

What Parents Need to Know About Special Education Law

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The Fundamentals

- ▶ IEP Teams
- ▶ Evaluation Data
- ▶ IEPs
- ▶ Placement
- ▶ Dispute Resolution
- ▶ The OSFAA
- ▶ The Unwritten Rule
- ▶ Some Suggestions

IEP Teams

- ▶ The IEP Team determines eligibility, writes the IEP, and determines placement.
- ▶ There are only two parties at an IEP Team meeting, even though there are more than two people: the school, and the parent (or adult student).
- ▶ The law encourages collaboration and consensus in decision-making, but also outlines what to do when consensus is not achieved.
- ▶ It's a parent-teacher conference on steroids.

Two Parties?

- ▶ Although there are multiple school employees at an IEP Team meeting (special ed teacher, general ed teacher, evaluation person, LEA rep) the school must ultimately speak with a united voice.
Examples:
- ▶ “We believe your child is eligible as a student with a learning disability.”
- ▶ “Here are the measurable goals we are proposing.”
- ▶ “Here is our proposal for placement in the least restrictive environment.”

And the Parent?

- ▶ If the school proposes, the parent responds.
- ▶ It works the other way too. The parent proposes and the school responds.
- ▶ “I think the IEP needs to include more speech therapy.”
- ▶ “I disagree with your proposed placement. I think my child should spend the full day in the mainstream classroom.”
- ▶ The assumption is that the individuals at the meeting will have different opinions, but all will desire the same goal: a good education for the student.

Remember the Sequence of Decision Making

- ▶ Do we have enough evaluation data to make our decisions?
- ▶ Is the child eligible?
- ▶ What is the disability classification?
- ▶ In what areas of the curriculum does the student need special education?
- ▶ What are the present levels of performance, both academic and functional?
- ▶ What are the “appropriately ambitious” goals?
- ▶ How will we measure progress?
- ▶ What is the placement in the LRE?

Evaluation Data

- ▶ All decisions about the IEP and placement must be based on evaluation data.
- ▶ This includes the formal evaluation the school will do as well as grades, test scores, progress reports, attendance and discipline records, input from parents, and input from outside providers.
- ▶ Good question for parents to ask: "What evaluation data supports your recommendation?"

A Word About Outside Providers...

- ▶ If you have your child evaluated by a private provider (psychologist, therapist, reading expert, BCBA, speech therapist) share the report with the school.
- ▶ Someone at the school will probably want to speak to the private provider, and will need your consent to do so.
- ▶ The school is responsible for the quality of the data it relies upon, and so it is proper for the school to want to speak to the outside provider and ask some questions.

IEPs

- ▶ Fundamentally, the IEP is a goal-setting document.
- ▶ Where does the student stand?
- ▶ What is a realistic but ambitious annual goal?
- ▶ How will we measure success?
- ▶ What services does the student need to achieve this goal? First instructional services; then related services.

Placement

- ▶ Placement refers to the instructional arrangement in which the student will be served. It must be in the LRE, but LRE is decided on a case-by-case basis.
- ▶ It's a continuum: Mainstream classroom. Resource room. Self-contained room. Private or residential program.
- ▶ Students are moved out of the mainstream if their disability is such that they require services that cannot feasibly be provided there.

Dispute Resolution

- ▶ You have the right to disagree with decisions about eligibility, the need for more data, IEP content, placement, discipline.
- ▶ This starts with you disagreeing at the IEP Team meeting.
- ▶ If the parties cannot resolve the disagreement at the IEP Team meeting, you have the right to file a complaint with the state agency, to ask if the school would be willing to mediate the dispute, or to seek a "due process hearing."

The OSFAA: One Size Fits All Answer

- ▶ Remember that all decisions about IEP content or placement should be 1) made by the IEP Team; 2) anchored in the evaluation data pertaining to your child; 3) based on the student's need for 4) FAPE.
- ▶ Let's break that down.

The IEP Team

- ▶ Special ed is upside down compared with all other aspects of public school operations.
- ▶ Decisions are not made by the highest ranking administrator. They are made by the IEP Team. You are part of that Team.

Evaluation Data

- ▶ All decisions made by the IEP Team should be based on the student's evaluation data.
- ▶ As the parent, you need to know and understand that data. Ask questions. Seek to understand the lingo and significance of testing data.

Need

- ▶ Your child should get what your child needs, but this may not match up with what you would like.
- ▶ "Need" is the only word in the law that recognizes that public schools have limited resources and cannot provide every service that would be beneficial. The IEP does not need to "maximize" your child's education or be the best possible. It just has to be reasonably calculated to produce benefit that is appropriate for your particular child.
- ▶ If you ask for something new, the focus should be "how is the child doing without it?"

Need for FAPE

- ▶ FAPE for students who are capable of meeting grade level standards requires services sufficient to enable the student to do that. SCOTUS tells us that the system itself monitors progress for these students.
- ▶ For students who are not capable of performing at grade level, FAPE requires services sufficient to enable “progress appropriate in light of the child’s circumstances.”
- ▶ SCOTUS encouraged an “appropriately ambitious” set of goals for every child.

The Unwritten Rule

- ▶ Because the IDEA is built on a framework that assumes collaborative efforts by two parties who want the same thing, legal disputes often turn on The Unwritten Rule: Did you act reasonably?
- ▶ Parents have been viewed as “unreasonable” when 1) refusing to consent to evaluations requested by the school; 2) refusing to attend IEP Team meetings; 3) not returning required paperwork; 4) rude, hostile, or unnecessarily aggressive behavior.
- ▶ Schools have been viewed as “unreasonable” when 1) being close-minded; 2) not soliciting and valuing parent input; 3) rigidity; 4) making decisions based on administrative concerns rather than the needs of the student as reflected in the evaluation data.

Some Suggestions for Both Sides...

Get familiar with the evaluation data.
 Get to know the individuals you are dealing with.
 Be open minded and creative.
 Be clear. Disagree when appropriate, but do it in an agreeable way.
 Don’t make it personal.
 Get assistance from advocates or lawyers who will follow the Unwritten Rule.
 Be hard on the problem, and soft on the people.

The Big Picture

- ▶ Let's remember Forrest Gump. His story reminds us of how all this got started.
- ▶ Major change in our country often begins with litigation and evolves to legislation. Civil Rights Movement was like that. Brown v. Board of Education in 1954. Civil Rights Act from Congress ten years later.
- ▶ Suits by people like Mrs. Gump in the 1960s led to legislation in 1975: what is now known as IDEA.
- ▶ It's never been properly funded. But let's remember the noble goal of serving the needs of each child, without regard to the nature or the severity of the disability.

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