

DISABILITY LAW BRIEFING

by
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INTRODUCTION

The Individuals with Disabilities Education Act (IDEA) imposes on a board of education, among other things, the obligation to make every reasonable attempt to enter into a “partnership” with the parents of a student with disabilities to educate the student. For the school district, this partnership involves a complicated set of legal obligations which require it to maintain a continuing relationship with the parents throughout the student’s school career. Absent a significant event, such as the student’s family moving out of the district, the IDEA forges an “educational marriage” between a district and the parents of a student with disabilities--without the possibility of divorce! The parties must make every reasonable attempt to maintain that relationship, even if they have disputes and some of those disputes require three-party resolution such as mediation.

District’s Obligation to Advocate For Students With Disabilities

The district not only is legally obligated to affirmatively find students who possibly have disabilities, it also must evaluate those students to determine whether they do have disabilities and, if so, establish their areas of need. If a student is found to have a disability, the district must make every reasonable effort to meaningfully involve the parents in the cooperative development of an IEP to establish, among other things, the programs and services necessary to meet that student’s unique needs.

By placing a variety of affirmative obligations on the district, the IDEA and the regulations promulgated pursuant to it have created a dual advocacy law. Under this law,

both district staff and parents have the right and corresponding responsibility to advocate on behalf of the student with disabilities with regard to whether the student should be determined to be eligible for special education programs and services and, if so, what those programs and services should be. Sometimes, districts and their staff fail to recognize their affirmative obligations under the IDEA or, if they do recognize them, fail to act on them.

IDEA: AN OVERVIEW

Historical Framework of the IDEA

The IDEA was an attempt to codify the judicial decisions of *Pennsylvania Association for Retarded Children v. Commonwealth* and *Mills v. Board of Education of District of Columbia*. Both cases held that children with disabilities were to be given access to adequate, publicly supported education and struck down local statutes and regulations that expressly excluded disabled individuals from education and training programs.

In 1966, Congress first addressed the lack of educational services for children with disabilities when it amended the Elementary and Secondary Education Act of 1965 to establish a grant program for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects...for the education of handicapped children.

In 1970, the program was repealed by the Education for the Handicapped Act, Part B of which established a grant program similar in purpose to the repealed legislation.

In 1974 federal funding was greatly increased for education of the disabled. For the first time, the law required recipient states to adopt a goal of providing full educational opportunities to all handicapped children. A year of study produced the Education for All Handicapped Children Act of 1975.

Rights Created by the IDEA

A. Children Covered under the Statute

Children with disabilities including: mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; and specific learning disabilities. It must be determined that a child with one of these impairments requires special education and related services based on the impairment.

Age of eligibility is defined under the IDEA to include all children with disabilities between the ages of 6 and 18.

B. Important Terms Defined

1. Free Appropriate Public Education

The IDEA defines the term to include special education and related services that “(A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program.”

2. Special Education and Related Services

Special education is defined as instruction, at no cost to parents or guardians, which is specially designed to meet the unique needs of a child with a disability. Related services are defined by the IDEA to include transportation and other developmental, corrective or supportive services. Important to the definition of related services is the requirement that the service be necessary to assist a child with a disability to benefit from special education.

3. Individualized Education Program

The IEP is the primary legal document which serves as the focus of most litigation under the IDEA. It is the document that sets forth the free appropriate public education that is to be or has been offered to a child with a disability. An IEP is a written document prepared for a child with a disability which must include: a statement of the child's present levels of educational performance; a statement of annual goals, including short-term instructional objectives; a statement of the specific educational services to be provided and the extent to which such child will be able to participate in regular educational programs; a statement of the needed transition services for students beginning no later than age 16; the projected date for initiation and anticipated duration of such services; and appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

Each school is responsible for initiating and conducting meetings for the purpose of developing, reviewing and revising the IEP of a child with a disability. A meeting must be held within 30 calendar days once a determination is made that the child needs special education and related services. The school must ensure that the following persons attend each meeting concerning a particular child; a representative of the school, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education; the child's teacher; one or both of the child's parents' the child, if appropriate; and other individuals at the discretion of the parent or agency.

C. Procedural Safeguards Provided by the Statute

1. Generally

The IDEA specifically requires state and local educational agencies to establish and maintain procedures to assure that children with disabilities and their parents or guardian are guaranteed procedural safeguards with respect to the provision of a free appropriate public education.

2. Due Process Hearing

The IDEA provides that whenever a parent or a guardian initiate a complaint the parents or guardian shall be afforded the opportunity for an impartial due process hearing. Due process hearing officers are required to render a final decision within 45 days after the receipt of a request for a hearing. Unless the state or local educational agency and the parents or guardian otherwise agree, the child is to remain in his or her then-current educational placement or, if applying for initial admission to a public school, shall, within the consent of the parents or guardian, be placed in a public school program until all such proceedings have been completed. The statute provides that a court in any action or proceeding may award reasonable attorneys' fees to the parents or guardian who is the prevailing party.

D. Procedural Protections Provided by the Regulations

1. Prior Written Notice

Written notice must be provided to the parents of a child with a disability within a reasonable time before the public education agency proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child.

2. Prior Parental Consent

Parental consent must be obtained before an educational agency conducts a preplacement evaluation or before initial placement of a child in a program providing special education and related services. When a parent refuses consent, the state may evoke due process.

3. Evaluation Procedures

Before a district takes any action toward the initial placement of a child into a special education program, it must conduct a full and individual evaluation of the child's educational needs. Testing and evaluation materials and procedures must be selected and administered so as not to be socially or culturally discriminatory. Tests must be administered in the child's native language or other mode of communication. All tests must be validated for the specific purpose for which they are used and must be administered by trained personnel in conformance with the instructions provided by the producer of the test or other evaluative instrument. Tests and other evaluative materials must be designed to assess specific areas of educational need, rather than to provide a single general intelligence quotient score. They must accurately reflect a child's aptitude or achievement level. The child must be assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.

4. Right to an Independent Educational Evaluation

When a parent disagrees with an evaluation conducted by the school, the school may initiate a due process hearing to show that its evaluation is appropriate. If a parent obtains an independent evaluation at his or her expense, the results of the evaluation must be considered by the school in any decision made with respect to the provision of FAPE to the child.

5. Confidentiality of Information

The regulations require schools to permit parents to inspect and review all educational records related to their children that are collected, maintained or used by the school under the IDEA. Parents have the right to request amendment of educational

records if they believe that information contained in the records is inaccurate or misleading or violates the privacy or other rights of their child. They have the right to place their own statement in the records which comments on the information or sets forth their reasons for disagreeing with the school.

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of the school or used for any purpose other than those contemplated by the IDEA and the regulations.

E. Determination of Free Appropriate Public Education

1. United States Supreme Court Standard

A state has provided a free appropriate public education when it has provided personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court noted that instruction and services are considered “adequate” if; they are provided at public expense and under public supervision and without charge; they meet the state’s educational standards; they approximate the grade levels used in the state’s regular education; and they comport with the child’s IEP.

The Court concluded that the IDEA does not require a state to maximize the potential of each disabled child commensurate with the opportunity provided to nondisabled children. Rather, the education to which access is provided under the IDEA is to be “sufficient to confer some educational benefit” on the disabled child.

The IDEA reflects a clear Congressional intent to provide more than “trivial” or de minimis” educational benefit.

The courts are clear that even the most severely disabled child is entitled to receive a free appropriate public education and that IDEA encompasses a “zero reject” philosophy. The Act does not require a school to maximize a child’s potential for learning. It does provide a “basis floor of opportunity” for the disabled, not a “trapdoor” for the severely disabled.

2. The Issue of Instructional Methodology

In defining FAPE, the Supreme Court was clear that courts should not “substitute their own notions of sound educational policy for those of the school authorities which they review. With this in mind, several courts have addressed the issue of whether parents are entitled to choose the particular methodology by which instructional services are delivered. Parents do not have a right under the IDEA to compel a school to provide a specific program or employ a specific methodology in providing for the education of a disabled child.

3. Violations of Procedural Safeguards

Several courts have found that procedural violations alone are sufficient to find a denial of FAPE. These include a district’s failure to provide parents with sufficient notice of their procedural right to contest placement and failure to advise them of the possibility of public funding, failure to convene an IEP conference and the failure to provide written notice of a proposed change in placement. Other fatal procedural violations have included the district’s failure to conduct multidisciplinary reviews and placement advisory committee meetings. When parents are not provided sufficient input into the development of an IEP and placement determinations are made outside of the IEP process, a court likely will find a procedural violation sufficient to warrant relief to the parents or child without regard to whether the district can actually provide an appropriate education to the child.

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