



# Educational Needs of Special Populations in Dependency

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# Child Find

- The State and school districts have an affirmative obligation to identify all children with disabilities living in the State “regardless of the severity of their disabilities” who need special education and related services.
- 20 U.S.C. §1412(a)(3)



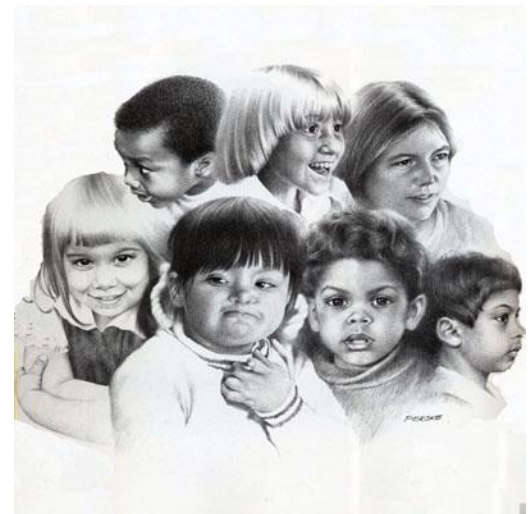
This includes locating, evaluating and identifying all children who need special education, including homeless children, foster children, children in detention centers, and in Department of Juvenile Justice Programs.

# Exception

- The State does not have to identify young adults, 18-21, with disabilities in adult correctional facilities. (Young adults, 18-21, who were already identified as ESE and had an IEP in the educational placement prior to incarceration, are entitled to services).

# Categorical Eligibility for IDEA

- Mental Retardation
- Hearing Impaired/Deaf
- Speech or Language Impairments
- Visually Impaired/Blind
- Serious Emotional Disturbance/Emotional Disturbance (SED/ED)
- Orthopedic Impairments
- Autism
- Traumatic Brain Injury
- Other Health Impairments
- SLD



To be eligible for special education, must

1 – meet the categorical eligibility requirements;  
**and**

2 – be in need of special education and related services for academic, social, emotional or behavioral reasons.

# Procedure



- Consent for Evaluation
- Functional Behavioral Assessment (data collection)/ Behavioral Intervention Plan
- Response to Intervention (RtI) – Tiers I, II, and III
- IEP development – services, ESY, transportation, school placement
- Minimum annual review of IEP; 3 year psychoeducational evaluation

# Difference Between 504/IDEA

## Section 504

- Purpose: to ensure access to FAPE.
- Accommodations available
- Fewer safe guards: School doesn't need to invite parents to meeting, plan doesn't need to be in writing. Schools do need to give notice when there is a plan in place and impartial review hearings.
- Student can still receive related services
- Follows child into post-public school: maybe helpful for Extended Foster Care eligibility, GED, post-secondary

## IDEA

- Purpose: to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 USC § 1400 (d)
- Written plans individualized for student with present levels of performance, goals and accommodations.
- Procedural safeguards include notice of meetings to parents.
- Due process hearings available for denials or failure to implement services.
- Schools must plan for transition and discuss LRE.



# Remedies

- Office of Civil Rights complaint
- State Complaint
- Due Process
- Circuit Court – Dependency Court

# Educational Surrogates

## Section 39.0016, Fla. Stat. (2014)

- (3)(b)1. Each district school superintendent or dependency court must appoint a surrogate parent for a child known to the department who has or is suspected of having a disability, as defined in s. [1003.01](#)(3), when:
- a. After reasonable efforts, no parent can be located; or
  - b. A court of competent jurisdiction over a child under this chapter has determined that no person has the authority under the Individuals with Disabilities Education Act, including the parent or parents subject to the dependency action, or that no person has the authority, willingness, or ability to serve as the educational decisionmaker for the child without judicial action.

# McKinney-Vento

- 42 USC 11302- Applies to homeless children who do not have a fixed, regular nighttime residence. Foster children who are in emergency shelter or are awaiting placement also included. Children should be kept in school of origin to the extent feasible unless contrary to wishes of the parent/caregiver.
- Denials should be in writing. Disputes can be made to the school district homeless liaison. The LEA must enroll the child in the school of origin or residency, based on caregiver's wishes, and provide transportation pending resolution of the dispute. Appeals can be made to FDOE.

# Section 39.01305(3), Fla. Stat. (2014)

An attorney shall be appointed for a dependent child who:

- (a) Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
- (b) Is prescribed a psychotropic medication but declines assent to the psychotropic medication;
- (c) Has a diagnosis of a developmental disability as defined in s. [393.063](#);
- (d) Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or
- (e) Is a victim of human trafficking as defined in s. [787.06](#)(2)(d).

# Children Residing in or Being Considered for Skilled Nursing Home

- Case study – C.
- ESE eligibility: Traumatic Brain Injury (TBI), Rule 6A-6.030153, Fla. Admin Code
- ESE eligibility: Orthopedically Disabled, Rule 6A-6.030151, Fla. Admin. Code
- ESE eligibility: Intellectually Disabled (InD), Rule 6A-6.03011, Fla. Admin. Code
- IEP implementation: hospital homebound – Rule 6A-6.03020, Fla. Admin. Code

# Children Objecting to Prescribed Psychotropic Medication

- Case study: M.
- ESE eligibility –EBD Eligibility Rule 6A-6.03016, Fla. Admin. Code:
- Definition: A student with an emotional/behavioral disability has persistent and consistent (6 months or longer) emotional or behavioral responses that adversely affect performance in school, not related to age, culture, gender or ethnicity.
- Process: RTI, Evaluation, FBA, Social Development History, Review of Educational Data; Medical Evaluation if needed.
- Criteria for Eligibility: (1) Internal factors, (2) External factors, (3) Factors must be present for minimum of 6 months in two or more settings.

# Children with Diagnosis of Developmental Disability

- Case study: E.
- ESE eligibility – Intellectual Disability (InD),  
Rule 6A-6.03011, Fla. Admin. Code
- Specialized school needed?
- Least Restrictive Environment

# Children Being Placed or Considered for Placement in a Residential Treatment Facility



- Case study: D.
- ESE – hospital homebound while  
in RTC – Rule 6A-6.03020, Fla. Admin. Code
- ESE – need to be evaluated or made eligible?
- ESE eligibility - Emotional Behavioral Disability (E/BD) - Rule  
6A-6.03016, Fla. Admin. Code
- ESE eligibility – Other Health Impaired (OHI) – Rule 6A-  
6.030152, Fla. Admin. Code
- Specialized school needed?
- Medication needed while in school
- Transition with therapeutic services



# Children Victim of Human Trafficking

- Case study: L. and J.
- Fla. Virtual School Full Time: Must fulfill obligations of a school district for ESE students, but IEP must indicate that fulltime virtual school is appropriate. Fla. Stat. § 1003.57(5)
- GED: No ESE services, but can get accommodations for the test (i.e. extra time, breaks, separate testing room)
- Need support to cope with trauma and ownership of decisions for older youth.

# Special Immigrant Juveniles

- ELL: English Language Learners - Section 1003.56, Fla. Stat. (2014)
- Child Find still applies
- Education surrogates

# Children with Crossover Cases

- Records transfer from DJJ program/detention facility
- Child Find/Exclusion
- Ability to re-enroll in home school
- DJJ needs to assist with transition services
- Felony arrest – Section 1006.09, Fla. Stat. (2014)

# Children Transitioning to Extended Foster Care

- Rights transfer to youth
- School change with change of placement
- IEP/504 Plan may assist with meeting Fla. Stat. § 39.6251 (2)(e) documentation.
- Transition services in IEP and Fla. Stat. §39.6035 should be congruent and in line with youth's post-18 plans.
- Vocational Rehabilitation



# Practice Pointers

- Gather all records from prior schools
- Determine whether education surrogate is needed.
- Determine if child is in need of academic skills assessments or new or re-evaluations (have all credits transferred, has the child missed a substantial amount of school, was the child previously in RTI?)
- Are IEP services individualized for child's needs
- Would child benefit from therapy in school
- Should school be made aware of any trauma or medical information
- Does the child have any special interests that can nurtured at school (Normalcy, Fla. Stat. §39.4091)
- Does the child have a transition plan which is realistic and reflective of their ability
- Make sure all relevant stakeholders are invited to school meetings
- Make sure all educational records are filed per §39.701(2)(a)12 and (3)(a)11
- Place the school district on notice of any suspected disabilities, placing child under umbrella of protection. 34 CFR 300.534

# Questions



- Where to go for help...
  - Florida Card Centers (autism)  
<http://www.autismfl.com/card.html>
  - Disability Rights Florida - <http://www.disabilityrightsflorida.org/>
  - Florida Department of Education  
<http://www.fldoe.org/academics/exceptional-student-edu/index.shtml>
  - [www.wrightslaw.com](http://www.wrightslaw.com) - education law resource
  - Council for Parent Attorneys and Advocates [www.copaa.org](http://www.copaa.org)
  - U.S. Department of Education -  
<http://www2.ed.gov/about/offices/list/osers/osep/index.html>