

Special Education Law

Mark W. Voigt, Esquire
Plymouth Meeting Executive Campus
600 West Germantown Pike
Suite 400
Plymouth Meeting, PA 19462
(610) 940-1709

Mwvoigt2@aol.com

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PRESENTATION OUTLINE

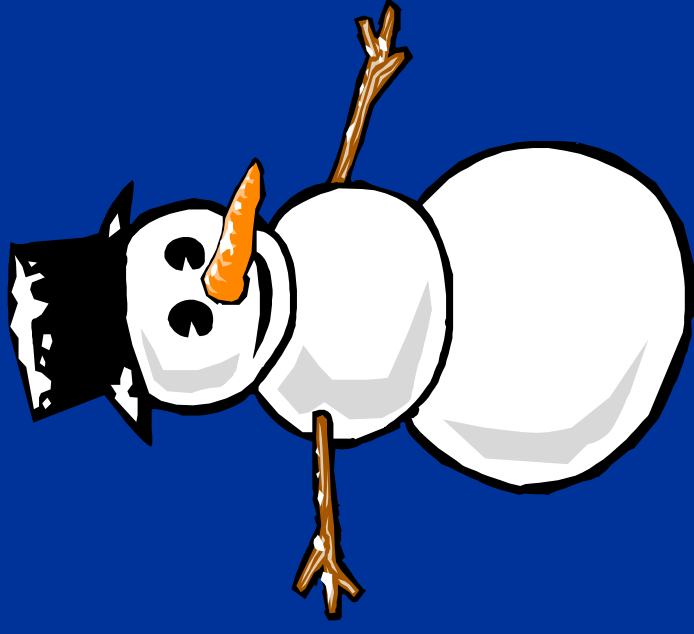
- I. Background
- II. Accessing Services- The Multidisciplinary Evaluation
- III. The IEP
- IV. Dispute Resolution
- V. Damages

I. Background - Individuals With Disabilities Education Act (IDEA)



Before the IDEA

- No protections for kids with special needs
- No funding = no special education
- Waiting lists



1975- IDEA Enacted

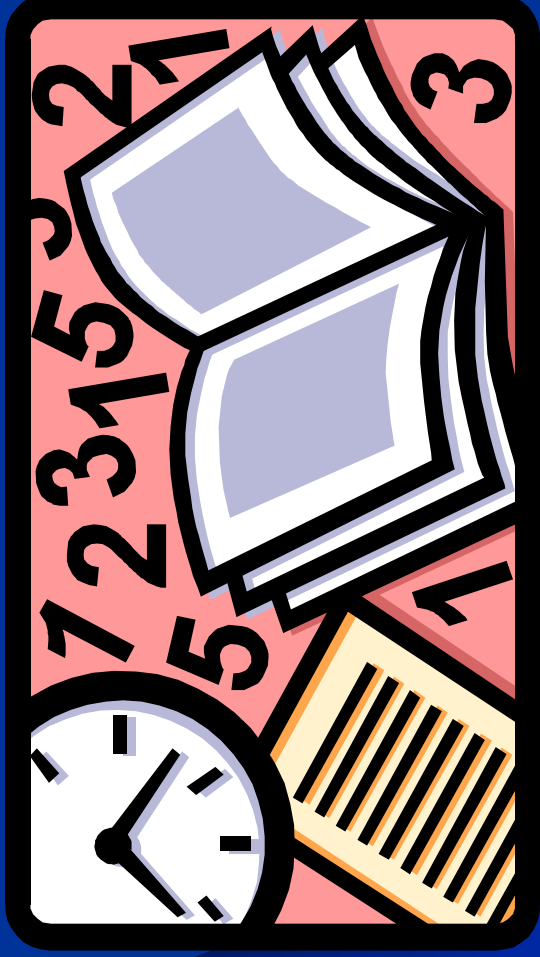
- Guaranteed each child with “special needs” a “Free, Appropriate Public Education (“FAPE”)
- Mandated federal funding (40%)



2004 – IDEA Reauthorization

- Mostly minor changes
- Employ “highly qualified teachers”
- Use “research-based methods”
- “Ability/ achievement discrepancy”
now “response to intervention”
- Parents pay District’s attorney’s
fees if “frivolous” claim

DEFINITIONS



“Free Appropriate Public Education” (“FAPE”)

- Special education
- Related services
- Children with disabilities
- Provided in “least restrictive environment”
- Transition services

“Special Education”

- Specially-designed
- Free of charge
- Tailored to meet child’s individual needs
- Regardless of claimed “unavailability of services”

“Related services”

- Transportation
- Speech, language, audiology
- Psychological/ counseling
- Therapeutic recreation
- Assistive technology
- Parent counseling & training

“Child with disabilities”

- ◆ Evaluated by licensed school psychologist
- ◆ Determined to have a disability
- ◆ Needs special services

Examples of covered disabilities

- ◆ Mental retardation
- ◆ Hearing impairment
- ◆ Speech/ language
- ◆ Visual impairment/ blindness
- ◆ Serious emotional disturbance
- ◆ Developmental delay
- ◆ Other health impairment or learning disability

“Early Intervention”

- Goal: identify and treat problems or delay as soon as possible
- Birth to 3 -- Dept of Public Welfare
- Age 3 to 5 – Bureau of Special Ed
- Eligibility based on:
 - ◆ “qualifying developmental delay”
 - ◆ “demonstrated need” for services

Least restrictive environment “LRE”

- Educate in regular classroom “to maximum extent possible”
- “Continuum of Placement”
- Use LRE “as a sword”
- Gaskin settlement

“Transition services”

- Includes:
 - ◆ Early intervention transition
 - ◆ Pre-school transition
 - ◆ Post-secondary transition
- Goals
 - ◆ Smooth inter-agency transfers
 - ◆ Parental involvement

II. Accessing Services: The Multidisciplinary Evaluation “MBE”



Initiation of MDE

- Parents may request (once per school term)
- Teacher may recommend
- District must evaluate if suspect special needs
- Free of charge
- Parental notice & permission

Who participates in MDE?

- Parents
- Regular education teacher
- Special ed teacher
- Curriculum supervisor
- Others with expertise

Comprehensive Evaluation Report (CER)

- Written product of MDE
- Questions answered:
 - ◆ Specific learning disability or health impairment?
 - ◆ Need special education?
 - ◆ Present levels of educational performance
 - ◆ Need related services?
- Must reevaluate every 3 years

Independent Educational Evaluation (“IEE”)

- Qualified independent examiner
- Selected by parents
- School must provide information
- Request District payment in writing
- School must:
 - ◆ Pay for IEE
 - ◆ Initiate due process

III. The Individualized Educational Program (IEP)



What is an IEP?

- “Road map”
- Clearly understood, written statement of:
 - ◆ Where child is now;
 - ◆ Where he is going;
 - ◆ Means to get there

Elements of IEP



Present Levels of Educational Performance (“PLEP”)

- Starting point for upcoming instruction
- Should include:
 - ◆ More than just grades
 - ◆ Curriculum-based measures
 - ◆ Nationally normed test results

Annual Goals (“AG”)

- Child specific
- Jargon-free
- Measurable
- Sufficient to determine “meaningful educational progress”

Specialty-Designed Instruction

- Tailored to child's unique needs
- Not dependent on:
 - ◆ District policies
 - ◆ Staffing concerns
 - ◆ Funding availability

Related Services

- Services required for child to achieve meaningful educational benefit
- Examples:
 - ◆ Transportation
 - ◆ OT/ PT
 - ◆ Speech/ language therapy
 - ◆ Therapeutic recreation

Assistive Technology

- District must supply if necessary for FAPE
- Examples:
 - ◆ Specially-adapted chairs
 - ◆ Picture boards for communication
 - ◆ AlphaSmart® or similar computer for note-taking

Parental rights

- 10 days notice of IEP meeting
- Convenient date and time
- Explanation of procedural rights
- Consent before:
 - ◆ MDE
 - ◆ initial placement
 - ◆ Disclosure of student information

Notice of Recommended Assignment (NORA)

- Explains child's placement
- Sets forth procedural rights
- Parents have 10 days to respond
- If parents reject -- mediation or due process

IV. Dispute Resolution



Mediation

- Voluntary
- Arranged through Office for Dispute Resolution (ODR)
- Attorneys not permitted
- Written agreements binding
- Discussions confidential

Due Process Hearing

- Impartial hearing officer
- Resolution meeting
- Witness testimony under oath
- Right to counsel
- Written decision within 15 days

Special Education Appeals Panel

- 3-member panels
- Hears appeals from hearing officer's decision
- Decision within 30 days

Appeal to Federal or State Court

- 90 Days to appeal
- No right to jury trial
- Court may allow additional evidence
- Administrative decision persuasive but not binding

V. Damages



Compensatory Education

- Remedy for past denial of FAPE
- Two year look-back
- Supplements regular school-year offerings
- Student may use until graduation
- Examples:
 - ◆ Summer school
 - ◆ Tutoring

Tuition Reimbursement

- More restrictive placement
- Ten days' notice before placement
- Must show:
 - ◆ lack of meaningful educational progress
 - ◆ District cannot educate student even with supplementary aids and services

Expense reimbursement

- OT/ PT if “education-related”
- Transportation
- Speech/ language therapy
- Psychotherapy
- Cost of IEE
- MAYBE expert witness fees

Attorneys' fees

- District pays if parents “prevail”
 - ◆ Results met parents’ goals
 - ◆ Child achieved benefit from case
 - ◆ Partial success = partial recovery
 - ◆ Requires “order”
- Parents pay District’s fees if “frivolous” claim

Damages not recoverable:

- Money damages
- Pain and suffering
- College tuition
- Medical vs. “educational” services