



CABE LEGAL ISSUES WORKSHOP

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Special Education:
Basics+Beyond

Rebecca Adams Rieder
Senior Staff Attorney
CABE
RAdams@cabe.org
(800) 571-7446






Course Objectives:

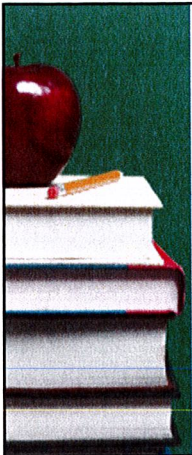
UNDERSTAND:

- Laws that protect students with disabilities
- 6 Core Principles of Special Education (IDEA) law.
- Cycle of Special Education
- Skills in advocating
- Options when parents & schools disagree



Laws:


That protect students with disabilities



FERPA

Family Educational Rights & Privacy Act


- Federal Education Privacy Law
- ALL students.
- Right to inspect and review “any and all” records the district keeps
Timeline in CA: 5 days
- Right to request correction of records
- Right to consent to disclosure of personally identifiable information contained in education records



504

Section 504
of the Rehabilitation Act / 1973

- Federal Anti-Discrimination Law.
- Protects ALL PEOPLE with a disability that impairs one or more major life activities (such as learning).
- Prohibits discrimination in ANY program that receives Federal \$\$\$\$\$.
- Provides Accommodations to remove discriminatory barriers.
- “504 Plan” removes barriers to learning and educational opportunity.

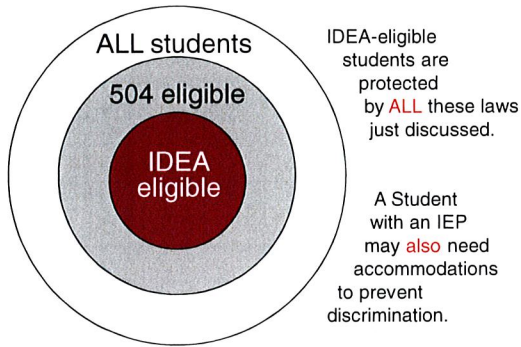


IDEA

Individuals with Disabilities
Education Act / 1975

- Federal Education Law.
- Student must fit at least 1 of 13 categories of disability, AND
- ALSO needs specialized support and instruction to benefit from education.
- Provides an “IEP”: special education plan
- specialized instruction
- supportive related services
- “IEP” must be individualized to meet a student’s unique needs.

Relationship of Protective Laws





IDEA: Federal Special Education Law



IDEA: Purpose


“(c) **Findings.** Congress finds the following: Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self sufficiency...”

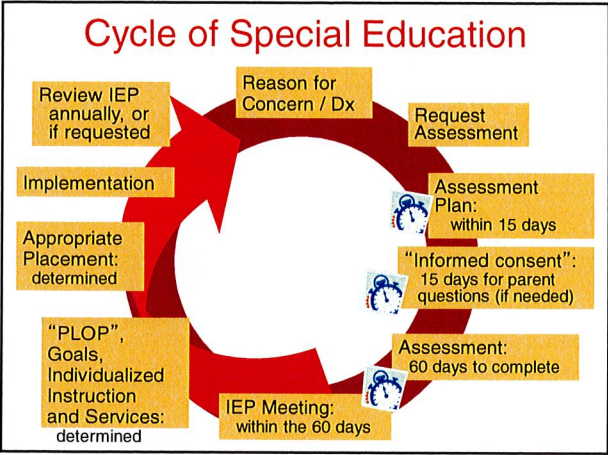
“(d) **Purposes.** The purposes of this title are - (1)(A) to ensure that all children with disabilities have available to them a free and appropriate public education [FAPE]...designed to meet their unique needs AND prepare them for further education, employment, and independent living...”


—IDEA / 20 U.S.C. § 1400

IDEA: 6 Core Principles

1. Appropriate Evaluation/Assessment
2. Free & Appropriate Public Education (FAPE)
3. Individualized Education Plan (IEP)
4. Least Restrictive Environment (LRE)
5. Parent (and student if appropriate) participation in the decision-making process
6. Procedural Safeguards







IDEA: Assessment

To determine the need for Special Education

Special Education Assessment

- Parent WRITE to request Special Education assessment.
- ★ "Request for Assessment" letter to Special Education director, cc others.
- SAFEGUARD: If parent asks verbally, district is obligated to help put request in writing.
- Comprehensively assess "in all areas of suspected disability" to determine need for special education.
- Note – parents may ask also for "504 assessment" in case their child does not qualify under IDEA.



Special Education Assessment

- SAFEGUARD: WRITTEN request triggers strict timeline and an "affirmative obligation" to assess. "CHILD FIND" provision of IDEA law



- 15 calendar days from request: district must provide "Assessment Plan" for parent consent.
- +15 calendar days if needed: parent questions plan.
- 60 calendar days: from parent consent, district evaluates and holds IEP meeting.



Assessment Rights

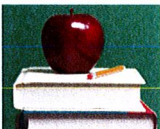
- Parent consent.
- Assess in child's language/mode of communication.
- Variety of tools & strategies must be used to determine:
 - If a child has a disability under IDEA
 - Contents of the IEP document
- Technically sound instruments. Qualified professionals.
- Independent (outside) assessments **must** be considered.
- Triennial (3 year) assessment, or upon "exit"
- Right to request assessment when needed.
- Right to review results in advance. Reports translated when feasible.
- Right to disagree with assessment: "IEE"



IEE: a "2nd opinion"

"Independent Educational Evaluation at public expense"

- Right to disagree with district assessment(s).
- ★ Parent sends WRITTEN notice, or request, for "IEE at public expense".
- "Without unnecessary delay," district must:
 1. Say YES and pay for the IEE [or]
 2. Say NO by filing for a Due Process hearing to prove district assessment was appropriate. Judge decides.
- Independent Educational Evaluations MUST be considered, no matter who paid.
- Qualified evaluator is necessary.
- NO requirement to pick from district list.



IDEA Eligibility

Birth up to age 22*

meets at least 1 of 13 eligibility categories:

- | | |
|----------------------------|------------------------------------|
| 1. Autism | 8. Other Health Impairment |
| 2. Deafness / HH | 9. Serious Emotional Disturbance |
| 3. Deaf-Blindness | 10. Specific Learning Disabilities |
| 4. Hearing Impairment | 11. Speech or Language Impairment |
| 5. Intellectual Disability | 12. Traumatic Brain Injury |
| 6. Multiple Disabilities | 13. Visual Impairment / Blindness |
| 7. Orthopedic Impairment | |

AND who by reason of their disability needs special education and related services in order to benefit from their education. **Determined by the assessments!**

* or sooner if the student earns a full high school diploma



IDEA:

The IEP Meeting

IEP: Required Team

- Student (as appropriate). At 16 **MUST** be invited.
- Parent/Guardian (or person with Educational Rights)
- Administrative Designee*
*Knowledgeable about General Ed curriculum, programs/services/resources. Qualified to supervise the IEP. **AND** with **POWER** to commit district resources.
- At least 1 General Education teacher if student included or **may be** included with/non-disabled students
- At least 1 Special Education teacher
- Persons who conducted assessments or persons qualified to explain assessments.
- Student's related service providers.



IEP: Team rules

- Translators as requested.
- Parent or district may invite others. Person inviting has the right to determine appropriateness.
- Required team member excused **ONLY** when the parent **AND** the district consent.
 - Parent must consent **in writing**.
 - Excused person **must submit PRIOR input in writing**.
- Team member may be excused when her area is not being discussed or modified.
 - Parent must consent **in writing**.
- Teams can meet by alternate ways: Speakerphone, video conference, etc.





IDEA: IEP Components

IEP: Think of it this way!

- Special Education is a **SERVICE**
- brought to the student **through the IEP**
- in order to **CLOSE THE GAP**
- between the student' s **Present Level of Performance (PLOP)**
- and the student' s **Expected Level of Performance**

IEP: Big Questions

- Where is student now? Present Levels Of Performance
- Where is student going? **GOALS/OBJECTIVES**
- How will student get there? **SERVICES & INSTRUCTION**
- How do we know when student/we have succeeded?
MEASUREMENT: What objective DATA will tell us?
- How and when will progress be reported?
PROGRESS REPORTS:
=ACCOUNTABILITY =STAYING ON TRACK.



IEP

Present Levels Of (educational) Performance
Academic **AND** Functional performance*

- How disability affects student involvement and progress in the general curriculum.
- For Pre-K age children, how disability affects participation in appropriate activities
- * Educational performance is a BROAD term specifically selected by Congress
- **NOT** limited to Academic Performance



IEP: Goals

Measurable Annual Goals
Including Academic AND Functional Goals

- To meet INDIVIDUALIZED needs so the student can be involved & make progress in the **General Education curriculum**.
- To meet other INDIVIDUALIZED education-related needs that result from disability.
- For children with severe disability, IEP goals must include "benchmarks" or short-term objectives.



IEP: S.M.A.R.T. Goals

SPECIFIC:
clear descriptions of the knowledge and skills that will be taught and how the child's progress will be measured.

MEASURABLE: you can count or observe it.

ACTION WORDS: "student will be able to . . ."

REALISTIC / RELEVANT: to child's **unique** needs that result from the disability.

TIME-LIMITED: what does the child need to know and be able to do after 1 year of special education? Monitored at regular intervals.



IEP: Goals Drive Services!

- Goals are **THE MAJOR FACTOR** in determining IEP services and placement!
- Goals should be written for **ALL NEEDS** identified by assessment.
- Goals must be "camera ready"
Clear picture of what will be implemented and how.
- Appropriate services, instruction and **intensity** derived from what is needed for the student to make expected/meaningful progress on goals.



Goal: Clarity

- **EXAMPLE:**
Stan will communicate better.
- **REWRITE!**
Stan will increase his sign language vocabulary to 300 words as described in the sign language notebook that travels between home and school by June 30.



Goal: Appropriate Measurement

- **EXAMPLE:**
Timmy will cross the street safely 100% of the time.
- **REWRITE!**
Given a supervisor's direction to look both ways twice before crossing, Timmy will take the supervisor's hand, say "look twice" and look both ways twice, say "safe" when it is safe, and cross the street safely 100% of the time.



IEP: Progress

HOW Progress will be measured.
HOW OFTEN written reports of progress issued.

- Measurements should be objective, not just subjective.
Subjective: measured by "teacher observation"
Objective: measured by "work samples, teacher made tests, STAR tests, data collection."
- **Progress Reports** should "mirror" the goal measurement (show%) & be specific.
NOT: "he appears to be making progress"
BUT: "he knows 75% of sight words now"



IEP: Services

Special Education AND Related Services
and any other individualized supports and services
the student NEEDS to:

- Make progress toward annual goals.
- Make progress in the General Ed curriculum.
- Participate in extracurricular and non-academic activities.
- Be educated & participate with ALL children.
- Not enough to benefit from a service. It must be **needed** to provide **FAPE**.



Related Services Professionals

- Audiology/Interpreter Services
- Braille
- Counseling Services
- Early Identification & Assessment of Disabilities
- Medical Services (To determine eligibility)
- School Health Services (for health-related needs)
- Occupational Therapy
- Orientation & Mobility Services
- Parent Counseling & Training
- Physical Therapy
- Psychological Services
- Recreation
- Rehabilitation Counseling Services
- Social Work Services in School
- Speech/Language Pathology Services
- Transportation
- Interpreter Services
- Transition Specialist
- Vocational Trainer/Counselor

& others as needed. "This is not an exhaustive list."
— US Dept. of Education
IDEA and IDEA regulations

IEP: Extended Services

Specialized Instruction & Services
beyond typical school year or even school day,
if necessary.

Data or assessment shows child will regress
without such services.

- Beyond the normal school year:
Extended School Year (ESY)
- Beyond the normal school day:
Extended School Day (ESD)



IEP: Testing Variations

INDIVIDUALIZED for
State and District standardized tests.

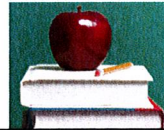
- "Accommodations"
Remove barriers but do not alter what is being tested.
Example: frequent breaks, math problem read aloud
- "Modifications"
Modifications alter what is being tested.
Example: calculator on math test
- If "Alternate Assessment" is needed,
team must define why.
(Ex: CAPA for student w/severe disability)



IEP: Student Accommodations

INDIVIDUALIZED IN THE IEP!
Create equal access and equal opportunity.
Remove discriminatory barriers.

- Timing: More time to complete assignments;
Frequent breaks
- Environmental: Quiet setting; Preferred seating,
Elevator key
- Health: Help with glucose testing;
Nut-free lunch table
- Assistive Technology (AT):
Computer access; FM system, Pencil grip



IEP: Placement

LAST part of IEP Meeting

- Placement is a "set of services" provided to the student.
NOT a **PLACE** for the student to go!
- Protect Least Restrictive Environment "LRE."
TIP: Watch out for "label and sort."
- Appropriate placement is one in which
the student has a reasonable expectation
of achieving IEP goals.
- **Ask for OBSERVATIONS!**
How can parent consent
to placement without observation?



IEP: LRE

Least Restrictive Environment

The extent to which the student will or will not learn with and participate in school with students without disabilities AND WHY.

- % in GenEd / % removed from GenEd.
- **Strong** presumption in IDEA that students with disabilities learn with Non-Disabled peers. Home school. General Ed. Typical classes.
- **ASK:** Where is the data that supports removal from typical learning environment?



IEP: LRE

Least Restrictive Environment


- Student should not be removed from typical classes UNLESS, even with supplemental aids and services, education cannot be achieved satisfactorily
Ex: student does not progress on IEP goals.
- If not, team can consider placements options on the "continuum":
 - Special Day Class
 - Non-public (private/special) school
 - Home/Hospital setting
- **TIP:** Watch out: "student needs small group instruction to benefit from education."



IEP Tips: Build Partnerships

- **Model what YOU expect from others!**
- Protect relationships.
- Ensure all team members have on-going special education specific professional development
- Ask "Help me understand..." questions.
- Be responsive. Follow through.
- Share ideas that support the team.
- Don't communicate only when there are problems.
- Be proactive – not reactive.
- Listen to what is important to parent
- Be empathetic
- Remember: parent is equal member of the TEAM!!





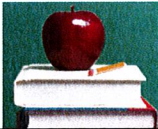
Disputes:

When things go wrong in implementing the IEP.
[or]
When parents and schools don't even agree on the IEP.

Tips: Conflict Preparation

DOCUMENT! DOCUMENT! DOCUMENT!
"If it was never written, it was never said and will never be done."


- Work out problems through **LETTER WRITING**.
See www.wrightslaw.com Search: "Letter to a Stranger"
- **Memorialize all communications IN WRITING**
- **TIP:** Send with proof of delivery
- If Behavioral/Discipline concerns:
be prepared to document every removal from class or school!
- Document conversations and calls:
Date. Time. Who/title. Contact info.
What was discussed. What is understood.
What is expected result. Follow up in writing.



[20 U.S.C. Sec. 1415(b)(3); 34 C.F.R. Sec. 300.503(b); Cal. Education Code Sec. 56500.4.]

Prior Written Notice (PWN)


- District must provide PWN when it **proposes or refuses** to do something that involves the child's identification, assessments, placement, or FAPE.
- PWN must include:
 - (1) Description of action proposed or refused.
 - (2) Explanation of why school proposes or refuses to take that action.
 - (3) Each evaluation, procedure, test, report, etc. the school used as a **BASIS**.
 - (4) Copy of the parent's rights to challenge the action or inaction.
 - (5) Sources of advocacy assistance for parents.
 - (6) Other options the school considered and why they were rejected.
 - (7) Other reasons for the school's action or inaction.



Formal Complaints:
Types


**504: Civil Rights
Discrimination Complaint**

- Complaint describes and provides evidence that:
 - Institution that receives Federal funds discriminated against student on the basis of his/her disability.
 - Educational opportunity is not commensurate with non-disabled peers ("level playing field").
- File **within 6 months** of alleged violation.



**IDEA
Compliance Complaint**

- Describes & provides evidence that district:
 1. Failed to carry out an agreed-to IEP.
Ex: "The 4/8/09 IEP says my child is supposed to receive speech therapy 3X/week, but X School District did not provide any speech therapy from 09/11/09-3/26/10. A copy of the IEP is attached."
 - and/or 2. Violated Procedural Safeguards in IDEA law.
Ex: "Required IEP team did not participate in the 3/26/10 meeting. See attached IEP."
- File within **1 year** of alleged non-compliance.
- **FYI:** Teachers & Staff may file. "Whistle-blowing" protections.



IDEA Due Process Complaint

- "Trial-like" legalized process.

When Parent & School District have **BIG disagreements**:

- whether student is eligible for special education [or]
- whether the IEP services or placement offered provide a "Free and Appropriate Public Education (FAPE)

- Department of Education Hearing Officer resolves.

- Parents or Districts can file.
District has **BURDEN OF PROOF**.

- Must file within **2 years** of alleged complaint



ADR if Due Process Complaint Filed

- **Due Process "Resolution Meeting"**

- New to IDEA 2004
- Required to create an early opportunity to come to agreements, unless BOTH parties waive.

- **Due Process Mediation:**

- Another way/opportunity to resolve issues
- Strictly voluntary
- Different rules from "Mediation-Only"

- Download DREDF "Guide for CA Families: Special Education Due Process and the Resolution Meeting":

http://dredf.org/special_education/dueprocess.pdf

Due Process Mediation

- Voluntary.
- Cannot delay Due Process Hearing.
- Trained impartial Mediator provided.
- No cost to parent.
- Timely & in convenient location.
- Written agreement is binding.
- Confidential info (cannot be used at hearing!).



- **CAUTION:** Different Rules from "Mediation-Only"
Due Process Mediation allows for Attorneys to accompany clients.
Meditation-Only does not allow attorneys or paid advocates.

Due Process Hearing Decisions

- Whether child received Free, Appropriate Public Education (FAPE), and/or
- Procedural Violation: Child did not receive FAPE only if procedural errors:
 - 1) impeded child's right to FAPE.
 - 2) substantially impeded parents' participation in FAPE decisions for their child.
 - 3) caused a deprivation of educational benefit.
- Hearing Officers (HO) conduct DP Hearings and issue decisions.
- Either party may appeal a hearing decision.

QUESTIONS?

