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Representing people with disabilities and their families since 1974

■ Special Education Overview

Every child with a disability between the ages of 3 and 21 is entitled to a Free, Appropriate Public Education (FAPE) tailored to meet his or her individual needs, at no cost to the child's parents. This right to special education is described in the Individuals with Disabilities Education Improvement Act (IDEA). This article provides an overview of:

- Eligibility
- Evaluation
- The IEP Process
- Placement
- Least Restrictive Environment
- Related Services
- Extended School Year Services
- Dispute Resolution

Special education rights are not self-enforcing, and parents should not rely upon the good faith of school districts to carry out what the law requires. Even the best school district may incorrectly assess a child's needs or let economics dictate the decisions it makes.

Q: How can parents obtain special education services for their child?

If parents believe that their child with a disability needs special education, they should request an evaluation. The written request should be dated and sent to the school district's director of special services. Parents should always keep copies of correspondence to and from school district personnel.

Usually, the evaluation includes a psychological evaluation; an educational evaluation (in Pennsylvania, this is part of a "psychoeducational evaluation"); a social history; and a health summary describing the effects of any health problems. An evaluation by a speech-language specialist is required for preschoolers. At least one member of the team must be knowledgeable in the child's suspected area of disability.

Q: What does the evaluation process involve?

First, the evaluation team, which includes the parents, meets to determine what assessments are necessary.

The unique needs of the child might prompt other evaluations. For example, a psychiatric evaluation may be conducted if a child appears to have emotional or behavioral disabilities. All required evaluations must be performed at no cost to parents.

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Q: How long does the school have to complete evaluations?

The child study team must complete all evaluations, determine the child's eligibility for special education, and if eligible, develop and implement the education program for the child within 90 days. Waiting lists for evaluations are not permitted.

Q: What can parents do if they disagree with the evaluation results?

If parents disagree with the evaluation performed by the school, they may request an independent evaluation paid for by the district. The evaluation will be provided by an agency or clinic approved by the Department of Education to perform such evaluations, or by another appropriately credentialed professional.

Q: How is eligibility determined?

To receive special education services, a child must be between the ages of 3 and 21, have a disability as defined by federal law, and be in need of special education services because of that disability. Following the evaluation, the child study team will make this determination. By law, parents are part of this team. Eligibility is based on the results of the assessments, as well as reports or evaluations provided by the parents. In Pennsylvania, students ages 3-5 may be served by their local Intermediate Units or other agencies.

School districts may not use any single procedure as the sole criterion for determining eligibility. A child's unique needs, and not his or her diagnosis, dictate what educational services are appropriate.

Q: What is an Individualized Education Program (IEP)?

The IEP is a written plan that details a child's special education program for the school year. The IEP is developed at a meeting of the parents, members of the child study team, and the child's teacher. The purpose

of the meeting is to identify the child's educational goals as well as the program of services, supports and related service necessary to help the child achieve those goals. The district and the parents will also decide on the appropriate placement in which to carry out instruction.

Q: What are "related services"?

Related services are support services needed to allow a child with disabilities to benefit from special education. These include but are not limited to: adapted physical education services; aide services; assistive technology; audiological services; behavior consultant services; counseling services; interpreter services; nursing services; occupational therapy services; orientation and mobility services; physical therapy services; school psychological services; speech and language services; and, transportation.

The IEP must describe the services that will be provided; the amount of time that the service will be provided (e.g., 30 minutes, 45 minutes); the frequency (e.g., 2 x/week); and the nature of the services (e.g., small group, individual); where it will be provided (e.g., pull out services, in class, teacher consultation); and who will be responsible for delivering the service.

Q: What is "placement"?

Placement refers to the setting in which the special education program will be implemented. Regardless of a child's disability, a full continuum of placement options must be considered. These include: a general education class with supports, services and modifications as necessary; small group or individual instruction; a special education class in the local public school for all or part of the day; a separate school that also serves students without disabilities; a separate school that serves only students with disabilities; home instruction; and instruction in a residential setting or hospital.

Q: What is “least restrictive environment”?

The concept of the “least restrictive environment” (LRE) is intended to benefit children with disabilities by assuring that they are given the greatest opportunity to be part of mainstream society, and are not unnecessarily removed from general education classrooms. Instructional practices and special education services must be provided to the maximum extent possible in classrooms with non-disabled peers.

In determining LRE, the IEP team must first consider whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily; and if not, whether the school has mainstreamed the child to the maximum extent appropriate by attempting to include the child in school programs with nondisabled children whenever possible.

When determining placement in the LRE, the team must also consider the educational benefits available to the child in a regular class compared to the benefits of a special education class, as well as the possible negative effects of the inclusion of the child on the education of the other students in the class.

While there are no hard-and-fast rules regarding the distance that a child with a disability can travel to and from school, LRE considerations also include the distance from the child’s home.

In addition, the law does not consider whether a program is publicly or privately operated when determining LRE. Therefore, in some cases, a public out-of-district program may be more restrictive than a private school for the disabled.

A word of caution: districts sometimes use LRE as a pretext for opposing appropriate, and sometimes more costly, specialized out-of-district placements. By definition, a placement cannot be the “Least Restrictive Environment” if the program is not appropriate.

Q: What is extended school year instruction (ESY)?

Extended school year (ESY) is an educational program provided during the usual summer vacation.

The most common reason for ESY is because the child has “regression/recoupment” difficulties. While all students regress over summer vacation, some children suffer such regression in their skills and take so long to recoup that loss, that they need summer instruction to maintain skills.

Aside from the regression/recoupment test, there are other reasons to provide an extended school year. For example, a student might become socially withdrawn or depressed during the summer months such that returning to school is very difficult in the fall. Some children require the additional instructional time to master important skills. Other students may need ESY for reasons related to transition from school to adult life.

Q: What is an extended day program?

The law requires that students with disabilities have at least the same number of hours of instruction as non-disabled peers. However, some children with disabilities require services beyond the usual school day. For example, students with behavioral difficulties often require behavior management plans that extend beyond the regular school day. As another example, a student with problems socializing might need to participate in an after-school social skills group.

While there are no specific regulations dealing with extended school day programs, the length of a student’s school day must be determined based upon the student’s individual needs. School districts can be required to provide services beyond the regular school day to a child with a legitimate need for them.

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Q: What if a parent does not agree with the services proposed?

Parents must be clear about what they want and communicate this to the child study team. If there is a disagreement, parents should meet with the director of special services and if necessary, the school superintendent. Parents should not sign the IEP until they are satisfied that it contains everything their child needs to make educational progress. If parents don't agree with the IEP, they should write a letter to the child study team that describes the changes that are desired.

Q: What if a dispute cannot be resolved with district staff?

Parents can seek mediation or ask for a due process hearing. Mediation is an informal procedure. At the

mediation conference, the parents will sit down with school district staff and an employee of or on behalf of the Department of Education to attempt to resolve their differences. Mediation is voluntary, and parents need not use it before requesting a due process hearing. In Pennsylvania, a number of innovative dispute resolution procedures are available, such as Facilitated IEP Meetings.

Q: What happens to a child's program during an appeal?

During either mediation or due process, no change may be made in a child's program unless both the parents and the school district agree to the change. This is known as the "stay put" provision. This program freeze can be helpful when the school district is proposing a change to a child's program with which the parents disagree.

Hinkle Prior & Fischer is a multi-state law practice with offices in Lawrenceville, Cherry Hill, Florham Park, Paramus, and Wall, New Jersey. The attorneys lecture and write frequently on topics of elder law, estate planning, special needs trusts, guardianship, special education, Medicaid and accessing adult services. The attorneys are available to speak to groups in New Jersey and Pennsylvania at no charge.

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