

ABC's of Special Education

LA Law Library Legal Services Fair

Pro Bono Week
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www.DRLCenter.org

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Goals for Today

- ▶ To gain a basic understanding of special education rights and services available in California
- ▶ To learn basic advocacy strategies to help children with disabilities
- ▶ To identify helpful resources

Special Education & The Law

- ▶ Americans with Disabilities Act (ADA)
- ▶ Section 504 of the Rehabilitation Act (Section 504)
- ▶ Individuals with Disabilities Education Act (IDEA)
 - ▶ *California Education Code – The State Law that implements the IDEA*



We will be focusing on the IDEA and the CA Education Code!



ADA – Who Is Protected?

- ▶ Disability = a physical or mental impairment that substantially limits a major life activity

- ▶ Schools must provide students with disabilities with meaningful access to their programs, services and activities

Section 504 – Who is Protected?

- ▶ Disability = a physical or mental impairment that substantially limits a major life activity
- ▶ A 504 Plan = a plan for accommodating a student's disability to allow her to participate in
 - ▶ Academics
 - ▶ Physical Education
 - ▶ Recreation
 - ▶ Other Extracurricular Activities

What is Required Under a 504 Plan?

- ▶ FAPE in the LRE
 - ▶ Is the student with disabilities receiving educational services as effective as those made available to their non disabled peers?
 - ▶ Key difference: the district's obligation to provide specialized instruction



Accommodations

- ▶ **Accommodations** – refer to the teaching supports and services that the student may require to successfully demonstrate learning at grade level.
- ▶ **Examples:**
 - ▶ **Extended time on tests**
 - ▶ **Tests read orally**
 - ▶ **Books on tape**
 - ▶ **Note takers**
 - ▶ **Taped lectures**
 - ▶ **Quiet testing environment**



Modifications

- ▶ **Modifications** – refer to changes made to the curriculum expectations in order to meet the needs of the student. These are made to the curriculum when the expectations are beyond the student's level of ability.
- ▶ Examples:
 - ▶ **Include in the same activity/theme but individualize the expectations and materials**



Individuals with Disabilities Education Act

- ▶ Federal law that provides for special education and related services for **eligible** students with disabilities
- ▶ Updated in 2004, the IDEA is also known as the Individuals with Disabilities Education Improvement Act (IDEIA)
- ▶ Substantive (“what”) and Procedural Due Process (“how”)

IDEA – Who is Protected?

Ages 3-22

- ▶ If under 3, consider the Regional Center for evaluation for early intervention services
- ▶ Disability Rights California is an advocacy group that may be able to help



IDEA – Who is Protected?

Disability (+)

1. Other Health Impairment (OHI)
2. Visual Impairment (VI)
3. Deafness
4. Hard of Hearing (HOH)
5. Orthopedic Impairment (OI)
6. Intellectual Disability (ID)
7. Specific Learning Disability (SLD)
8. Speech and Language Impairment (SLI)
9. Multiple Disabilities
10. Emotional Disturbance (ED)
11. Traumatic Brain Injury (TBI)
12. Deaf-Blindness
13. Autism (AUT)





Highlight

▶ **Other Health Impairment (OHI)**

- ▶ OHI means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems

▶ **Specific Learning Disability (SLD)**

- ▶ The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia

Highlight

▶ Emotional Disturbance

- ▶ A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
 - ▶ An inability to learn that cannot be explained by intellectual, sensory, or health factors
 - ▶ An inability to build or maintain satisfactory interpersonal relationships with peers and teachers
 - ▶ Inappropriate types of behavior or feelings under normal circumstances
 - ▶ A general pervasive mood of unhappiness or depression.
 - ▶ A tendency to develop physical symptoms or fears associated with personal or school problems.
- ▶ Includes Schizophrenia but does not include children who are socially maladjusted

IDEA – Who is Protected?

- ▶ (+) By reason of the disability requires specially designed instruction
- ▶ Specially designed instruction means that you modify the content, methodology, or delivery of instruction in order to meet the **unique** needs of a student with a disability.
 - ▶ Academic
 - ▶ Social
 - ▶ Health
 - ▶ Emotional
 - ▶ Physical
 - ▶ Vocational



Five Steps in the Special Education Process

1. Identification and Referral
2. Evaluations
3. Eligibility
4. Developing an IEP
(Individualized Education Program)
5. Placement

Assessments: Because Sometimes School Districts See it One Way and Parents Another

- ▶ School districts have an independent obligation to identify, locate, and assess all children with disabilities in **all** suspected areas of disability
 - This obligation is known as “child find”
- ▶ The assessor must be qualified and able to evaluate cultural, language and outside factors; Can't rely on one measure or assessment as the sole criterion

Areas of Suspected Disability

- ▶ Health
- ▶ Vision
- ▶ Hearing
- ▶ Social and Emotional Status
- ▶ General Intelligence
- ▶ Academic Performance
- ▶ Communicative Skills
- ▶ Motor Disabilities

Types of Assessments

- ▶ Psycho-Educational Assessment
- ▶ Occupational Therapy Assessment
- ▶ Physical Therapy Assessment
- ▶ Speech-Language Assessment
- ▶ Social-Emotional Assessment
- ▶ Functional Behavioral Assessment (FBA)
- ▶ Neuro-Psychological Assessment
- ▶ Assistive Technology Assessment
 - ▶ Not a complete list, there are more types available!


Assessment Requirements in a Nutshell

- ▶ Request assessments in writing (best practice)
- ▶ The school district must provide an assessment plan within **15 days** or PWN
- ▶ Upon receiving parents' consent, the district has **60 days** to complete all assessments and convene an IEP meeting to review and discuss the assessments
 - ▶ Note: Vacations or breaks for more than **5 school days** do not count as part of the timeline

Independent Educational Evaluations

- ▶ The parents of a child with a disability have the right to obtain an independent educational evaluation (IEE) at public expense if the parent disagrees with an evaluation obtained by the public agency.
- ▶ An IEE is an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.
- ▶ Parent-initiated evaluations: Parents may fund their own evaluation and present it to the IEP Team for review.

IEEs: Appropriate District Response

- ▶ If a parent requests an IEE, the school district must, without unnecessary delay:
 - ▶ File a due process complaint to request a hearing to show that its evaluation is appropriate; OR
 - ▶ Ensure that an IEE is provided at public expense.
- ▶  **WARNING:** You may end up in a due process proceeding.

IEP Team

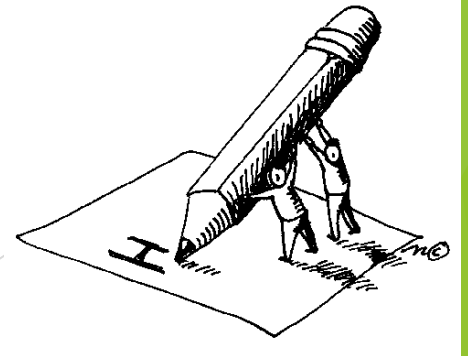
- ▶ Parent
- ▶ Special Education Teacher
- ▶ General Education Teacher
- ▶ Local Education Agency Representative
- ▶ Someone qualified to interpret evaluations
- ▶ Student, if applicable
- ▶ Any additional person with knowledge of the student
- ▶ *Parents can bring anyone with them – including an attorney!*

Individualized Education Program (IEP) Meeting

- ▶ An IEP is the written document memorializing the educational plan for an eligible student with a disability. The IEP describes the child's individual needs and the proper placement and services designed to meet those unique needs.
- ▶ Team members gather to discuss the student's
 - ▶ Needs
 - ▶ Goals for the year
 - ▶ Services that will help the student meet those goals
 - ▶ Placement
- ▶ Then document the meeting in your child's IEP.

IEP MUST be in Writing

- ▶ The results of the IEP meeting **must** be documented.
- ▶ If it's not in writing, it didn't happen....

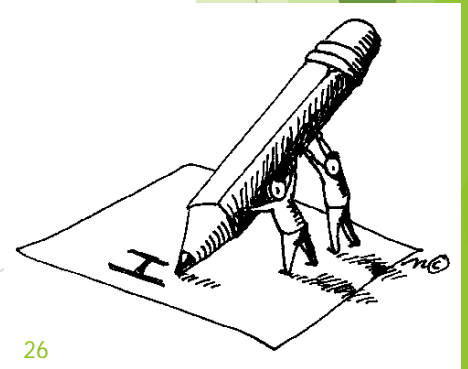


IEP Contents

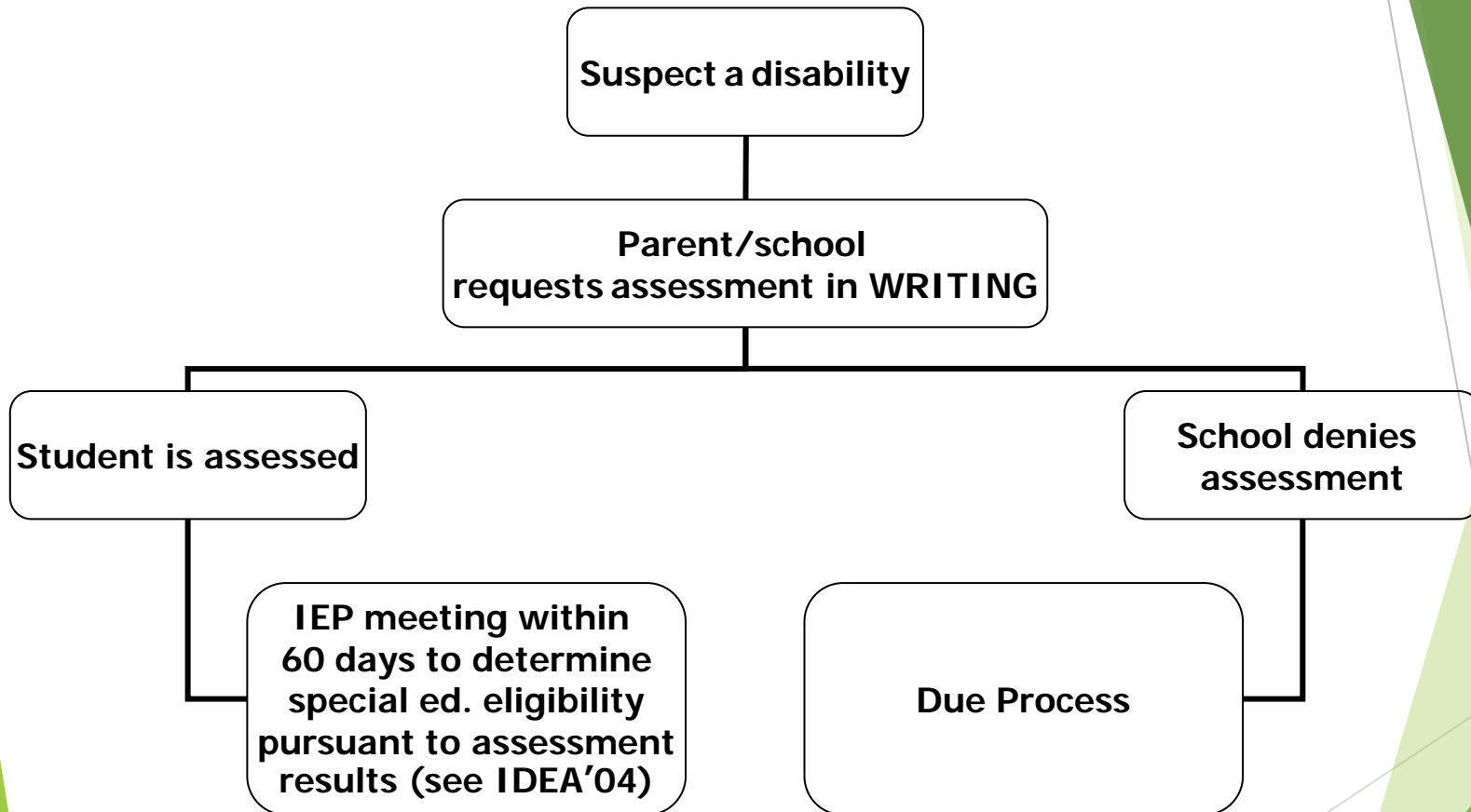
- ▶ The IEP MUST include:
 - ▶ Present levels of academic achievement and functional performance
 - ▶ Measurable annual goals for adequate progress
 - ▶ IDEA 2004: Description of how progress will be measured and when parents will receive periodic progress reports
 - ▶ All related services
 - ▶ Must include statement of frequency, duration and location
 - ▶ All accommodations and modifications
 - ▶ Explanation of extent to which student will not participate with students without disabilities
 - ▶ Explanation of extent to which student will participate in standardized testing
 - ▶ Placement

IEP Basics

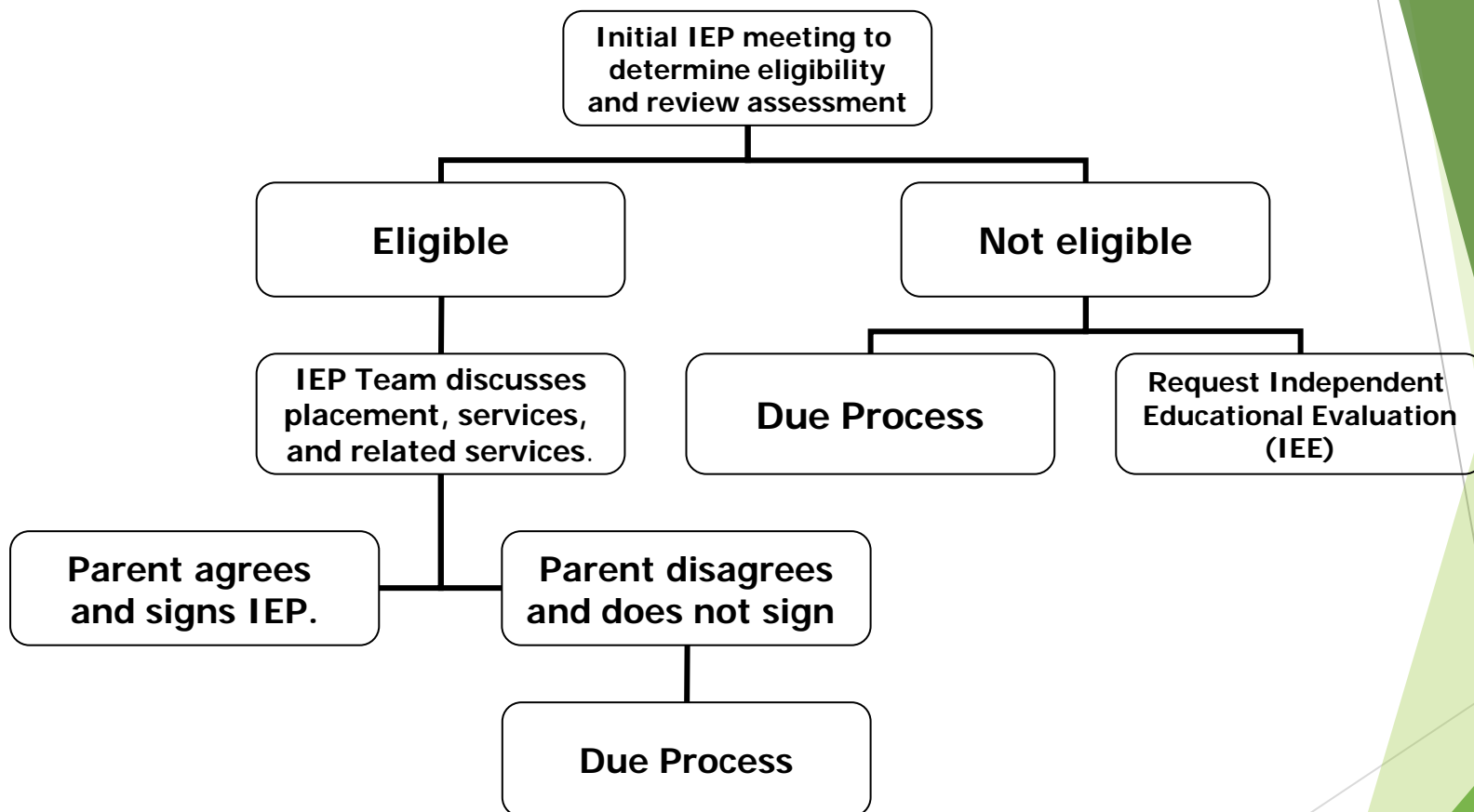
- ▶ Assessments determine needs
 - ▶ Present Levels of Performance and the Assessments are presented to determine if the student is found eligible
- ▶ Needs determine goals
 - ▶ No limit!
- ▶ Goals determine related services, accommodations, and modifications!
- ▶ Then we discuss placement



The IEP Process



The IEP Process continued



Timelines for the IEP

- ▶ Convene an IEP meeting at least **once per year**
- ▶ IEP meeting must be held within **30 days** of the parent's request
- ▶ Assess at least **every three years**



Substantive Due Process

- ▶ Free and Appropriate Public Education (FAPE)
- ▶ In the Least Restrictive Environment (LRE)
- ▶ Pursuant to a full assessment
- ▶ With Appropriate Related Services
- ▶ Documented in an Individualized Education Program (IEP)



What is FAPE?

Four Major Components

- ▶ Specially designed instruction and related services that are appropriate to meet the unique needs of a child with a disability
- ▶ Meets the standards of the State educational agency
- ▶ Provided in conformity with the IEP
- ▶ Services must be FREE!

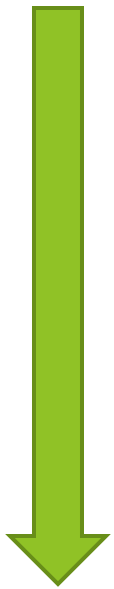


Rowley Standard

- ▶ Two part test to determine appropriateness:
 - ▶ Has the state complied with the procedures set forth in the IDEA?
 - ▶ Is the IEP developed through the IDEA's procedures reasonably calculated to enable the child to receive educational benefits?
- ▶ If YES to both, the state has complied with the IDEA and the courts can require no more.
- ▶ It's a Chevrolet standard not a Cadillac standard

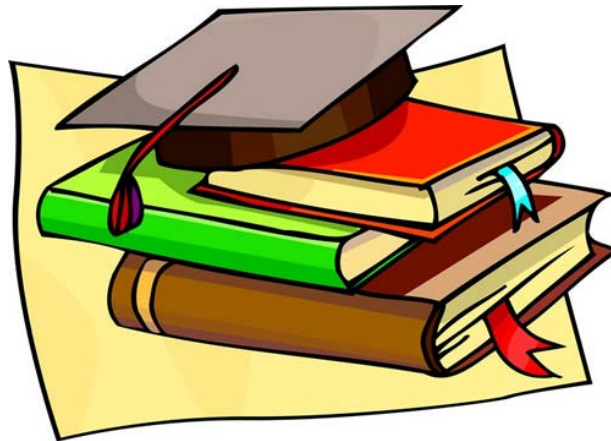
Placement in the LRE

- ▶ To the maximum extent appropriate, children with disabilities are educated with children who are non disabled.
- ▶ Continuum of Placements:
 - ▶ General Education Class with specialized instruction from the classroom teacher
 - ▶ General Education Class with resource instruction
 - ▶ Special Day Class
 - ▶ Non-Public School
 - ▶ Residential Treatment Facility
 - ▶ Home or Hospital



Related Services

Any service that is necessary to help a student benefit from his or her special education program



What Does Necessary to Benefit From His or Her Educational Program mean?

- ▶ Generally it means that the service is necessary for the student to make meaningful progress towards meeting the IEP goals
- ▶ The key, here is that it's "related" to your child's ability to succeed in school.



Examples of Related Services

- ▶ Orientation and mobility services
- ▶ Medical services for diagnostic or evaluation purposes (by licensed physician to determine underlying disability)
- ▶ Social work services in schools
- ▶ Parent counseling and training
- ▶ Transportation
- ▶ Transition services*
- ▶ Counseling services, including rehabilitation counseling
- ▶ School health services
- ▶ Speech-language pathology
- ▶ Audiological services
- ▶ Psychological services
- ▶ Physical and occupational therapy
- ▶ Recreation, including therapeutic recreation
- ▶ Early identification and assessment of disabilities in children

Three Basic Principles about Discipline in California Schools

- ▶ Students have a right to an education, even if they misbehave in school.
- ▶ Students have the right to challenge punishment and tell their side of the story.
- ▶ Students have a right to basic due process before being excluded from school.

Types of Discipline

General Discipline:

- ▶ All forms of “punishment” other than suspension and expulsion – includes detention, behavior contracts, in-school suspension, loss of privileges, etc.
- ▶ Students with disabilities are subject to the same suspension rules as students without disabilities, except that suspensions of students with disabilities cannot exceed **10 days**

Suspension:

- ▶ Temporary removal of a student from school for no longer than 10 days.

Expulsion:

- ▶ Permanent removal of a student from all comprehensive District schools by the Governing Board for a term no longer than one calendar year.

Manifestation Determination

- ▶ A MD is an evaluation of a child's misconduct to determine whether the conduct is a manifestation of the child's disability.
 - ▶ Conducted by the District, the parent and relevant members of the IEP Team.
- ▶ MUST be performed when a district proposes disciplinary measures that will result in a change of placement for a child with a disability.

Manifestation: What is a change in placement?

- ▶ A change in placement occurs when:
 - ▶ The removal is more than 10 consecutive school days
OR
 - ▶ The child has been subjected to a series of removals that constitute a pattern
 - ▶ Because the series of removals total more than 10 school days in a school year;
 - ▶ Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - ▶ Because of such additional factors as the length of each removal, the total amount of time the child has been removed and the proximity of the removals to one another.

Manifestation Determination: the process

- ▶ The District must conduct a MD review within 10 days of the school's decision to remove the student
- ▶ Questions that the manifestation team must answer:
 - ▶ **A.** Was the conduct caused by, or has a direct and substantial relationship to, the child's disability?

OR

- ▶ **B.** Was the conduct the direct result of the school district's failure to implement the IEP?
- ▶ If no for **A and B** → school may expel (right to appeal)

Behavioral Supports

- ▶ If yes for **A or B** → Conduct is manifestation of child's disability and the child cannot be expelled and a placement change would require the consent of the parent or hearing officer
 - ▶ IEP team **must** provide a functional behavioral assessment and implement a behavioral plan. (If already has a plan, must be reviewed and modified)
 - ▶ Positive behavior interventions
 - ▶ Strategies for teaching new skills
- ▶ A school can immediately place a child in a different interim placement, and keep him or her there for **45 school days**, even if the behavior is found to be a manifestation of the disability, if the student does any of the following:
 - ▶ Weapons
 - ▶ Drugs
 - ▶ Inflictions of serious bodily injury

Procedural Safeguards- 4 Main Categories

At all stages of the special education process...

- ▶ **Notice** – the right to notice about meetings and proposed actions by the school
- ▶ **Participate** – in decisions as an equal team member
- ▶ **Consent** – or to not consent to proposed actions or to withdraw consent
- ▶ **Disagree** – about decisions and proposals and to have those disagreements resolved through various dispute mechanisms

Helping a Student – The Problem Solver’s Tools

- ▶ Request New IEP
- ▶ Request Additional Assessments or Independent Educational Evaluations
- ▶ File State and Federal Complaints
- ▶ File for an Administrative Hearing (Due Process Hearing)



Requesting a New IEP

- ▶ Parent can always request an IEP meeting to review, or revise the Individualized Education Program, including but not limited to:
 - ▶ Annual Goals
 - ▶ Grading
 - ▶ Progress/Lack of progress
- ▶ New meeting must be held within **30 days** of the **written request**

Requesting New Assessments

- ▶ Parent can request additional District testing
- ▶ Parent can request independent testing if they disagree with results or feel they are insufficient
- ▶ **60-day** timeline for initial assessment request applies
- ▶ Assessment plan must be provided within **15 days** or alternatively written notice for refusal to assess



Where do I file a complaint?

State Compliance Complaint

- California Department of Education (CDE)
- CDE must investigate all complaints
- State complaint used mainly for procedural errors
- **Free**

Send by mail/fax:

California Department of Education
Special Education Division
Procedural Safeguards Referral Service
1430 N Street, Suite 2401
Sacramento, CA 95814-5901
Fax: 916-327-3704

Questions:

Email : spceducation@cde.ca.gov
Telephone: 800-926-0648

Federal Discrimination Complaint

- Office for Civil Rights (OCR)
- OCR does not have to investigate all complaints
- CR complaint used mainly for allegation of discrimination
- **Free**

Send by mail/fax/email:

Office for Civil Rights,
San Francisco Office
U.S. Department of Education
50 United Nations Plaza
San Francisco, CA 94102
Telephone: (415) 486-5555
Facsimile: (415) 486-5570
Email: OCR.SanFrancisco@ed.gov

Also available online!

What do you put in the State Complaint?

- ▶ Who? (parents, district, student)
- ▶ Statement of Facts
 - ▶ Why is student eligible for special education?
 - ▶ When did she become eligible?
 - ▶ What is the underlying disability?
 - ▶ What are the reasons for the complaint?
- ▶ Specific Issues of Non-Compliance
 - ▶ What are the current issues? What are the school's failures?
 - ▶ What laws have been violated? (You don't have to cite the law, facts are enough)
- ▶ Resolutions
 - ▶ What are you asking for?
 - ▶ What do you want (if you know)?

State Complaint Timeline

- ▶ Event/violation occurs
- ▶ Parent files written complaint within **1 year** of incident (the sooner, the better).
- ▶ CDE has **60 days** to investigate and issue a written response (CDE can extend the timeline if it informs both parties of reasons for extension).
- ▶ Parent and/or school can request a reconsideration of the complaint if they disagree with the findings.
- ▶ CDE can order compensatory education, related services, withhold funding, etc.

Office for Civil Rights Complaint

- ▶ Incident occurs
- ▶ Parent must file a written complaint within **180 days** of incident
- ▶ The Office of Civil Rights (OCR) decides whether or not to investigate.
- ▶ OCR issues a Letter of Finding.

What goes into an OCR Complaint?

- ▶ Who was discriminated against?
- ▶ Who performed the discrimination?
- ▶ What happened?
 - ▶ Detailed description including:
 - ▶ How the student was harmed and
 - ▶ Where the incident occurred.
- ▶ Include your contact information.



Filing for Mediation Only

- ▶ Voluntary
- ▶ All parties must agree to participate
- ▶ **No attorneys, representatives, or advocates can be present**
- ▶ **Parent** submits a completed **Mediation Only Request Form**

Send by via mail/fax:

Office of Administrative Hearings, Special Education Unit
2349 Gateway Oaks Suite #200
Sacramento, CA 95833
Fax: (916) 376-6319

- ▶ Send a copy of the completed form to the District and any other party you identified

File for Due Process Hearing

- ▶ Administrative forum
 - ▶ Governed by the Office of Administrative Hearings
- ▶ Attorneys/advocates can and often are present
- ▶ Trial-like environment
 - ▶ Evidence
 - ▶ Witnesses
 - ▶ Administrative law judge a.k.a Hearing Officer
 - ▶ Right to appeal
 - ▶ Right to recover attorneys' fees *
- ▶ Stay Put

Why File for Due Process?

- ▶ When there is a disagreement between you and the school over what is a Free and Appropriate Public Education (FAPE)
 - ▶ Implementation
 - ▶ Eligibility
 - ▶ Assessments
 - ▶ Changes to IEP without your approval and/or
 - ▶ Placement
- ▶ District takes parent to due process

Due Process Timeline

- ▶ Parent must file within **2 years** from the time parent knew or should have known of the injury or event
- ▶ School district must answer complaint within **10 days** of filing (PWN)
- ▶ Resolution meeting must be held within **15 days** of filing the complaint
- ▶ Mediation within **30 days** of filing the complaint
- ▶ Hearing must be set within **45 days** after the **30 days** to resolve **[75/45]**
- ▶ Appeal to state or federal court within **90 days** of Order

Due Process Continued...

- ▶ Burden of proof
 - ▶ Most of the time the parent bears the burden of proof
 - ▶ The school districts bears the burden of proof to show their assessment is appropriate
- ▶ Evidence
 - ▶ At least **5 business days** prior to the hearing, each party must disclose evidence that they plan to use at the hearing

What do you put in a Due Process Request?

- ▶ The name of the child, the address of the residence of the child, and the name of the school the child is attending;
- ▶ A description of the nature of the problem(s), including any district proposed initiation or change to the child's program that you disagree with, as well as any other facts relating to the problem(s); and
- ▶ Proposed resolution of the problem to the extent known and available to the party at the time

Possible Resolutions

- ▶ Compensatory Education –remedy to make up for education lost due to district denial of FAPE
- ▶ Reimbursement – For parents that have paid to provide FAPE
- ▶ To decide any issue of FAPE - placement, related services, least restrictive environment
- ▶ Prevailing Party Status – as to each issue raised

Bullying

- ▶ OSERS: “Bullying is no longer dismissed as an ordinary part of growing up and every effort should be made to structure environments and provide supports to students and staff so that bullying does not occur”
 - ▶ FAPE denial
 - ▶ Violations under Section 504 & ADA
 - ▶ Title VI of Civil Rights Act of 1964
 - ▶ Title IX of the Education Amendments of 1972

Helpful Websites

- ▶ The Council of Parent Attorneys and Advocates, Inc.
 - ▶ <http://www.copaa.net>
- ▶ Wrightslaw
 - ▶ <http://www.wrightslaw.com>
- ▶ California Dept. of Education, Special Ed. Resources
 - ▶ www.cde.ca.gov/sp/se/sr/
- ▶ Disability Rights California, Special Ed. Publications
 - ▶ http://www.disabilityrightsca.org/issues/special_education_pubs.html