Improvement Act (“IDEIA”). The IDEIA had significant amendments to the IDEA, but the core purpose of both pieces of legislation is the same: to identify students with disabilities and provide them with a free and appropriate public education.



Requirements of the IDEA and IDEIA

CHILD FIND:

- The IDEA and IDEIA require that the state educational agency develop policies and procedures that ensure that all students with disabilities are identified, evaluated and educated. This is what is known as the “**child find**” obligation. 34 CFR §300.111.



ELIGIBILITY FOR CLASSIFICATION

- **Eligibility** determinations are to be based upon the evaluation data provided to the CSE, as well as a variety of information, including but not limited to the student's achievement tests, parental input and teacher information.
- A student may not be eligible for classification if lack of appropriate instruction or limited English proficiency is the determinant factor regarding lack of achievement.



EVALUATIONS

- Districts are required to conduct a full and individual initial evaluation before a student can be considered eligible for classification. Requests for such initial evaluation can come from the parent(s) and staff of the district.
 - Initial evaluations must be conducted within sixty days of the receipt of parental consent to perform the evaluation.
- Reevaluations - District must reevaluate a student at least every three years, unless the parent(s) and the district agree that a reevaluation is unnecessary. Reevaluations can be done on a more frequent basis, if there is a request for reevaluation sooner or the student's performance warrants such reevaluation.
- Independent educational evaluations (IEE) – Parents have a right to obtain an IEE if the parent disagrees with an evaluation obtained by the district.
 - Should such a request be made the district either needs to ensure that an IEE is funded or provided or commence an immediate due process hearing to demonstrate that its evaluation was appropriate.



CLASSIFICATIONS UNDER THE IDEA

A **child with a disability** is defined as a child evaluated in accordance with the statute as having:

- (1) Autism
- (2) Hearing impairment (including deafness)
- (3) Deaf-blindness
- (4) Emotional disability
- (5) Hearing impairment
- (6) Learning disability
- (7) Intellectual disability
- (8) Multiple disabilities
- (9) Orthopedic impairment
- (10) Other health impairment
- (11) Speech or language impairment
- (12) Traumatic brain injury
- (13) Visual impairment AND
- (14) Who, by reason thereof, needs special education and related services.



FREE AND APPROPRIATE PUBLIC EDUCATION

School districts must provide a FAPE to students who are classified under the IDEA.

- A **FAPE** is met when a school district recommends a **program and services that meet the individualized needs of the classified student so that s/he can make meaningful progress in the least restrictive environment (“LRE”)**.
- Decisions regarding program and services are to be made by people, including the parents, who are knowledgeable about the student and the programs and services available, who make up the Committee on Special Education (“CSE”).



INDIVIDUALIZED EDUCATION PROGRAM

A classified student is entitled to an Individualized Education Program (“IEP”).

- An IEP is a written statement that is developed, reviewed and revised by a CSE. 34 CFR §300.22.
- Special education is defined as specially designed instruction that meets the unique needs of a child with a disability, including classroom instruction. 34 CFR §300.39.
- The types of special education programs that can be recommended for classified students are set forth in the New York State Commissioner Regulations. They are known as the “continuum of services.”



THE IEP

An IEP should include the following:

- (1) A statement of the student's present levels of academic achievement and functional performance;
- (2) A statement of measurable annual goals;
- (3) A description of how progress towards goals will be measured and when periodic reports on progress towards the annual goals will be provided to parents;
- (4) A statement of the special education and related services and a statement of modifications and accommodations, as well as support to school personnel staff that will be provided to ensure progress towards the annual goals;
- (5) An explanation of the extent, if any, that the student will not participate with his/her mainstream peers.
- (6) If alternative assessments is deemed appropriate, a statement of why the student cannot participate in regular assessment and the particular assessment that is selected for the student.
- (7) The projected start date for the beginning of services and modifications, and the anticipated frequency, location and duration of those services and modifications.
- (8) Transition services.



CONTINUUM OF SERVICES

School districts are required to provide a continuum of services to classified students. These include:

- **Related services** include transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, such as:
 - (a) speech-language and audiology services,
 - (b) interpreting services,
 - (c) psychological services,
 - (d) physical therapy,
 - (e) occupational therapy,
 - (f) recreation, including therapeutic recreation,
 - (g) counseling services, including rehabilitation counseling,
 - (h) orientation and mobility services,
 - (i) medical services for diagnostic or evaluation purposes,
 - (j) social work services in schools, and
 - (k) parent counseling and training.



CONTINUUM OF SERVICES

- Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
- Transition services are defined as a coordinated set of activities for students with disabilities to aid in the student's movement from school to post-secondary activities. They can include instruction, related services, community experiences, development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills. 34 CFR §300.43.



CONTINUUM OF SERVICES

- Consultant teacher services – Direct or indirect services to the student in the regular education setting
- Resource room – A class supplementing regular or special education instruction
- Integrated co-teaching – Classes that are made up of regular and special education students, taught by both regular and special education teachers
- Special class – Classes made up solely of special education students, taught by special education teachers, capped at a limited number of students
- Home and hospital instruction
- Private school residential placements



CSE MEETINGS

- A CSE is required to review an IEP annually. Such annual review shall be based upon the following factors:
 - The strengths of the student;
 - The concerns of the parents;
 - The results of the initial or most recent evaluation(s);
 - Results of student's performance on any general State or district-wide assessment programs;
 - The academic, developmental and functional needs of the student;
 - The educational progress and achievement of the student, and his/her ability to participate in the instructional programs in the least restrictive environment.
- Every three years the student must be reevaluated and a re-evaluation meeting is held to consider the new evaluation data, as well as the other considerations of an annual review.



DUE PROCESS PROCEDURES

- New York is a two-tier state
 - Initial hearing is before an impartial hearing officer (IHO)
 - Either party to the impartial hearing can appeal the decision of the IHO to the Office of State Review (SRO)
 - Appeals from the SRO are made generally to the federal district court in the jurisdiction where the district is located.



DUE PROCESS PROCEDURES

- A **procedural safeguard notice** has been developed by the State Education Department and is required to be sent to parent(s) or those in parental relationship to the child upon the initial referral, once a year thereafter, the first filing of a due process complaint, upon request of the parent, upon a decision to impose a suspension that constitutes a change in placement, and upon receipt by the district of a complaint to the State Education Department.
- **Mediation** is available to resolve disputes short of an impartial hearing.
- A parent or a district may commence an **impartial hearing** with respect to any issue involving the identification, evaluation or educational placement of a student with a disability or one suspected as having a disability.
 - There is a requirement for the parties to meet in a resolution session to attempt to resolve the matter prior to a hearing. This resolution session must occur within 15 days from the submission of a due process complaint.



DUE PROCESS PROCEDURES

- There is a two year “**statute of limitations**” on allegations contained in a due process complaint. The two years is measured from when the party knew or should have known about the alleged action, except in instances where the school district’s affirmative actions precluded the parents from discovering the at-issue allegation.



PRIVATE SCHOOL STUDENTS

Students placed by their parents in private schools

- In accord with the IDEA, New York State Education Law §3602-c was amended to provide that the school district where the private school is located is responsible for the child find obligations of all students educated at that private school, regardless of whether they reside in the district or not.
 - a) To achieve this, districts are required to consult with non-public schools in their district boundaries to try and identify students who may need to be evaluated.
 - b) The district of location should meet as a CSE and develop an individualized educational service plan (“IESP”) to address the needs of any student who is eligible for special education services. Those services are to be provided by the district of location and then “billed back” to the district of residency for funding.
 - c) The district where the student resides still has an obligation to provide a free and appropriate education to the student.



DUE PROCESS HEARINGS

- Tuition reimbursement cases:
 - Parents can unilaterally place their child in a private school and claim that the District has not offered FAPE as the reason for such decision. The US Supreme Court has recognized that tuition reimbursement is an appropriate remedy.
- Parents of students who are in-district can bring a request for due process to seek a change in placement, program or services.
- Transportation – Districts have an obligation to bus classified students to private schools which offer service and programs similar to those on the students' IEP if the school is within 50 miles of the home. Denial of transportation can lead to hearings.



CONSIDERATIONS IN HANDLING DUE PROCESS HEARINGS

- Cost
 - What is the cost of what the parent is seeking in the hearing
 - Attorneys' fees for district counsel
 - Parents' attorneys' fees are the responsibility of District should the parents prevail on any part of their claim
 - Cost of IHO fees and court reporter
- Time and attention of staff
- Pendency – A classified student is maintained in the last agreed to program during the pendency of the litigation. If the District loses, pendency attached to the private school program.
- “Sending a message” – Decision to proceed or settle can send a message to staff and parents.



Examples of Relief Requested by Parent/Guardian

- Independent Educational Evaluations.
- Compensatory Services – services for students who were denied or not provided appropriate services.
- Tuition Reimbursement – parent/guardian places their child in a private school and seeks tuition reimbursement.
- Attorney’s Fees.



Considerations of District Counsel

- Whether the District can provide FAPE?
- Was the IEP specially designed to meet the student's needs?
- Does the IEP contain any procedural or substantive errors?
- Whether the student can be educated in-district or whether an out-of-district placement should be considered?
- Were there any gaps in services?
- Cost of educating the student in-district vs. out-of-district?
- How much would it cost the District to litigate the case?
- If a case is settled, would it have any precedential value?