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ABC's of Special Education

Los Angeles Public
Law Library Pro Bono
Week

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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?



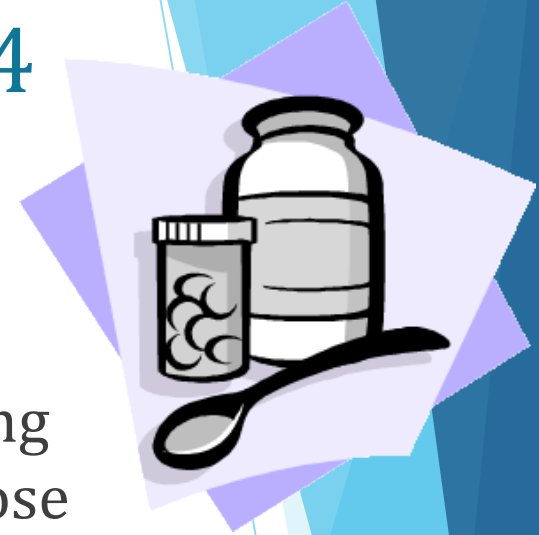
- ▶ Disability = a physical or mental impairment that substantially limits a major life activity
- ▶ Schools must provide students with disabilities with meaningful access to their programs, services and activities

Section 504 – Who is Protected?

- ▶ Disability = a physical or mental impairment that substantially limits a major life activity
- ▶ A 504 Plan is 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



Individuals with Disabilities Education Act – Part B

- ▶ 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 Part B – Who is Protected?

Ages 3-22

- ▶ If 0-3 years old, consider the Regional Center for evaluation for early intervention services
- ▶ Disability Rights California is an advocacy group that may be able to help



IDEA Part B – 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

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 Individualized Education Program (IEP)
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
- ▶ Assistive Technology Assessment
 - ▶ Not a complete list, there are more types available!

Assessment Requirements in a Nutshell

- ❑ Request assessments in writing (best practice)
 - ❑ School district personnel must help you put your request in writing
- ❑ Initial assessments
 - ❑ must occur upon parent's written request
 - ❑ the District must provide an assessment plan within **15 days** of parent's written request
- ❑ Reassessment
 - ❑ Must occur if the student's parents or teacher submit a written request for a reassessment; and
 - ❑ the previous assessment is over a year old
- ❑ 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
- ❑ Request an Independent Educational Evaluation (possibly)

Eligibility is determined by
the IEP team at an IEP
meeting!

IEP Team

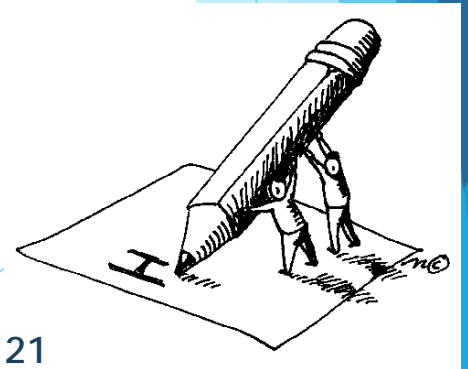
- ▶ Parent
- ▶ Special Education Teacher
- ▶ General Education Teacher
- ▶ Local Education Agency Representative
- ▶ Someone qualified to interpret evaluations
- ▶ Student, if applicable
- ▶ Any additional person with knowledge of the student
- ▶ *Parents can bring anyone with them – including an attorney!*

IEP Meeting

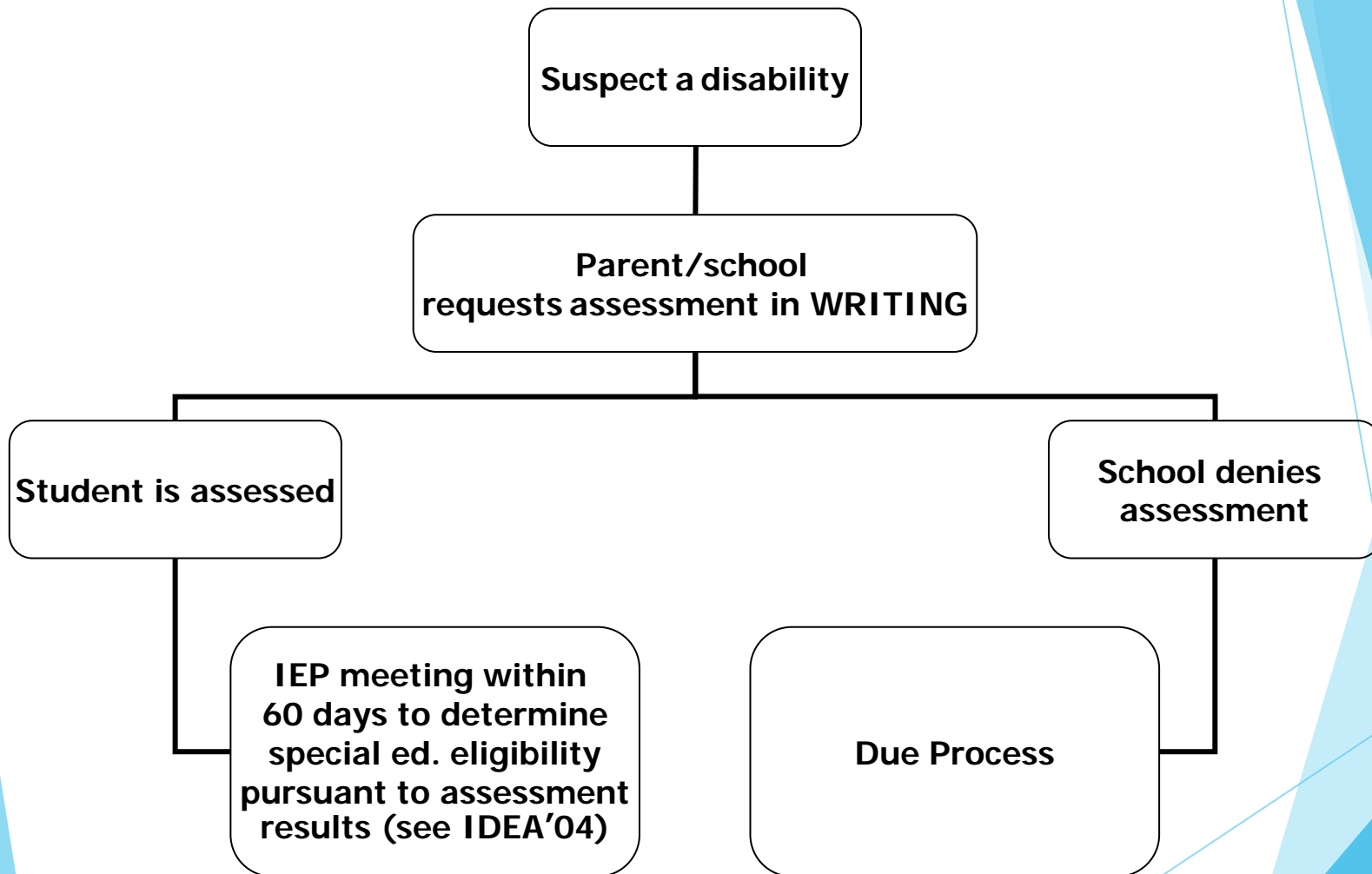
- ▶ An IEP is the written document memorializing the educational plan for an eligible student with a disability. The IEP describes the child's individual needs and the proper placement and services designed to meet those unique needs.
- ▶ Team members gather to discuss the student's
 - ▶ Needs
 - ▶ Goals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

IEP Basics

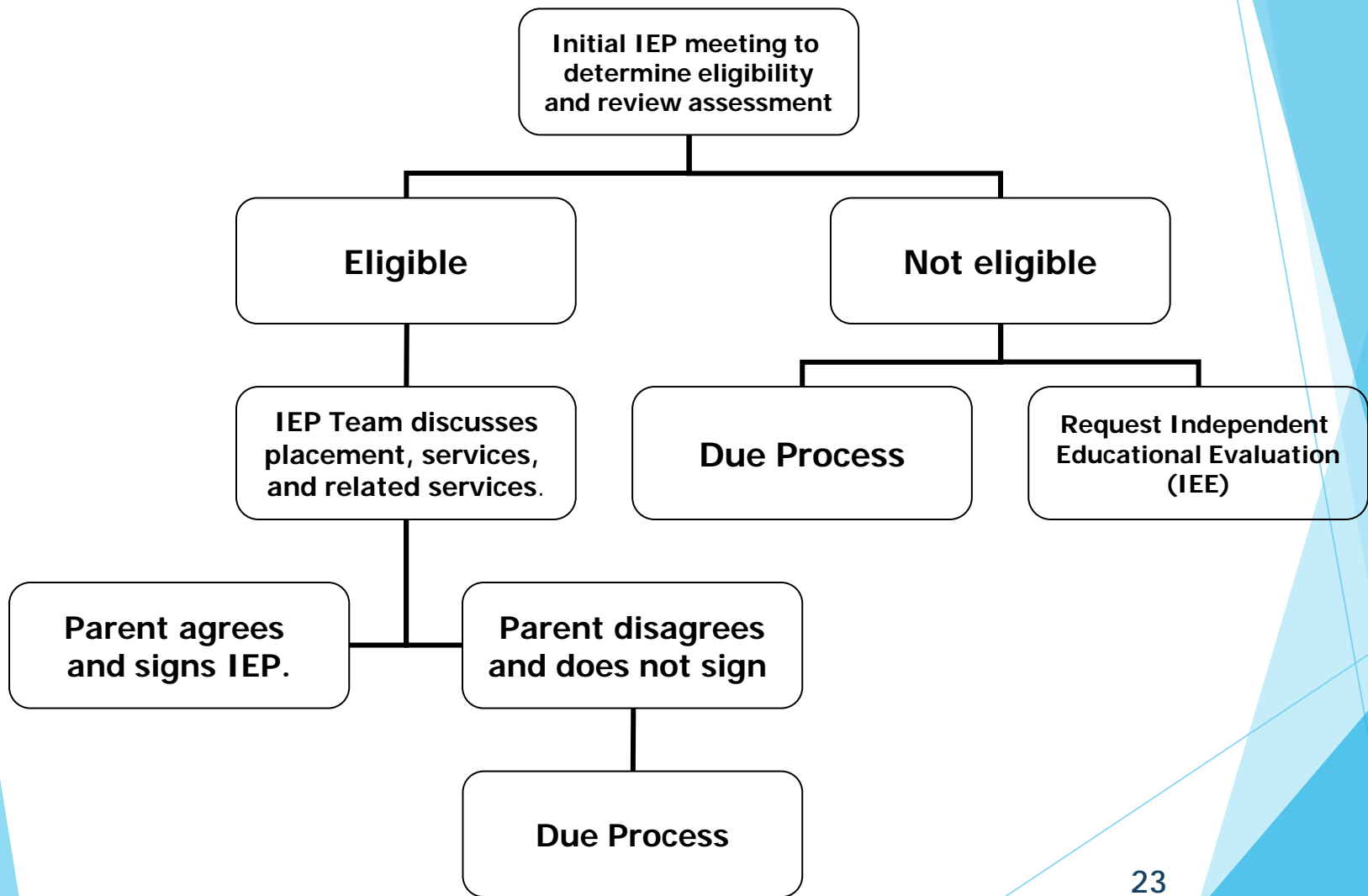
- ▶ Assessments determine needs
 - ▶ Present Levels of Performance and the Assessments are presented to determine if the student is found eligible
- ▶ Needs determine goals
 - ▶ No limit!
- ▶ Goals determine related services, accommodations, and modifications!
- ▶ Then we discuss placement



The IEP Process



The IEP Process continued



Timelines for the IEP

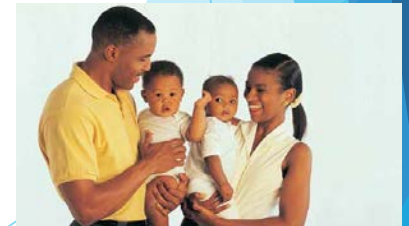
- ▶ Convene an IEP meeting at least **once per year**
- ▶ IEP meeting must be held within **30 days** of the parent's written request
- ▶ Assess at least **every three years**



IEP Spotlight



- ❑ Do not have to sign at the meeting
- ❑ Can agree with some parts and disagree with others
- ❑ Can pause, end, reconvene a meeting
- ❑ No time limits to IEP meetings
- ❑ No cap on the number of IEP meetings
- ❑ Get a second opinion, independent educational evaluations
- ❑ Take a copy of the IEP with you!!!



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?

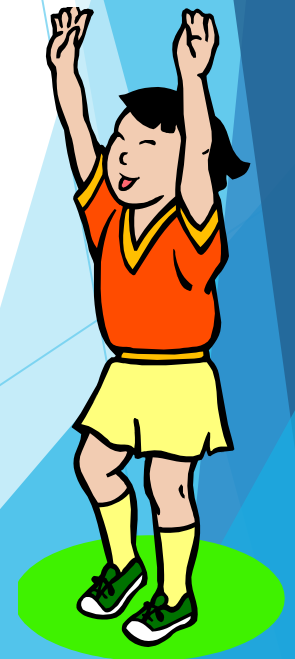
Four Major Components

- ▶ 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!



Appropriate: How does a School District Meet a Child's Unique Needs?

- ▶ Generally it means that the District must implement an IEP that is reasonably calculated to remediate and accommodate a child's disabilities so that the child can make progress in the general education curriculum, commensurate with his typically developing peers and the child's potential.
- ▶ The key, is that the IEP must address the individual needs of the student.



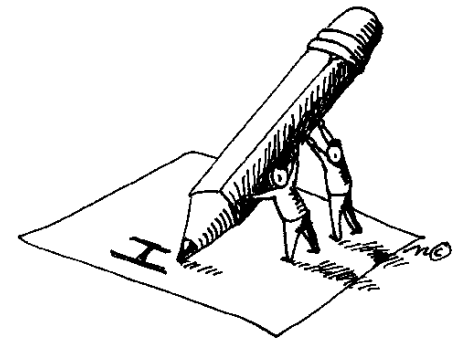
IEP Contents

- ▶ 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 MUST be in Writing

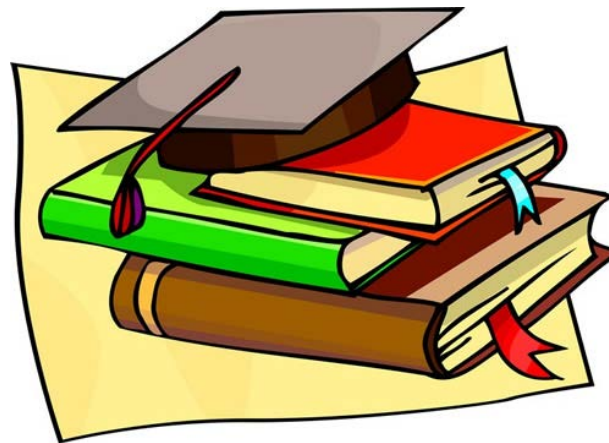
- ▶ The results of the IEP meeting **must** be documented.

If it's not in writing, it didn't
happen....



Related Services

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



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

Accommodations

- ❑ **Accommodations** – refer to the actual 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 (such as peers with carbon copy paper)**
 - ❑ **Taped lectures**
 - ❑ **Quiet testing environment**



Modifications



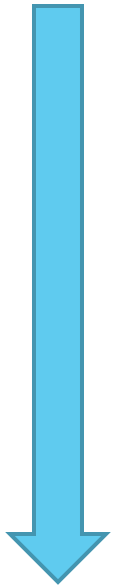
- ❑ **Modifications** – refer to changes made to the curriculum expectations in order to meet the needs of the student. These are made to the curriculum when the expectations are beyond the student’s level of ability.
- ❑ **Examples:**
 - ❑ **Withdrawal from general education for specific skills**
 - ❑ **Include in the same activity/theme but individualize the expectations and materials**

Transition Services

- ❑ Beginning no later than the IEP which includes the child turning **16**, school districts must provide activities that are designed to move the student from school to post-school activities like college, vocational school, employment, independent living, and community participation
- ❑ Transition services are often delivered through transition plans that must be based on:
 - ❑ Individual's needs, strengths, preferences, and interests
 - ❑ This includes instruction, related services, community experiences, and daily living skills

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



Extended School Year

- ▶ Extended School Year (ESY) services are “special education and related services that are provided to a child with a disability ... beyond the normal school year of the public agency ... in accordance with the child’s IEP...” 34 C.F.R. 300.106.
 - ▶ Extended school year must be at least 20 instructional days including holidays.

- ▶ Under California law, to qualify, a student must show:
 - (1) Her disabilities “are likely to continue indefinitely or for a prolonged period;
 - (2) Interruption of her educational program may cause regression;
 - (3) Limited recoupment capacity; and
 - (4) The above factors make it “impossible or unlikely” that she will attain self-sufficiency and independence without ESY services.

What Does a Dispute Look Like?

- ❑ When there is a disagreement between parent and school over what is FAPE:
 - ❑ Proposed program
 - ❑ Educational benefit
 - ❑ Least restrictive environment
- ❑ Procedural Safeguards have been violated
- ❑ Substantive Violation
- ❑ District takes the parent to due process

Examples:

Parent may disagree with the:

- ❑ Implementation of the IEP
- ❑ Eligibility
- ❑ Assessment
- ❑ Placement
- ❑ Related Services
- ❑ Progress
- ❑ Changes to IEP without parent's approval
- ❑ School failed to provide records
- ❑ School failed to provide assessment plan

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

Spotlight



- ❑ Prior Written Notice
 - ❑ The school district must provide the parents with written notice before changing placement, convening an IEP meeting, or conducting/refusing to conduct an assessment
 - ❑ The school district's notice must include:
 - ▶ An explanation of why the school is doing or not doing something (examples: services, assessment, placement);
 - ▶ A description of other options the IEP team considered and why those were rejected;
 - ▶ A description of each evaluation, record, procedure, test, report etc. the school used as a basis for doing or not doing something;
 - ▶ Other reasons for the school's action or inaction; and
 - ▶ They must give the parent sources that the parent can contact to get help
 - ▶ Prior Written Notice must be provided in the language of the parent

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
- ▶ Assessment plan must be provided within **15 days** of parent's written request
- ▶ **60-day** timeline for initial assessment request applies – the district has 60 days to do assessments and convene and IEP meeting



Independent Educational Evaluations (IEE)

- ▶ 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.

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 : speducation@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

Helpful Websites

- ▶ Disability Rights Legal Center
 - ▶ <http://drlcenter.org>
- ▶ 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