
CONSTRUCTING YOUR CHILD'S INDIVIDUALIZED EDUCATION PROGRAM:

UNDERSTANDING YOUR RIGHTS AND HOW TO OBTAIN SERVICES AND PREPARE FOR IEP MEETINGS

Wendy Watson
Educational Coordinator
The Arc Greater Twin Cities
2445 University Avenue W
St. Paul, MN 55114
Telephone: (952) 920-0855
wendywatson@thearcgutc.org
www.thearcgreatertwincities.org

Neal E. Takiff
Whitted Takiff, LLC
3000 Dundee Road, Suite 303
Northbrook, Illinois 60062
Telephone: (847) 564-8662
Facsimile: (847) 564-8419
ntakiff@whittedtakiffllaw.com
www.whittedtakiffllaw.com

ACRONYM QUIZ!

ADA -

IDEA –

504 –

IEP –

FAPE –

LRE –

CSE –

BIP -

FBA –

WHAT ARE THE LAWS RELATING TO PARTICULAR DISABILITIES?

1. Section 504 of the Rehabilitation Act of 1973
2. Title II of the Americans with Disabilities Act
3. Individuals with Disabilities Education Improvement Act

IEP v. SECTION 504 PLANS

SECTION 504 ELIGIBILITY IS BASED ON A THREE-PRONGED EVALUATION:

1. Does the student have a mental or physical impairment?
2. Is the student substantially limited?
3. Is the student substantially limited in one or more major life activities (this includes learning)?

IEP v. SECTION 504 PLANS

GENERALLY:

Section 504 prohibits discrimination on the basis of disability from all school programs and activities in both public and private schools receiving direct or indirect federal funding

PURPOSE:

To provide equal access and fairness in general education to students with disabilities

PLANS:

Section 504 Plans are much less formal than IEPs

SERVICES:

Generally, direct services are not provided under Section 504 Plans, just modifications/accommodations (related services can be provided)

THE ADA

1. To be protected, one must have a disability
2. “Disability” is defined as:
 - A. A physical or mental impairment that substantially limits one or more major life activities
 - B. A *record* of such impairment, or
 - C. Being regarded as having such impairment
3. Guarantees that people with disabilities have the same opportunities to participate in mainstream American life, including public education

INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT

- Identification
- Free Appropriate Public Education (FAPE)
- Least Restrictive Environment (LRE)
- Procedural Safeguards



School districts are required to:

- Identify students with disabilities living within the district
- Evaluate students in all areas of suspected disability
- Serve students by providing them with FAPE in the LRE

THE IDEA

1. Disability Identified
2. Adverse impact to student's educational performance
3. Student requires special education and related services to address educational needs

THE IDEA (Individuals with Disabilities Education Improvement Act)

- The IDEA provides a broad range of educational services (as opposed to accommodations) to students with disabilities.
- Children eligible under the IDEA, receive an IEP, or Individualized Education Program.
- Educational progress is monitored through annual goals and objectives.
- Specialized instruction is provided by certified special education trained staff.
- Educational placements are made based on the child's educational needs and can include day schools outside of the public school or residential placements.



FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

- Provided through the Individualized Education Program (IEP) designed to provide educational benefit to the student
- Includes necessary related services
- Includes transition services for students in grade 9 and older

“EDUCATION”

- FREE
- APPROPRIATE
- PUBLIC
- EDUCATION



CLEARING A PATH
FOR PEOPLE WITH SPECIAL NEEDS
CLEARS THE PATH FOR EVERYONE!



EDUCATION



THE ROWLEY CASE – ESTABLISHING EDUCATIONAL BENEFIT

- Standard for Special Education Services – “Some educational benefit”
 - Not the MAXIMUM, not the bare minimum
 - Not a “Cadillac,” just a serviceable “Chevy.”
- Two-Prong Legal Analysis
 1. PROCEDURAL: Has the school district complied with the procedural requirements of the IDEA?
 2. SUBSTANTIVE: Is the IEP “Reasonably Calculated” to confer educational benefit?



EDUCATION



- Disability (eligibility) category should NEVER drive services
- IEP must be *individualized* – Districts must NEVER state that they provide “set” services or that they “don’t provide” a requested service
- “Consider” all requests

FAPE

- A free and appropriate public education (“FAPE”) must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school

Endrew F. v. Douglas County School District **(U.S. Supreme Court, March 22, 2017)**

The 10th Circuit affirmed the administrative decision and held that a child's IEP is adequate so long as it is calculated to confer an "educational benefit [that is] merely...more than *de minimus*."

The 10th Circuit found Endrew's IEP to be "reasonably calculated to enable him to make *some* progress."

The 10th Circuit found that Endrew had received a FAPE.

Endrew F. is the most recent US Supreme Court case to address the IDEA and what it means to receive a FAPE.

Endrew F. v. Douglas County School District **(U.S. Supreme Court, March 22, 2017)**

The U.S. Supreme Court issued a unanimous decision, vacating the 10th Circuit's decision.

The degree of progress must be appropriate in light of the child's circumstances.

- For a child fully integrated in the regular classroom, and IEP typically should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.
- If not fully integrated in the regular classroom, the child's IEP should be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in regular classrooms.

The standard under the IDEA is more than “de minimus” progress.

Endrew F. is the most recent US Supreme Court case to address the IDEA and what it means to receive a FAPE.

PRACTICAL APPLICATION OF SPECIAL EDUCATION LAW

HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- Child Find responsibilities – affirmative duty
- Referral for initial Case Study Evaluation (“CSE”)
 - May be made by a parent or a public agency (i.e. employee of school district, a State agency, another State agency, or a community service agency)
 - For any child suspected of having a disability
 - RTI does not delay District’s need to respond to a parent request for CSE
 - NOTE – typically, referrals are made by school district, parents, or professionals with knowledge of the child

HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- District has **14 school days** to respond to parents requesting case study evaluation
- Can use screening data and conduct preliminary procedures to assist in making determination
- If decline to do a CSE – must provide notice **in writing with an explanation**

HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- Parents can request a due process hearing to contest District's refusal to conduct CSE
- If District agrees to CSE, parent must sign consent for evaluation (@ domain meeting)
- Date parents sign starts the 60 day timeline for District to complete CSE (this may vary by state)

PROCEDURAL SAFEGUARDS

- Ensure parental participation in decision making
- Establish timelines for evaluations and revisions of IEP
- Provide a framework for resolving disputes

PRIOR WRITTEN NOTICE (PWN)

A parent must receive prior written notice at a reasonable time before the district proposes or refuses to initiate or change the identification, evaluation, educational placement or the provisions of FAPE to a child with a disability.

EVALUATION

- Comprehensive, non-discriminatory assessment of strengths & needs in all areas of concern
- Uses a variety of testing methods

IF PARENTS DISAGREE WITH RESULTS

- May request an Independent Educational Evaluation (IEE)
- IEE conducted by a qualified examiner not employed by the public agency responsible for educating the child

HOW TO OBTAIN SPECIAL EDUCATION SERVICES

DOMAIN MEETING –

- IEP team determines relevant domains for CSE
- All meetings must be scheduled at a mutually convenient time for parents and school
- 8 domain categories (health, vision, hearing, social emotional status, general intelligence, academic performance, communication status, motor abilities)

HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- Parental revocation of consent can be done in writing or verbally
- If parents verbally revoke consent, District must confirm revocation in writing within 5 days

IS A DENIAL OF A CSE JUSTIFIED?

- Grades
- Behavior
- Peer relationships
- Emotional well being
- Attendance
- Home Issues
- Court Involvement
- Drug and Alcohol Issues
- Hospitalizations

HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- Conference is then held to determine eligibility
- If eligible, an IEP is written for the child within 30 days of eligibility determination (can be immediately following)
- Initial placement decision made
- School must wait 10 days before placement and services are made (parents can waive this waiting period)

ELIGIBILITY CATEGORIES – 34 C.F.R. 300.8

- Disability: IDEA identifies 12 disabilities as the basis for students' eligibility for special education and related services. These disabilities include mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities.



"MY FATHER SAYS, THESE INTELLIGENCE TESTS ARE BIASED TOWARD THE INTELLIGENT."

HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- Eligibility is based on federal and state definitions of a disability
- The decision is made by a majority of the IEP team
- The existence of a DSM diagnosis does not necessarily mean a child will be eligible for services

IEP TEAM MEMBERS



- Parents
- At least one regular education teacher, if the student is or will be participating in regular education
- At least one special education teacher or provider
- An administrative representative

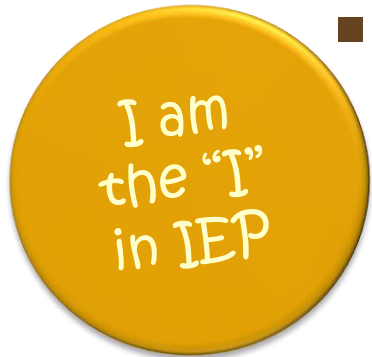
IEP TEAM MEMBERS



- An individual who can interpret the evaluation
- Other individuals requested by the school district or parents who have knowledge or special expertise regarding the student
- The student (as determined by the parent)

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- Written plan
- Developed by the student's team
- Outlines plan of service



IEP: INDIVIDUALIZED & PERSONALIZED

- The “I” in IEP stands for individualized. This means that the document must be individually and personally tailored to meet the identified needs of the student with a disability. In order to grasp and translate the full meaning of the term individualized into the IEP document, the document’s author(s) must have a full and complete understanding of the comprehensive case study evaluation.

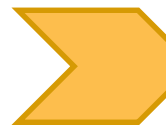
THE IEP IS FOUR THINGS

1. It is a management document that sets forth what resources the school district will make available to the student;
2. It is a communication document, which clarifies what the student is entitled to based on the exceptional needs identified in the case study evaluation;
3. It is an accountability document, which specifies the individualized goals, benchmarks or short-term objectives, objective measures of progress toward goal attainment, and the schedule for measuring and reporting goal attainment progress; and
4. It is a record of a meeting.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- PLAAFP (Present Level of Academic Achievement & Functional Performance)
- Statement of measurable annual goals including short term objectives

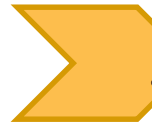
S.M.A.R.T. Goals



Specific



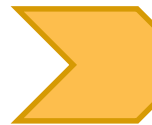
Measurable



Action Words



Realistic & relevant



Time-limited

OBJECTIVES



- Steps to the goal
- Measure of progress towards the goal
 - Must keep and be able to show data

SPECIAL EDUCATION SERVICES

- Designed to meet the unique needs of the student
- Must include direct services and may include indirect & related services
- Amount & type of services based on individual student's needs

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- Statement of any individual accommodations in the administration of state or district wide tests
- Beginning at grade 9, a statement of transition service needs

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- Statement of how the student's progress will be measured & reported
- Statement of the need & responsibilities of a paraprofessional
- Accommodations and Modifications
- Extended School Year Services (ESY)

TRANSITION SERVICES



- The time to plan for the future & build a resume of life skills
- Help make a successful transition from school to adulthood
- Prepare a student for life after high school
- During the 9th grade year the plan must address student's transition needs

TRANSITION SERVICES

- Student must be invited to the IEP meeting if transition services are addressed
- Student gives input on plans & goals
- School must ensure student preferences & interests are addressed

A photograph showing four hands, two from the top and two from the bottom, placing blue puzzle pieces into a larger structure. The puzzle pieces are interlocking, and the hands are positioned as if they are about to complete a section.

RELATED SERVICES

- Audiology
- Counseling
- Early identification & assessment
- Interpreting
- Medical services
- Occupational therapy
- Orientation & mobility services
- Parent counseling & training
- Physical therapy

A close-up photograph showing four hands, two from the top and two from the bottom, carefully placing blue puzzle pieces together. The puzzle pieces are interlocking, and the hands are positioned to complete the assembly.

RELATED SERVICES

- Psychological services
- Recreation
- Rehabilitation counseling
- School health services & school nurse services
- Social work services
- Speech-language pathology
- Transportation

IEP – NOW WHAT?

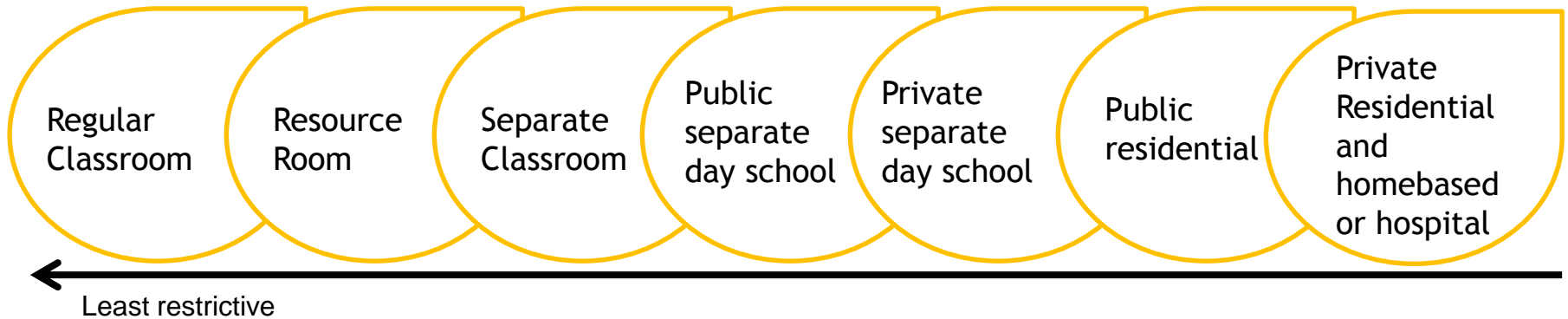
- Annual review of IEP
- Three year re-evaluation (triennial)
- Transfer Students (must provide comparable services until the district adopts prior IEP or develops, adopts and implements a new IEP)

LEAST RESTRICTIVE ENVIRONMENT

- What is LRE?
- What is the range of educational placements?
- Mainstreaming? Inclusion? Is it required? When?

LEAST RESTRICTIVE ENVIRONMENT (LRE)

- Students should be educated, to the maximum extent possible, with peers without disabilities
- Districts must make available a continuum of placement options



7th CIRCUIT TEST – BETH B.

- “The Act itself provides enough of a framework for our discussion; if Beth's education at Lake Bluff Middle School was satisfactory, the school district would be in violation of the Act by removing her. If not, if its recommended placement will mainstream her to the maximum appropriate extent, no violation occurs.”

SATISFACTORY?

- Time in class
- Progress toward goals
- Where is learning occurring
- Behaviors
- Accessing curriculum/mainstream environment

TDS vs. HOME SCHOOL

- Can the student's needs be met in the mainstream (home school) setting, *i.e.* will he/she get a satisfactory education?
 - What benefit will the child receive from access to non-disabled peers
 - Can the child access that benefit
 - What level of related services does the student need

TDS vs. HOME SCHOOL

- Does the District have the appropriate educational services to meet the student's needs (life skills, multisensory classes, Autism services)
- If already in special education, has the student met his/her goals and objectives
- Private evaluations? Recommendations?
- Discipline, attendance (school refusal anxiety)
 - In school stronger evidence than out of school...

HOW DO YOU DEFINE PROGRESS?

- Start with the Case Study Evaluation
- Goals must be measurable
- Progress updates
- Annual reviews
- Reevaluations
- Drafts of reports/goals
- School Observation

GRADUATION

The IEP team determines when & how a student receiving special education services will graduate



GRADUATION

A student receiving special education services can graduate either based on completion of standard graduation requirements or completion of his/her individual IEP goals



DIPLOMA

Regular high school diploma identical
to diploma granted to a student
without a disability



COMMUNICATION

- Remember you can call an IEP meeting at any time
- Keep the focus on the student
- Be careful what you say in email

COMMUNICATION

- Take notes of conversations. Write down the date of your contact & describe the conversation
- Call the special education director to voice your concerns

WHEN DO I NEED TO BRING IN AN ATTORNEY?

ATTORNEY INVOLVEMENT CAN TAKE MANY DIFFERENT FORMS:

- Ensure appropriateness of services
- Dispute about placement on the LRE
- To review documents
- To work with you “behind the scenes”
- Because of a disciplinary infraction and what will happen next
- Various other reasons

HOW TO PREVENT AND RESOLVE DISPUTES

Do not allow anger to cloud better judgment –
IT USUALLY ISN'T PERSONAL!!

Creative ideas to reduce tension –
Change contact people

Neutral third party evaluator (“IEE”)

Mediation

ALTERNATIVE DISPUTE RESOLUTION

- Conciliation conference
- Mediation
- Facilitated IEP meeting
- Complaint

FUNCTIONAL BEHAVIOR ASSESSMENT ("FBA")?

- Process of gathering information
- About factors that reliably predict problem behavior
- For the purpose of developing an effective BIP (behavior intervention plan)

IN OTHER WORDS, YOU ARE LOOKING FOR . . .

- Behavior and its antecedents
- That represent the child's unsuccessful attempt to respond to the environment, such as
- "Yelling and screaming is one way to get attention"
- You are not looking for "invisible forces" within the student

DUE PROCESS HEARING

DUE PROCESS

- Parents are entitled to request a due process hearing whenever they have a complaint regarding the evaluation, identification, placement or the provision of a FAPE regarding their child
- 2 year statute of limitations to filing a due process request
- Third Circuit case (Pennsylvania) may have an impact . . .

TOP 5 TIPS FOR PARENTS

- **Do Your Homework**
- **Stay Organized**
- **Stay Focused, Brief, And Realistic**
- **Use Reputable Experts**
- **Do Not Be Intimidated**
- **And a bonus – document, document, document!**

QUESTIONS?



THANK YOU!!