



Disability Rights

F L O R I D A

**Special Education Law for
Students with Disabilities**

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Advocacy. Equality. Dignity.

DISABILITY RIGHTS FLORIDA

- Disability Rights Florida is the designated protection and advocacy system for individuals with disabilities in the State of Florida.
- Disability Rights Florida has authority and responsibility under eight federal grants.
- Established in 1987, Disability Rights Florida is a statewide, not-for-profit corporation.



We Will Cover

- **The ESE Process**
- **The Initial Evaluation**
- **Eligibility**
- **The IEP**
- **504 Plan**
- **Procedural Safeguards**
- **Dispute Resolution**
- **Discipline/Behavior**
- **Transition**
- **Resources**
- **How we can help**



The ESE Process

- Ten Step Process
 1. Student is identified as needing services and/or related services beyond what is provided through general education
 2. Consent is signed (timeline starts) and the Student is evaluated
 3. Eligibility is determined
 4. Student is found eligible or ineligible for services
 5. Individualized Education Program (IEP) meeting is scheduled
 6. IEP is drafted by the team
 7. Services are provided
 8. Progress is measured over time
 9. IEP is reviewed
 10. Student is re-evaluated (at least every three years)



Evaluation

- Under 34 C.F.R. §300.15, an “evaluation” is defined as procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.
- A screening of a student by a teacher or specialist for instructional purposes is not an evaluation for eligibility for special education and related services. See 34 C.F.R. §300.302.



Evaluation

- *A.W. v. Middletown Area Sch. Dist.*, [115 LRP 4105](#) (M.D. Pa. 01/28/15) (holding that a student's evaluation was inappropriate because it lacked information from which the district could develop a positive behavior plan, craft IEP goals, or rule out a specific learning disability).
- *M.H. v. Nassau Cnty. Sch. Bd.*, 918 So.2d 316, 44 IDELR ¶ 165 (Fla. Dist. Ct. App. 2005) ruled that district had a Child Find obligation to pursue consent and provide procedural safeguards notice for full evaluation of child with ADHD and Tourette Syndrome who had a 504 plan that was unsuccessful—here parent initially revoked consent for part of the evaluation but then ambiguously appeared to withdraw that partial revocation



Child with a Disability

- A child with a disability is one who is evaluated in accordance with §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. See 34 C.F.R. §300.8.
- **See 6A-6.0331 General Education Intervention Procedures, Evaluation, Determination of Eligibility, Reevaluation and the Provision of Exceptional Student Education Services.**



General Education Interventions

Are **not** required prior to referral for:

- student with speech disorders,
- severe cognitive impairments,
- physical or sensory disorders, or
- severe social/behavioral deficits
- preschool students

Are required for:

- all other students prior to referral
- evaluations and interventions may occur simultaneously
- See OSEP 11-07



Initial Evaluations

- Under F.A.C. Rule 6A-6.0331 (3) (b), if the parent of the child receiving general education interventions requests, prior to the completion of these interventions, that the school conduct an evaluation to determine the student's eligibility for ESE and related services as a student with a disability, the school district:
 - Must obtain consent for and conduct the evaluation; and
 - Complete the interventions concurrently with the evaluation but prior to the determination of the student's eligibility for ESE; or
 - Must provide the parent with written notice of its refusal to conduct the evaluation.



Parental Consent

- The public agency (i.e. the school district) proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability must obtain informed consent from the parent of the child before conducting the evaluation.
- The school district must provide notice to the parent that describes any evaluation procedures the school district proposes to conduct.
- This parental consent for the initial evaluation does not also extend to the initial provision of special education services



Surrogate Parent

- A child who is a ward of the state may be appointed a surrogate parent by the judge overseeing the child's case.
- The surrogate may not be an employee of the state local educational agency, local educational agency, or any other agency involved in the education or care of the child.
- A Guardian ad Litem may serve as an education surrogate



60 School Days

- For K-12 students, the school district must ensure that initial evaluations are completed within sixty (60) school days that the student is in attendance after the school district's receipt of the parental consent.
- For pre-k students, the evaluations must be completed within sixty (60) school days after receipt of the parental consent.



Eligibility

- In interpreting evaluation data for the purpose of determining if a student is an exceptional student and the educational needs of the student, each school district shall:
 - Draw upon data and information from a variety of sources, such as aptitude and achievement tests,
 - the student's response to interventions/instruction implemented,
 - parent input,
 - student input as appropriate,
 - teacher recommendations, and
 - information about the student's physical condition, social or cultural background, and adaptive behavior



504 ELIGIBILITY

- Any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having an impairment.



MAJOR LIFE FUNCTION

- A major life activities as defined in the Rehabilitation Act of 1973 include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- Learning does not have to be the major life activity affected in order for an individual to be eligible for protections and services under Section 504.



ESE & 504

- Students with disabilities receiving exceptional student education (ESE) services, as defined by the Individuals with Disabilities Education Act (IDEA), are protected under Section 504.
- Not all Section 504 students are eligible for ESE services.



WHAT ARE THE DIFFERENCES

- IDEA
 - provides more specific categories of disabilities
 - student's educational performance must be adversely affected by the disability
 - Specialized instruction
 - Students who meet specific IDEA requirements are also protected under Section 504.
 - Birth through age 21.
- 504
 - 504 is not limited to specific disability categories
 - Does not require evidence that the disability adversely affects the student's educational performance.
 - Disability substantially limits one or more major life activities
 - All ages



INDIVIDUAL EDUCATION PLAN

- A written plan including a present level of performance, goals and objectives, accommodations and modifications, and related services.
- IEP's must be updated at a minimum of once a year. (can be updated more if deemed appropriate).



Important Sections of the IEP

- In an IEP meeting you and the school-based IEP team will review the following sections of the IEP and how they relate to your child:
 - Introductions
 - Procedural Safeguards
 - Present Levels of Academic Achievement and Functional Performance
 - Evaluations
 - Goals, Short-Term Objectives
 - Related Services
 - Accommodations/Modifications
 - Supplementary Aides and Services
 - Placement



Present Levels of Academic Achievement and Functional Performance

- Present Levels of Academic Achievement and Functional Performance should include the following starter phrases to ensure the appropriate information is documented:
 - Effects of the disability
 - Priority educational need



Annual Goals

- A measurable annual goal is an individualized, specific statement of what the student needs to learn and how it will be demonstrated.
- The intent of the annual goal is to move the student toward greater involvement and progress in the general curriculum.



Short Term Objectives

- Short-term objectives are intermediate steps that the student will take to reach the measurable annual goal.
- As an alternative to short-term objectives, IEP teams may develop periodic measures, which can be thought of as describing the amount of progress the child is expected to achieve at certain points during the year.



Related Services

- Services a child with a disability needs in order to benefit from special education.

Services can include the following:

- Speech therapy
- Occupational therapy
- Physical therapy
- Audiology Services
- Psychological services
- Recreation, including therapeutic recreation
- Counseling services, including rehabilitation counseling
- Orientation and mobility service
- Medical services for diagnostic or evaluation purposes
- School health services
- Social work services in schools
- Parent counseling and training
- Transportation



Related Services

- The IEP must clearly specify the nature and type of services that the district intends to provide. See *Board of Educ. of Carmel Cent. Sch. Dist.*, [21 IDELR 633 \(SEA NY 1994\)](#); [Minneapolis Special Sch. Dist. No. 001, 62 IDELR 276 \(SEA MN 2013\)](#); and [Los Angeles Unified Sch. Dist.](#), [60 IDELR 29 \(SEA CA 2012\)](#).



Assistive Technology

- Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.
- 20 U.S.C. 1402(1)(A), 34 CFR 300.5



Florida Statute 1003.575

- If an individual education plan team makes a recommendation in accordance with State Board of Education rule for a student with a disability, as defined in s. 1003.01(3), to receive an assistive technology assessment, that assessment must be completed within 60 school days after the team's recommendation.



Accommodations v. Modifications

- **Accommodations:** adjustments to curriculum presentation that does not interfere with the State Standards.
- **Modifications:** adjustments to curriculum presentation that do substantially change the requirements of State Standards.



Least Restrictive Environment

- To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled.
34C.F.R. §300.114 (2)(i)
- This is also know as **“INCLUSION”**.



LRE

- Supreme Court held that Rachel Holland, a young lady with Down Syndrome, should be mainstreamed into a regular class even if the only benefits to her were non-academic in nature. *Sacramento City Unified School District v. Rachel H.*, 14 F.3d 1398 (1994)
- Falvey (2004) concluded “no studies conducted since the late 1970’s have shown an academic advantage for students with intellectual and other developmental disabilities educated in separate settings.” In fact, research has consistently shown that students with disabilities who spend more time with typically developing peers perform better academically when compared to students served in more restrictive placements.”



504 PLAN

- The 504 plan describes the accommodations that the school will provide to support the student's education.
- While Section 504 does not require a written plan, it does require documentation of evaluations and accommodations.
- A written plan is useful and provides clarity and direction to the individuals delivering services or making accommodations.
- While there is no time limit specified for an accommodation plan. A yearly review is recommended.
- Changes to the 504 plan can be made on an as needed basis.



REASONABLE ACCOMMODATIONS

- Accommodations are used to “level the playing field.”
- They do not provide the student with an unfair advantage.
- Accommodations are required for the student to receive a free and appropriate public education.



PROCEDURAL SAFEGUARDS IDEA

- Procedural safeguards include the right to participate in all meetings, to examine all educational records, and to obtain an independent educational evaluation (IEE) of the child.
- Parents have the right to written notice when the school proposes to change or refuses to change the identification, evaluation or placement of a child.
- The law includes several ways to resolve disputes including state complaints, mediation, a "Resolution Session" and due process hearings.
- Procedural safeguards include legally binding written mediation agreements and confidentiality.



Dispute Resolution

1. Try to resolve at the school level with the IEP Team, Principal and ESE Staffing Specialist.
2. Contact the District ESE Director and/or Superintendent.
3. Contact an advocate or attorney.
4. Request a Facilitated IEP meeting.
5. Request Informal Conflict Resolution.
6. Request Mediation.
7. File a State Complaint.
8. File for Due Process.
9. Report Staff Conduct to Professional Practices.
10. File an OCR Complaint.
11. Contact your Florida Representative or Senator.



PROCEDURAL SAFEGUARDS

504

- Parents have the right to:
 - Receive notice regarding the identification, evaluation, and placement of their child
 - Receive prior notice when the school is changing or discontinuing services for their child
 - Review their child's records to participate in an impartial hearing and review process with or without representation by counsel



504 GRIEVANCE

- The Section 504 Coordinator (or her/his designee) shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint.
- The Section 504 Coordinator should issue a written decision on the grievance.
- The availability and use of this grievance procedure does not prevent a person from filing a complaint of discrimination on the basis of disability with the Office for Civil Rights or requesting an impartial 504 hearing.



504 GRIEVANCE

- If you are unable to resolve your concerns through a meeting with your school administrator, you have the option of filing a grievance with the school's 504 coordinator.
- Grievances must be submitted to the Section 504 Coordinator.
- A complaint must be in writing, containing the name and address of the person filing it.
- The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.



504 GRIEVANCE

- If you are not satisfied with the investigation you can file for a 504 hearing, or
- You can file a formal complaint with the office of civil rights.



Discipline

- School may make unilateral change in placement:
 - For 10 school days or less for students who violate the code of conduct.
 - Over 10 days a manifestation determination must be held
 - IF a manifestation of the student's disability the student cannot receive a consequence.
 - **IF NOT** a manifestation of the student's disability can be disciplined but FAPE cannot be denied and IEP Team determines placement.
 - For 45 days or less for weapons, drugs or infliction of **serious** bodily injury.



Manifestation of the Disability

- If the LEA, parent and relevant members of the IEP team determine that either reason I or reason II below apply, the conduct **shall** be determined to be a manifestation of the student's disability:
 - I. If the conduct in question was **caused by, or had a direct and substantial relationship to**, the student's disability; or
 - II. If the conduct in question a **direct result of the LEA's failure to implement the IEP.**
- If the LEA, parent and relevant members of the IEP team determine that either I or II is applicable for the student, the conduct **shall** be determined to be a manifestation of the student's disability.



MD

- If the MD reveals that the student's conduct was a manifestation of a disability, the student generally cannot be expelled or suspended for the conduct beyond the 10th day. See *Honig v. Doe*, [559 IDELR 231](#) (U.S. 1988); *S-1 v. Turlington*, [552 IDELR 267](#) (5th Cir. 1981); and *OSEP Memorandum 95-16*, [22 IDELR 531](#) (OSEP 1995).



FBA/BIP

- **Functional Behavior Assessment:** A process for identifying relationships between a person's behavior and aspects of their environment.
- **Positive Behavior Interventions:** Strategies for effectively addressing behavioral problems that are proactive, educative, and functional in nature.



FEDERAL LAW

- Federal law (IDEA & 504) guarantees every student with a disability the right to assistance in moving from the school to post secondary activities.



What are Transition Services?

- A coordinated set of activities for a child with a disability that is designed to be within a **results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's** movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported adult services, independent living, or community participation).



Transition

- *Gibson v. Forest Hills School District Board of Education*, [61 IDELR 97](#) (S.D. Ohio 2013). The District Court concluded that a district's concerns about a high schooler's ability to tolerate a lengthy, contentious IEP meeting that addressed issues well above her level of comprehension did not excuse its failure to include her in postsecondary transition planning. Noting that the district took no other steps to ensure that the team considered the student's preferences and interests, the District Court held that the procedural violation amounted to a denial of FAPE.



What are Transition Services?

- Based on the individual **child's** needs, taking into account the **child's** strengths, preferences and interests; **and includes:**
 - Instruction
 - Related services
 - Community experiences
 - The development of employment and other post-school adult living objectives; and
 - When appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.



Transition Services

- *East Hartford Bd. of Educ.*, [50 IDELR 240](#) (SEA CT 2008). Concluded that the transition services provided to a student with Down syndrome were "designed to fail," a hearing officer determined that a Connecticut district denied the student FAPE. The IHO ordered the district to retain an independent consultant and develop an appropriate compensatory program for the student.



Components of a TIEP

- Present level of performance = Student's unique educational and functional needs.
- Supports and related services.
- Which agencies or individuals will provide the services.
- Measurable goals for the student.
- Program accommodations, modifications and supports.
- Technology devices.



504 Plan

- Students with disabilities who are not covered by IDEA – that is, students who need accommodations in education but do not need specially designed instruction — have a plan similar in purpose to the TIEP. Covered by Section 504 of the Rehabilitation Act, it is usually called a “504 Plan.”



504 Plan

- A 504 plan, like a TIEP, specifies the steps to be taken to give the young person equal access to be educated and transition successfully to post-secondary.
- It describes the kind of education that is right for him or her and the accommodations to make it possible.



TIEP or Transition 504

- High-school program the student needs.
- Student's desired post-school outcome.
- Type of work the student wants.
- Right training, supports and services.
- Job training the student will need.



TIEP or Transition 504

- Post school adult living arrangements.
- Functional vocational assessments.
- Life skills the student has yet to learn.
- Assistive Technology.



TIEP/504 Responsibility

- The school has primary responsibility for creating and maintaining the 504 plan and the TIEP, although many other institutions and agencies should help.



WHEN DOES IT START?

- Transition, which usually takes place between the ages of 14 and 22, can be much more successful if a student has access to all the supports and services that permit him or her to live as fully and independently as possible.



Post Secondary

- A post-secondary educational program will not usually conduct meetings or write plans, but will support students with disabilities via arrangements such as a reduced course load, recording devices, sign-language interpreters, readers, extended time for testing, or adaptive software and hardware for computers.



Post Secondary

- To receive accommodations, the student must notify the school that he or she has a disability and requires certain accommodations, services or technology.
- The post-secondary school is not required to lower its academic standards for a student with a disability.



Post Secondary

- To receive accommodations the student will need to provide an updated psychological report and TIEP or 504 Plan, that provided accommodations in High School.
- Contact your college/university/vocational school choice well in advance to learn their requirements.



Transfer of Rights

- Sec. 300.520 A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)--
- (1)
 - (i) The public agency must provide any notice required by this part to both the child and the parents; and
 - (ii) All rights accorded to parents under Part B of the Act transfer to the child;



Agency Linkage

- Agency collaboration is essential in developing effective Transition Individual Educational Plans and Transition 504 Plans for students.
- Effective transition planning requires a coordinated effort on the part of families, students, school district personnel, and agency personnel.



Resources

- Disability Rights Florida
www.disabilityrightsflorida.org
- Wrightslaw
www.wrightslaw.com
- Bureau of Exceptional Education and Student Services
<http://www.fldoe.org/ese/>
- Division of Vocational Rehabilitation
www.rehabworks.org
- Division of Blind services
<http://dbs.myflorida.com>
- Agency for Persons with Disabilities
<http://apd.myflorida.com>



HOW TO REQUEST SERVICES

- **800-342-0823**
 - We will gather information
 - Review your request
 - Provide follow-up information and referral
 - Discuss other possible services

Web Site

www.DisabilityRightsFlorida.org

- Visit the Contact Tab
- Use an Online Form to Request Services





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F L O R I D A

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