

# Special Education Law

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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

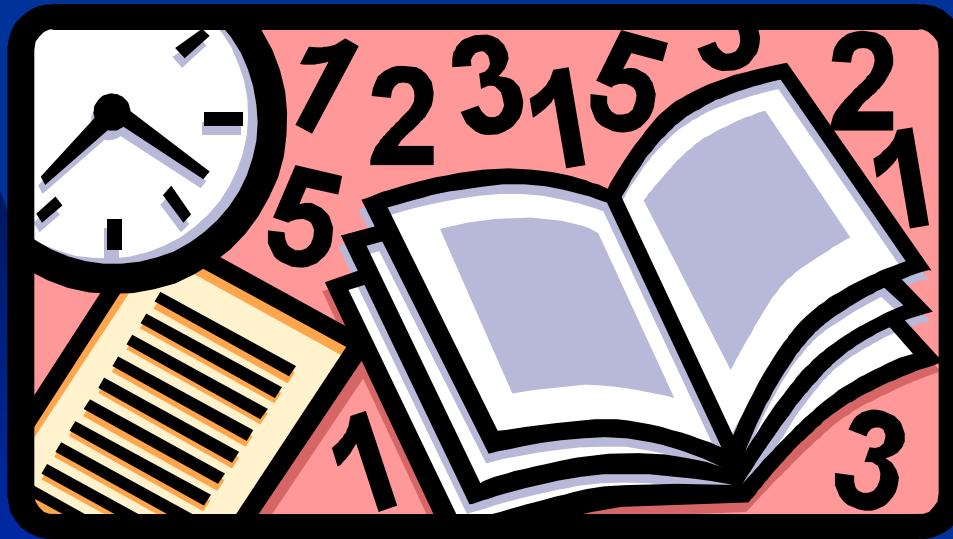
- Guaranteed each child with “special needs” a “Free, Appropriate Public Education (“FAPE”)
- Mandated federal funding (40%)



# 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 “MDE”





# 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”

# Specially-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