



Fagen Friedman & Fulfroft LLP

Special Education: An Overview



Piedmont Unified School District
Governing Board Presentation
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AGENDA

- Free and Appropriate Public Education
 - A Bit of History
- Child Find
- The IEP Process
- Due Process and Conflict Resolution



Acronym Soup



- IDEA
- IEP
- FAPE
- LRE
- SELPA
- OAH



FAPE: Substance

- Test of Substantive Compliance:
 - Designed to meet unique needs;
 - Reasonably calculated to provide educational benefit (not maximize, but more than trivial);
 - Services comport with IEP
 - Least restrictive environment



FAPE: Procedure

- Test of Procedural Compliance:
 - Impeded right to FAPE;
 - Significantly impeded parents' right to meaningfully participate in the decision-making process;
 - Caused educational deprivation.



A Linear Process

- Child Find
- Assessment
- Present Levels of Achievement/Performance
- Educational Needs
- Goals
- Placement
- Services



CHILD FIND



Legal Standard

■ IDEA

- Affirmative, ongoing duty to identify, locate and evaluate all children with disabilities residing in the state who are in need of special education

■ California law

- Education Code's child find requirements includes homeless children, wards of the state, children attending private schools
- Applies regardless of the severity of disabilities
- California districts may serve children and young adults from birth, and certainly from 3-22



Two Components to Child Find

- General “public notice” responsibility
 - Inform and educate public about need to locate and identify all children with disabilities
- Obligation to specific child
 - Triggered when district knows – or should know – that student may have a disability



General Responsibilities

- Neither IDEA nor Education Code specifies which general activities are sufficient to meet child find obligations
- Ed Code obligates each SELPA to establish child find policies and procedures for use by its districts

(Ed. Code, § 56301)



General Responsibilities

■ Staff Training

- Essential component of continuous child find responsibilities
- Student v. Santa Barbara USD decision:
 - OAH scolded District for lack of general training for staff on child find
 - Continuing failure to meet child find obligations deemed “egregious”
 - ALJ ordered six hours of mandatory training

(Student v. Santa Barbara Unified School Dist. (OAH 2013) No. 2012080468, 113 LRP 1802)



Obligation to Individual Students

- Triggered when district has knowledge of – or reason to suspect – student has disability
 - Threshold for suspicion is “relatively low”
 - Appropriate inquiry: Whether student should be referred, not whether he or she will qualify
 - Child find violated if district overlooks clear signs of disability and offers no rational justification for not evaluating
 - But, Child find does not guarantee eligibility

(Department of Educ. State of Hawaii v. Cari Rae S. (D. Hawaii 2001)
35 IDELR 90)



Obligation to Individual Students

- Affirmative obligation to act
 - Not dependent on parent request for evaluation
 - Child find not excused even when parent interferes with process
 - Passive approach – deciding not to “push” or to “wait and see” – equates to active and willful refusal to take action

(Compton Unified School Dist. v. Addison (9th Cir. 2010) 54 IDELR 71)



What Triggers Child Find Duty?

- Could be any one of numerous indicators, including:
 - Declining academic performance
 - Problematic behavior issues
 - Bullying (either target or perpetrator)
 - Extended illness
 - Medical diagnosis of recognized disability
 - Nonattendance, school refusal or anxiety
 - Psychiatric hospitalization and/or attempted suicide
 - Parental request for assessment
- Also unique child find issues arise regarding:
 - English learners
 - RTI process



Appropriate Assessment



Appropriate Assessment

- What is an appropriate assessment?
 - Use a variety of assessment tools and strategies to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining—
 - Whether the child is a child with a disability; and
 - The content of the child's IEP

34 CFR 300.304(b)



Appropriate Assessment

- It is a comprehensive review of a student to get a complete picture of the students needs
 - Not just standardized testing



Appropriate Assessment

- What does an appropriate assessment include
 - Review records
 - Standardized testing
 - Non-standardized testing
 - Observe student in classroom
 - Observe student in other relevant areas such as play ground, lunch room, on the bus
 - Parent/teacher interviews
 - Student interview
- All of which are analyzed to provide a comprehensive understanding of the student



Appropriate Assessment

Findings must be documented in a legally compliant assessment report

- Used to determine eligibility
- Provides basis for determination
- Used to develop present levels
- Used to identify the needs that are addressed through goals



Eligibility Under IDEA



Eligibility for Special Education

- What is the eligibility criteria for determining IDEA eligibility?
 - Very specific, and
 - Two pronged analysis



Eligibility for Special Education

■ Analysis

- A child with a disability is one who has been determined by an IEP team to meet the criteria for one of the eligibility categories
- And who, by reason thereof, needs special education and related services



Eligibility for Special Education

■ Disabilities

- Autism
- Deaf-Blindness
- Deafness
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment, including Blindness



Eligibility for Special Education

- Why is the eligibility analysis important?
 - Could qualify as having some type of disability yet still not qualify under IDEA
 - There is no automatic eligibility category
 - Only students meeting the very specific IDEA categories qualify for these services



IEP Team Meeting



IEP Team Meeting

- What is the required composition of the IEP team?
 - Parent(s)
 - A special education teacher or provider
 - Not less than one regular education teacher of the child (if child is or may participate in regular education environment) (34 C.F.R. § 300.321, subd.(a)(2).)
 - A district representative qualified to provide or supervise the provision of special education services and knowledgeable about the general curriculum and the availability of resources



IEP Team Meeting

- What is the required composition of IEP team? (cont.)
 - An individual who can interpret the instructional implications of evaluation results, may be a current member of IEP team (e.g., the district representative)
 - Other individuals who have knowledge or special expertise regarding the child
 - Student, if appropriate



IEP Team Meeting

- The Meeting—also linear
 - Non-adversarial process
 - Parent rights, concerns, input
 - Discussion of Student's Strengths and Needs
 - Review assessment reports
 - Including private reports
 - Determine eligibility



IEP Team Meeting

- If Eligible
 - Present Levels of Academic Achievement and Functional Performance
 - Develop Goals
 - Offer of Placement and Services in the Least Restrictive Environment



Least Restrictive Environment

■ Holland Test

- a) educational benefits available in general education class, supplemented with appropriate aids and services
- b) non-academic (social) benefits of interaction with non-disabled students
- c) effect of presence of disabled student on teacher and other students
- d) costs of supplementary aids and services required for placement in general education

Sacramento City USD v. Rachel Holland (9th Cir. 1994)



IEP Components

- Why is it important to understand and follow the process in developing an IEP?
 - FAPE for a student
 - Parent has a right to
 - Be involved in the formation of the IEP
 - Be informed of the educational program student receives
 - Informed consent



Due Process and Conflict Resolution



Conflict Resolution

- What is the process for parents to resolve disputes regarding FAPE?
 - Local dispute resolution
 - Compliance complaint to CDE
 - Due process complaint to OAH



Compliance Complaint

- Parent may file when they believe the school district has failed to
 - Follow special education laws
 - Implement a student's IEP
 - Comply with a due process hearing order or settlement agreement



Compliance Complaint

- California Department of Education has 60 days to investigate and resolve complaint



Due Process: Initiation

- What are the situations in which a due process filing can be initiated (by parents or district (generally))?
 - Disagreement with a district's decision regarding identification, assessment, or educational placement



Due Process: Initiation

- School district must initiate due process
 - If parent request independent educational evaluation (IEE) the district must either
 - Initiate a due process hearing to demonstrate their assessments were appropriate
 - Provide the IEE



Due Process: Initiation

- School district must initiate due process
 - If parent refuses to consent to all services in an IEP after consenting to the services in the past
 - If parent refuses to consent to a service the school district believes is necessary to the provision of a FAPE
 - NOTE: District cannot file on initial IEP if parents have not consented



Due Process

- What are the mechanisms available to resolve due process disputes?
 - Resolution meeting (if parents file)
 - Mediation
 - Due process hearing



Proving and Defending An IEP

■ Substantive Prong

- Program must be designed to meet the student's unique needs
- Program must be reasonably calculated to provide some educational benefit
- Program must comport with IEP
- Program must be offered in the least restrictive environment



Proving and Defending An IEP

- Procedural inadequacies result in denial of FAPE if
 - Impede student's right to a FAPE
 - Significantly impede parent's opportunity to participate in decision-making process; or
 - Cause deprivation of educational benefit



Due Process: Remedies

- Retroactive Reimbursement
- Compensatory Education
- Specific Placements, including NPS or residential placement
- Parents' Attorneys' Fees (through agreement, or court proceeding)





CELEBRATE SUCCESS

EDUCATION AWARDS

Education for All Photography Contest

The California Association of African-American Superintendents and Administrators (CAAASA) and Fagen Friedman & Fulfrost LLP (F3) confer three awards of \$1,000

Why Education Matters Essay Contest

The California Association of Latino Superintendents and Administrators (CALSA), F3, and HispanicBusiness magazine awards five students \$1,000 each

2012 Student Art Contest

The Association of California School Administrators' (ACSA) Student Services and Special Education Division and F3 sponsor ten awards of \$250 each

Going Green! California School Boards Association Golden Bell Award

F3 is proud to partner with the California School Boards Association to present the \$5,000 Going Green! Golden Bell Award

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