

Special Education and State Charter Schools

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Key Terms

- IDEA- Individuals with Disabilities Education Act
- Section 504 of the Rehabilitation Act
- Child with a Disability
 - Child meets eligibility in one of the twelve categories
- FAPE- Free and Appropriate Public Education
- High Quality teacher
- Special Education
- Least Restrictive Environment
- Transitional Services



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FAPE

- Free and Appropriate Public Education
- This is what the IDEA guarantees students with disabilities
- Special education and related services
 - Provided at public expense, under public supervision and direction, and without charge;
 - Meet the standards set by the state educational agency;
 - Provided in conformity with the IEP

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Child Find

- States are required to identify, locate, evaluate, and determine which children need special education and related services
 - This includes homeless youth and youth in care
- LEAs are a central part of this
- Over-identification of minority children
 - Congress found that African American children are identified with mental retardation and emotional behavioral disorders at far greater rates than white students. LEAs must implement policies and procedures that prevent this over-identification
 - SST (student support team) and RTI (response to intervention) are two ways that we address this in GA



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Least Restrictive Environment

- Legal requirement to educate children with disabilities in general education classrooms with children who are not disabled to the maximum extent possible
- Children with disabilities may only be removed from the regular education setting if the nature or severity of the disability is such that the child cannot be educated in the general education environment even with the use of supplemental aids and services
 - Remember, the needs of other students cannot be a consideration when creating an IEP



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State Assessments

- Students with disabilities are generally included in state and district-wide testing
 - There can be accommodations and alternative assessments where necessary
 - There needs to be documented reasons when this is used including in the IEP. This should be the exception not the rule, and is generally used with more extreme disabilities.
- Where alternative assessments are used they need to be aligned with state standards



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Individualized Educational Plan

- This is a plan that is tailored to a students' unique educational circumstances and is designed to convey educational benefit (FAPE)
- FAPE: Free Appropriate Public Education— Special education and related services provided in conformity with an IEP, are without charge, and in conformity with the State's rules.
- Why do we need to comply with SBOE Rules in Special Education?

Parental Rights

- Procedural safeguards for parents and students with disabilities. GaDOE has a model on its website.
- Must be provided at least:
 - Once per year
 - Upon request
 - First request for due process
 - First initiation per school year of formal complaint
 - Discipline proceedings
 - Change in placement
 - Initial referral
 - Eligibility meetings

Evaluation, Eligibility, IEP, and Educational Placement

Initial Evaluation

- SST/ RTI
 - Purpose
 - RTI: Scientific, research-based intervention
 - Specifically used for students with suspected learning disabilities
 - SST: Student support team
 - Used for all students
 - Used to implement interventions to prevent students from going into special education
 - Measurable
 - Check Progress
 - Part of child find procedures and an essential part of the referral for evaluation
 - Referrals for evaluation must be accompanied by data showing the use of scientifically-based interventions prior to referral (SBOE Rule 160-4-7-.03)

Eligibility Meeting

- There is typically a meeting to discuss the evaluation. At this meeting the evaluation is explained to the parents, any additional areas of evaluation are discussed, and parental and teacher concerns are discussed. Results from SST/ RTI are discussed.
- Eligibility requires the IEP team to make a determination of whether a child is eligible for special education
- Team
 - Includes: school psychologist, at least one general and one special education teacher, one representative of the LEA, one person who knows the spectrum of special education services through the LEA, parent, child, and anyone else either party wants to bring
 - The team must work together to come to a decision. Consensus cannot always be reached, but when possible/realistic, it should be the goal.
 - The decision cannot be predetermined because it must be made by the team as a whole
 - No one person carries more weight than another.

Initial Evaluation

- What is the special education eligibility based upon?
 - Initial Evaluation
 - Teacher, parent, and student observations
 - SST/ RTI process and results
- Initial Evaluation
 - Uses multiple instruments that test the child in every area of suspected disability
 - There must be at least two measures for achievement and intelligence
 - Must be conducted **within 60 calendar days** of the request
 - Must have parental consent to evaluate the child
 - The evaluation must be conducted by an expert in that field (school psychologist, but for other areas it may be another professional. For example, in speech it may be a speech-language pathologist)
 - Classroom observations are required for students with a specific learning disability



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Initial Evaluation

- LEAs are responsible for ensuring that all tests chosen are not discriminatory and provided in the language most likely to yield the appropriate results
- Additional assessments may be needed for related services- AT, PT, counseling, etc.

Eligibility

- Determining whether the student is a child with a disability
 - Defined as a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, developmental delays (3-9 only), or specific learning disabilities; and
 - By reason thereof need special education
 - There does not need to be a disparity between the intelligence and achievement
 - Specific learning disability- requires enough specificity to provide FAPE.



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Eligibility

- Cannot say the child is a child with a disability if a critical factor is that the child did not receive education in reading or math; OR
 - A critical factor is that the child is an English language learner
- Not getting adequate instruction in reading is defined as missing instruction in phonic, phonemic awareness, vocabulary, fluency, and reading comprehension
- Once the team determines whether the child is eligible for services, it has 30 days to create an IEP if the child is eligible

Initial IEP

- The same team members plus any additional people
 - These people are typically the IEP team
 - There does not always have to be the exact same people although continuity helps create a better plan. The teachers who are present at the meeting do not have to be the student's teachers, although it helps create a better plan when they are team.
 - Team members can be excused if both parties agree in writing.

Initial IEP

- Notice: parents should be given reasonable notice for all IEP meetings
- Includes the names of people attending, purpose of the meeting, time, date and location
- And inform the parent that other parties may be invited (by the parent) to the IEP team who have special expertise (could be a mentor, counselor, etc.)

IEP

- In general the IEP team must consider the child's:
 - Strengths
 - Parental concerns for enhancing the student's education
 - Evaluation and eligibility results
 - Academic, developmental, and functional needs the child has



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Special Considerations

- If the child has behavior that impedes the child's learning, then the IEP team must consider positive behavioral interventions, supports, and other strategies to address that behavior
 - Functional Behavioral Assessment
 - Behavioral Intervention Plan
- If the child has limited English language proficiency, how that will be accounted for within the special education program?
- Blind and visually impaired students must be considered for Braille. If the child will not be getting Braille services, there must be an explanation for why not.

IEP Components

- Present level of academic achievement and functional performance
- Measurable Goals
- Educational Progress
- Appropriate accommodations/ Alternate Assessments
- Transition Plan (for children 16 and up)
- BIP
- Placement
- Support Services
- ESY- extended school year

IEP Components

- Measurable goals should be SMART, related to all areas of disability, and meaningful
 - Related to areas that will actually show progress and change for the student
 - SMART refers to the goals being specific, measurable, achievable, realistic, and time-bound
- Educational progress
 - How often will data be collected on these goals? How will it be collected? Who will collect it? When and how will that data be conveyed to the parent?
- Alternative assessments
 - The team must decide whether the student needs testing accommodations
 - Students with disabilities are expected to take all district and state-wide standardized tests
 - If the team chooses to use an alternative assessment, the team must justify that and define it

IEP Components

- Transition Plans
 - This is for students who are 16 and older regarding their transition out of IEP services
 - Designed with a results oriented process focused on increasing academic and functional achievement to facilitate the child's movement to post-secondary life and education, employment, and/or vocational school.
- BIP- behavioral intervention plan
 - Has goals that are targeted towards identified behavioral concerns
 - Use positive interventions geared towards those behaviors
 - monitor progress

IEP components

- ESY
 - Extended school year- this allows students with disabilities to continue to receive special education services during breaks in school (spring break, thanksgiving, winter, and summer breaks)
 - SLD example
- Placement
 - What type of setting will the child be educated in?
 - Inclusion, self-contained for one period, etc.
- Support Services
 - Assistive technology
 - Physical therapy
 - Nursing
 - Counseling

Revisions

- IEP must be revisited annually to review goals and adopt new ones for the coming year
- Re-evaluation and eligibility is redone every three years
- The IEP team convenes again during these decisions to assess progress, make amendments, and make decisions
- The team must convene to address any lack of progress, results of any re-evaluation, information provided by parents, anticipated needs

General Guidance

- Even though it may be adversarial at times, the IEP process should be viewed as a team-based decision process. When possible, it is best to work with parents.
- It is illegal to predetermine IEP/ special education decisions outside of the team
- The school can only have a lawyer when the parents/child have a lawyer
- Surrogate parents- appoint non-biased person to act as the parent for IDEA decisions for children who are wards of the state, homeless, parents are unidentified, or can't be located

Discipline

- PBIS- Positive Behavioral Interventions
- Students in special education are generally subject to the same code of conduct as other students
- Students with disabilities who have repeated behavioral concerns should have a BIP, which needs to be followed and updated consistently
- Can be suspended up to ten days consecutively or in total before there needs to be a manifestation determination hearing
- Referral to police is considered suspension for however many days that student is detained
 - DRH v Fulton County Schools
 - Police referral cannot be used as a surrogate for suspension

Manifestation Determination Hearing

- The MDH must occur when a child with a disability engages in behavior or breaks a rule or code of conduct that applies to a non-disabled child and the school proposes to:
 - Remove the child
 - Or the child has been suspended outside of school for an accumulation of 10 days
 - The tenth day triggers the MDH
- ISS does not count if the child is receiving special education services
- The manifestation determination hearing (MDH) is designed to determine whether the student's behavior directly relates to the child's disability

Manifestation Determination Hearing

- Conduct within 10 school days of any decision to change the child's placement
- Convene parent, LEA, and relevant IEP team members to determine:
 - If the child's conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; OR
 - If the conduct in question was the direct result of the LEA's failure to implement the IEP
- If the answer to either question is yes, then the behavior must be determined to be a manifestation

Manifestation Determination Hearing

- If the behavior is a manifestation, the team must conduct an FBA and create a BIP OR modify the existing BIP
- If the behavior is a manifestation, the team cannot change the child's placement because of the child's behavior
- If it is not a manifestation, then the child can be disciplined like any other child provided that the child still receives special education services
- Honig: Other students' safety/well-being cannot be considered in the IEP process
- 45 day exception: weapons, serious bodily injury, drugs
 - Serious bodily injury is extreme in case law



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State BOE Complaints

- The Georgia Department of Education is ultimately responsible for ensuring all students with disabilities are served.
- Parents can file a complaint with the state board of education if they believe their child is not getting FAPE. This is typically done without a lawyer, but not always.
 - The LEA has to issue a proposal to resolve the issue.
 - The LEA and parent may choose to take advantage of mediation services
 - The department has 60 days to issue a decision.
 - This does not preclude additional due process proceedings
 - In the complaint, the parent can propose a possible solution. The SBOE may choose to go with the proposal or its own solution.

Due Process

- When parents disagree, they have the right to pursue an outside opinion.
- This is a quasi-judicial process used to resolve disputes between parents and school regarding the provision of FAPE before an administrative law judge
- This is more adversarial than the state BOE complaint process. This procedure must be used before taking a claim to state court.
- An LEA can file this over an Independent Educational Evaluation. The parent can file this for any issue dealing with identification, evaluation, placement, provision of FAPE, placement decision
 - Stay put provision during the Due process procedures
 - Statute of limitations- offense(s) had to happen within the last **two** years
- Hire a lawyer if this happens because there are a lot of procedural intricacies
 - 15 days sufficiency (name, address (school and parent), problem, solution)
 - 5 days the ALJ makes a determination on sufficiency
 - 10 days PWN
 - 15 days resolution meeting
 - 30 day resolution meeting
 - 45 days from the 30 day resolution period hearing and decision
- As a LEA, it is best to try and avoid disagreements getting to this point
- There is more general information in the SCSC's IDEA handbook

Timeline

- 15 days sufficiency (name, address (school and parent), problem, solution)
 - The opponent can say that there is not a claim
- 5 days the ALJ makes a determination on sufficiency
- 10 days PWN (prior written notice)
- 15 days resolution meeting
- 30 day resolution meeting (the period of time the two side have to reach a resolution without the ALJ interfering). This usually involves mediation
- 45 days from the 30 day resolution period hearing and decision
- Appeal to a state court or a federal district court



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Support/ Resources

- WrightsLaw.org
- SCSC handbook
- National Center for Special Education in Charter Schools
- Georgia Department of Education
- US Department of Education
- PBIS.org
- Federal Resource Center for Special Education (FRC)
rrfcnetwork.org
- National Center for Teacher Quality nctq.org



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