

**NAVIGATING A COMPLEX WORLD:
SPECIAL EDUCATION LAW
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PURPOSE

- *The purpose of this chapter is to implement Part B of the Individuals with Disabilities Education Act (IDEA) and Education Article, Title 8, Subtitles 3 and 4, Annotated Code of Maryland, which assure a **free appropriate public education (FAPE)** for all students with disabilities, birth through the end of the school year in which the student turns 21 years old, in accordance with the student's **Individualized Education Program (IEP)**.*

ASSESSMENTS

- A **variety of assessment tools** and strategies shall be used to gather sufficient relevant functional, cognitive, developmental, behavioral, academic, and physical information, **and information provided by the parent**

ASSESSMENTS

- A single procedure may not be used as the sole criterion for determining;
- (a) If a student is a student with a disability; and
- (b) An appropriate educational program for a student

IEP MEETING

- A public agency shall take steps to ensure that one or both of the parents of the student with a disability are present or are afforded an opportunity to attend and participate at meetings of the IEP team.

- (2) The parent of a student with a disability shall be provided with written notice in advance of the meeting. Reasonable notice shall be at least 10 days in advance of the meeting,

- School personnel shall provide to parents, at least 5 business days before a scheduled meeting, a copy of all assessments, reports, data charts, draft IEPs, or other documents the team plans to discuss at that meeting, at least 5 business days before the scheduled meeting.

- Efforts to obtain the participation of the parent include:
- (a) Scheduling the IEP meeting at a mutually agreed on time and place

ELIGIBILITY

IDEA – a child with a disability in one of the identified areas “and who, by reason thereof, needs special education and related services.”
(See pages 9-11)

§504 ELIGIBILITY

- a physical or mental impairment that substantially limits one or more major life activities, or
- A record of such an impairment, or
- Being regarded as having such an impairment

IEP

- The IEP for a student with a disability shall include:
- **Measurable** academic and functional annual goals, including benchmarks or short-term instructional objectives
- The special education and related services and supplementary aids and services, based on **peer-reviewed research** to the extent practicable, including staffing support, to be provided to the student, or on behalf of the student

- An IEP shall include how a parent is to be regularly informed of the:
- (a) Student's progress toward the annual goals; and
- (b) Extent to which the progress is sufficient to enable the student to achieve the goals within a year

LRE

- To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled; and
- Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

PRIOR WRITTEN NOTICE

- Consistent with 34 CFR §300.503, a public agency shall provide written notice to the parent of a student with a disability before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student.

PRIOR WRITTEN NOTICE

- The notice shall include:
- (1) A description of the action proposed or refused;
- (2) An explanation of why the public agency proposes or refuses to take the action;
- (3) A description of the options the public agency considered and the reason the options were rejected;

PRIOR WRITTEN NOTICE

- (4) A description of each assessment procedure, test, record, or report the public agency uses as a basis for the proposal or refusal;
- (5) A description of any other factors relevant to the proposed or refused action

**INDEPENDENT EDUCATIONAL
EVALUATION**

- If a parent disagrees with the evaluation obtained by the public agency, the parent may request an independent educational evaluation at public expense.
- (2) When a parent requests an independent educational evaluation at public expense, the public agency shall:

- (a) Provide an independent educational evaluation; or
- (b) File a due process complaint in accordance with Regulation .15C of this chapter, to demonstrate that the public agency's evaluation is appropriate.

MEDIATION

- A parent of a student or the public agency may request mediation when there is a dispute about any matter related to the identification, evaluation, or educational placement, or the provision of FAPE to a student.
- (2) Mediation is voluntary on the part of the parties.

DUE PROCESS HEARING

- A parent or a public agency may file a due process complaint on any matter related to the identification, evaluation, or educational placement, or the provision of FAPE to a student with a disability

RESOLUTION SESSION

- The public agency shall convene a meeting with the parent and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process complaint before being provided the opportunity for an impartial due process hearing.

STAY PUT

- Student's Status During Proceedings. Unless the parent and the public agency agree on an alternative placement, the student shall remain in the present educational placement during the pendency of an administrative or judicial proceeding

ATTORNEYS' FEES

- In an action or proceeding under this section, courts may award reasonable attorneys' fees to the prevailing party

TREND

FEWER STUDENTS IDENTIFIED AS IDEA
ELIGIBLE =
MORE STUDENTS IDENTIFIED AS §504
ELIGIBLE

ADA Amendments Act January, 1, 2009

- Overruled two Supreme Court decisions which limited ADA coverage: *Sutton v. United Airlines* 527 U.S. 471 (1999); and *Toyota Motor Mfg. v. Williams*, 534 U.S. 184 (2002)
- The definition of disability "shall be construed in favor of broad coverage of individuals."
- "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active"

ADA Amendments Act

- The determination whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures except for ordinary eyeglasses or contact lenses.

REMEDIES

- *Lyons v. Smith*, 829 F. Supp. 414 (D.D.C. 1993)
District court upheld hearing officer's decision that child with ADHD was not eligible under IDEA but reversed decision declining to order the child be given special education under §504.

- *Mark H. v. Lemahieu*, 513 F.3d 922 (9th Cir. 2008)
Hearing Officer found that the school district denied a disabled student a FAPE and ordered prospective relief. Parents sued in district court for damages under §504 for the period of time preceding the remedial action. District court entered judgment for school district. Ninth Circuit overturned the decision and remanded for determination whether the student received an education equivalent to that received by non-disabled students.
