

Introduction to Special Education

A presentation by William B. Jaffe, Esq.

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About the Speaker, William B. Jaffe

- William B. Jaffe has been practicing law for over 30 years. Bill spent seven years as a lawyer for the D.C. Public Schools in their Office of General Counsel. He is now the Owner and Principal of the Law Office of William B. Jaffe, a civil rights law firm. Bill also worked at the DC Attorney General's Office, the New York Attorney General's Office, the Justice Department, and elsewhere. Bill will bring his expertise to bear to ensure that your child receives the services she or he is entitled to.
- Litigated jury trials in federal court, appeals in federal and state appellate courts, and many state court and administrative matters.
- Expert in all areas of IDEA litigation, Section 504 litigation, disciplinary and residency matters, and all other areas of education law.
- Took over 150 due process complaints to hearing decision, settling many more.
- Schools insider; Understands the resources and thinking of a major U.S. school system and can obtain good outcomes.
- Lectured on the IDEA and other civil rights statutes.
- Admitted in District of Columbia (active), New York (active), and Virginia (inactive) and various federal district courts.
- Past Adjunct Professor, Legal Writing, Benjamin N. Cardozo School of Law.

The Law of Special Education

- Sources of law, regulations, guidance:
- The Individuals with Disabilities Education Act (IDEA) -- the federal law that governs the provision of special education in public schools.
- The IDEA is found at Title 20 United States Code Section 1400 et seq.
- Title 34 Code of Federal Regulations;
- Title 5-A DCMR Chapter 30;
- Section 504 of the Rehabilitation Act (Section 504);
- US Dept of Education Office of Special Education and Rehabilitative Services.

What is a free and appropriate public education (FAPE)

- A free and appropriate public education (FAPE) is the right of every child with a disability eligible under the IDEA and Section 504.
- FAPE means special education and related services that
 - are provided at public expense;
 - meet state standards;
 - are provided in conformity with a properly developed Individual Education Plan (IEP).

What is Special Education

- Special Education is “specially designed instruction” intended to meet “the unique needs” of a child with a disability.
- Because it is unique to each child, there is no one type that fits all students.
- Special education must be individually tailored to the needs of each child.

What are “related services”

- Related services are supportive services designed to allow the student to benefit from specialized instruction. Thus, they are an essential aspect of the package of services to be provided to a student in need of specialized instruction.
- *Some* examples of related services are speech language services, occupational therapy, physical therapy, psychological services, and counseling.
- These are *just examples* and are *NOT* an exhaustive list.

Eligibility – what factors are considered?

- The student must be between the ages of 3 and 21;
- The student must have a qualifying disability; and...
- The student must be in need of special education and related services as a result of this disability.
- (Not all students with a qualifying disability are in need of special education.)
- Remember Section 504: Even if a student is not in need of special education, they may be entitled to certain services or accommodations under Section 504 of the Rehabilitation Act.

Some specific disabilities

- Autism or Autism Spectrum Disorder;
- Emotional disturbance;
- Hearing impairments, visual impairments;
- Intellectual disability (formerly referred to as mental retardation);
- Specific learning disability;
- Speech or language impairment;
- traumatic brain injury;
- Other health impairment (e.g., asthma); or multiple disabilities.

EVALUATIONS

What is an evaluation?

- An evaluation is the initial step in determining eligibility.
- It is extremely important that your evaluation be thorough and properly documented.
- An evaluation is defined as the procedures used to determine if a student has a disability, and, if so, the nature and extent of his need for special education and related services.

Child Find

- The school district has an affirmative obligation to “find” each child in need of specialized instruction and related services.
- Failure of a parent to identify their child as needing services does NOT relieve the school district of its child find obligation.

Who determines eligibility

- A group of qualified professionals and the parent, the multi-disciplinary team, comprise the group that determines whether a child is eligible for special education and related services.
- The parent may, and frequently should, bring his or her own professional(s) to this group, if possible.

What type of evaluation must be performed

- The specific evaluation used depends on what disability is suspected.
- The school district must use a variety of assessment tools and strategies to gather relevant information;
- Must be administered properly;
- Must be administered by trained personnel;
- The student must be assessed in all areas of suspected disability;
- The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs;
- Not a complete list. Other factors may apply.

What is a reevaluation

- A reevaluation is a comprehensive evaluation, similar to an initial evaluation, for students who have previously been found eligible.
- Reevaluations should take place periodically based on need.
- Reevaluations must take place at least every three years unless both parents and school agree unnecessary.
- Reevaluations may be needed more often.

Independent Educational Evaluation (IEE)

- An independent educational evaluation (IEE), may be required if a parent disagrees with the conclusions or other aspects of the initial evaluation or reevaluation.
- An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district.
- Often an IEE may give an important perspective, or the opposite perspective, to the prior evaluation.
- The right to an IEE is essential for parents who question the initial evaluation.
- The parent has a right to an IEE at public expense unless certain conditions apply.

Individualized Education Program (IEP)

- After a determination on eligibility-once student found eligible.
- Team is formed to create an Individualized Education Program (IEP).
- The IEP is the heart of special education.
- An IEP is a written document, created by an IEP team, that memorializes the essential components of the eligible student's educational program

What should an IEP contain?

- Statements of present levels of academic achievement and functional performance (PLOPS);
- Annual measurable goals (both academic and functional);
- Goals must be measurable, i.e., by (specific date) student will _____ (specific goal) in _____ (where, i.e. in class), as measured by _____ (teacher report or other data), with _____ accuracy (i.e. with 80% accuracy in x out of x attempts);
- Statement of special education needs and services provided, as well as modifications, supplementary services, and accommodations;
- Statement of the least restrictive environment in which to provide these services;
- How progress will be reported.

How is an IEP developed?

- An IEP is developed by an IEP team, at an IEP meeting.
- The IEP team is a group of professionals- which professionals are required depends on the needs of that child.
- Always have a special educator and a regular classroom educator.
- Parent is an essential member of the team.
- Parent has right to notice and a right to participate and have her opinions taken into account, and other procedural protections.
- Meeting to develop the IEP must occur within 30 days of eligibility.

IEP Goals Must be Appropriate

- Appropriate goals are an essential component of an IEP.
- Failure to include appropriate goals may be considered a denial of FAPE.
- Shouldn't be too easily achievable – needs to be some challenge.
- Only after determining the goals may an IEP team determine the appropriate amount of special education and the setting.

IEP – Services Must be Specified; IEP Drives Placement – Not the Opposite

- Not enough just to list the services – the amount must be specified.
- The IEP must drive the placement- not the other way around.
- What goes into the IEP determines where it should be implemented.
- Must never fit an IEP into an existing program just because that's what is available!

IEP- Some Data to Consider

- Appropriate data to consider when developing an IEP includes but is not limited to:
- Student's current records; current IEP (if any), recent evaluations (including any independent educational evaluations of course), counseling records, behavioral data, and any other information about the student that may be relevant.
- The team should consider the child's strengths, parents' concerns, evaluations, and the child's academic, developmental and functional needs.

IEP-Related Services

- Related services under the law are supportive services that are provided to assist the student in benefitting from special education.
- Without the proper related services, in the proper amount, the special education may not be effective, it may not work.
- Analogous to being prescribed medicine but not in a sufficient dosage.
- A student who only needs related services, and not special education, is not eligible for an IEP; However, the student may receive those related services under a 504 Plan even if an IEP is not available.

IEP-Related Services

- Related services may include (not at all a definitive list):
- Speech-language pathology;
- Audiology;
- Physical and occupational therapy;
- Counseling;
- School psychology;
- Social work;
- Assistive technology;
- Transportation.

IEP – Who Must Be on the Team

- Parents, regular education teachers, special education teachers, a district representative, and related services providers are essential (not an exhaustive list).
- Absence of essential team members can render the resulting IEP invalid.

IEP-Process at IEP Meeting

- Each participant will make recommendations for the IEP and the IEP team will try to achieve consensus.
- There is NO “majority vote” rule at IEP meetings.
- The parent’s view must be taken into account.
- Parent may often be in the minority.
- If the team cannot reach consensus, the parent must be provided with Prior Written Notice and the parent has the right to seek resolution at a due process hearing.

IEP-Disagreements: Due Process and Stay Put

- If there is disagreement on how to proceed with a particular issue, at any stage of the process, the parent has the right to request a due process hearing.
- A due process hearing is like a mini-trial before an impartial hearing officer.
- While awaiting a decision on the due process hearing, the stay-put rule applies.
- The stay-put rule prevents the school district from unilaterally changing any aspect of the student's special education program prior to a decision on the due process hearing.
- The details of the due process hearing are complicated and you will likely need an attorney to represent you.

Placement Decisions

- A placement decision is a determination of where the IEP will be implemented. Placement decisions must be consistent with the IEP.
- Remember that the IEP drives placement – not the other way around.
- The school district cannot shoe horn the student into an IEP just because they have space in a particular program.
- Placement decisions must include the parent and the parent must participate in the placement decision.
- An appropriate placement should be the “least restrictive environment.”
- The child should be educated as close as possible to her home.
- If there is disagreement on placement, the parent may request a hearing.

Procedural Safeguards

- Procedural safeguards are the law's formality requirements.
- Designed to provide parents with “meaningful involvement” in the educational placement of their children.
- Major procedural safeguards include but are not limited to:
- Opportunity for parents to examine records, participate in meetings, obtain an independent educational evaluation.
- School district must provide Prior Written Notice whenever the school district proposes (or refuses) to initiate a change in the identification, evaluation or educational placement of the child.
- An opportunity to file a due process complaint if necessary.

Don't Ever Give Up!

- Nelson Mandela: “It always seems impossible until it’s done.”
- Oprah Winfrey: “When you give up on life, never give up on yourself because there is so much for you to keep on giving.”
- Winston Churchill: Never give up on something that you can’t go a day without thinking about.”
- Chuck Yeager: “You do what you can for as long as you can, and when you finally can’t, you do the next best thing. You back up but you don’t give up.”
- Harriet Beecher Stowe: “Never give up, for that is just the place and time that the tide will turn.”
- Confucius: “It does not matter how slowly you go as long as you do not stop.”

Questions? Contact the school or our Office.

- Contact your local school or contact our office for further assistance.
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