

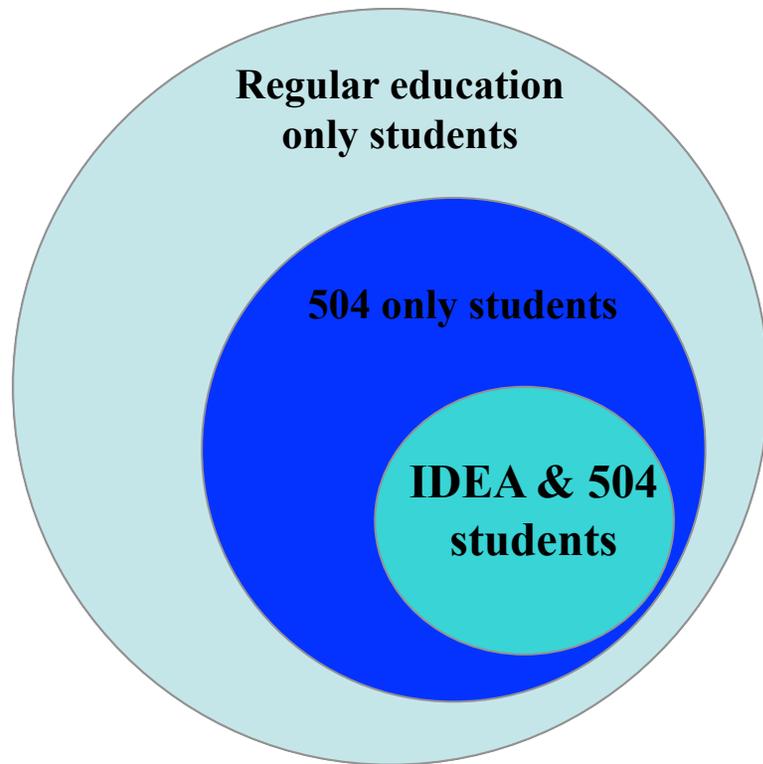
Special Education: The Legal Framework, Building an
IEP and What to do When the Team does not Agree

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THE LAW

- Individuals with Disabilities in Education Act (IDEA), 20 U.S.C. §1400 *et seq.*
- Section 504 of the Vocational Rehabilitation Act, 29 U.S.C. § 794(a)
- Americans with Disabilities Act, 42 U.S.C. § 12101
- No Child Left Behind, 20 U.S.C. § 6301
- Families Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g

Student Population



IDEA/504 Students

Students are qualified under one or more of thirteen (14) IDEA disabling conditions. Specially designed individual education programs are planned for each student by IEP teams.

Section 504 Students Only

Due to substantial mental or physical impairments that limit one or more of the student's major life activities, special accommodations to the student's program are required. A 504 accommodation plan is designed for each student according to individual need.

Examples of potential 504 disabling conditions not typically covered under IDEA are:

- ◆ communicable diseases – HIV, tuberculosis
- ◆ medical conditions – asthma, allergies, diabetes, heart disease
- ◆ temporary medical conditions due to illness or accident
- ◆ Attention Deficit Disorder (ADD, ADHD)
- ◆ recovering alcoholics and addicts
- ◆ other conditions

IDEA vs. Section 504

	IDEA	§504
Year Enacted	1975	1973
Legal Citation	20 U.S.C. 1400 et seq. 34 C.F.R. Part 300	29 U.S.C. 794 34 C.F.R. Part 104
Type of Statute	Federal funding statute providing federal aid to states that ensures the provision of free appropriate public education (FAPE) to children with disabilities	Civil rights statute protecting individuals with disabilities from discrimination in programs and activities receiving federal funds

	IDEA	§504
Who is Covered	Infants and toddlers with disabilities 0-2; children 3-21 who meet the definition of a preschool child with a disability or one of the 14 categories of disabilities applicable to school-age children	Any person with a physical/mental impairment which substantially limits one or more major life activities (e.g., self-care, manual tasks, walking, seeing, hearing, breathing, learning, working), who has a record of such an impairment, or is regarded as having such an impairment.

	IDEA	Section 504 of the Rehabilitation Act (§504)
Major Provisions	Ensures procedural safeguards and the right to free appropriate public education in the least restrictive environment in accordance with the IDEA	<p>No otherwise qualified individual with disability shall solely by reason of his or her disability be:</p> <ul style="list-style-type: none"> • excluded from participation in, • denied the benefits of, • or be subjected to discrimination under any program or activity receiving federal financial assistance.

FAPE under 504

- Like IDEA, Section 504 requires that students receive a free, appropriate public education.
- FAPE under 504 means, “regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures. 34 C.F.R. §104.33 (b)

	IDEA	Section 504
Free	At no cost to the Family	
Appropriate	designed to provide "educational benefit" for a person with disabilities	an education comparable to the education provided to those students who are not disabled
Services	May include speech and language therapy, occupational therapy, physical therapy, counseling services, psychological services, social services, and transportation.	Related services can be provided but may constitute need for IDEA eligibility

How to measure FAPE under Section 504

- Unlike IDEA's more specific and elaborate procedures, Section 504 provides a more general standard that prohibits discrimination and ensures equal access to the educational opportunities that exist.
- According to OCR, appropriate education is:
 - education services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students are met;
 - the education of each student with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability;

SPECIAL EDUCATION PROCESS

- IDENTIFICATION
- EVALUATION
- ELIGIBILITY
- PLACEMENT

Who needs special education?

- A child having mental retardation, hearing impairment, speech or language impairment, visual impairment, serious emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, deaf-blindness, or multiple disabilities and who, by reason thereof, needs special education and related services.
- Children aged 3 through 9 experiencing developmental delays (discretionary)
- U.S.C. §1401(3); 34 C.F.R. §300.8; GDOE Rule §160-4-7-.05 (See appendix to rule).

DIAGNOSIS vs. ELIGIBILITY

- Eligibility means the child is disabled AND needs special education. 34 C.F.R. 300.8
- IDEA contains 13 categories of eligibility
- A DSM-IV or medical diagnosis is only HALF the equation
- IDEA and SSI have different standards

What special education is?

- “Specially designed instruction provided at no cost to parents that meets the unique needs of a student with a disability. Special education includes instruction in the classroom, in the home, in hospitals, institutions and other settings, physical education, travel training and vocational education.” 20 U.S.C. §1401 (29); GDOE Rule §160-4-7-.21(39).

FAPE

- Free - without charge
- Appropriate – conforms with requirements of IDEA (GDOE Rule §160-4-7-.06), meets the unique needs of the child, and confers educational benefit
- Public – at public expense
- Education – 3 through age 21

What is an IEP?

- Individualized education program. The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—
 - Present levels of performance
 - Annual Goals and Objectives
 - Related Services and Supplementary Aids and Services plus modifications that are appropriate and allow participation in the general curriculum as well as with non-disabled peers
 - an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in the activities

20 U.S.C. §1414; 34 C.F.R. §300. 320(a); GBOE Rule §160-4-7-.06

Components of an IEP

- Present Levels of Performance
- Goals & Objectives
- Special Considerations
- Related Services
- ESY
- Assistive Technology
- Modifications
- Testing Accommodation
- LRE/Placement

IEP BASICS

- IEP's are focused on both academic AND functional performance
- IEP's include both academic and functional goals
- IEP's are designed to “meet educational needs”
- IEP's presume student will take standardized assessments
34 C.F.R. §300.320; GBOE Rule §160-4-7-.06.

IEP Participants

- Attendance from IEP Team members may be excused by mutual agreement of the parties and after submitting a written statement to the IEP team.
- When revising an IEP, the parties may agree not to convene an IEP Team meeting for the purposes of making changes, and instead may develop a written document to amend or modify the child's current IEP.

34 C.F.R. §300.324; GBOE Rule §160-4-7-.06.

GOALS & OBJECTIVES

- Address educational weaknesses of student
- Specific and quantifiable
- Provides for objective measurement and regular data collection
- Focuses on a single educational skill

V. Measurable Annual Goals

Academic and/or functional goals designed to meet the child's needs that result from the disability to enable the child to be involved in and make progress in the general education curriculum or to meet each of the child's other educational needs that result from the disability.

Measurable Annual Goal: Alfredia will improve numbers and operations skills, as measured by formal and informal grade level assessments.

Criteria for Mastery	Method of Evaluation	Progress At Reporting Period					
		Baseline 2/1/2010	1	2	3	4	5
Independently with 70% accuracy	Data Collection	Data: 33%	Data:	Data:	Data:	Data:	Data:

Measurable Annual Goal: Alfredia will improve algebra skills, as measured by formal and informal grade level assessments.

Criteria for Mastery	Method of Evaluation	Progress At Reporting Period					
		Baseline 1/28/2010	1	2	3	4	5
Independently with 60% accuracy	Data Collection	Data: 30% Benchmark	Data:	Data:	Data:	Data:	Data:

Measurable Annual Goal: Alfredia will ignore routine distractions during seat work, instruction, etc.

Criteria for Mastery	Method of Evaluation	Progress At Reporting Period					
		Baseline 1/28/2010	1	2	3	4	5
With cue assistance 60% of the time.	Data Collection	Data: 40%	Data:	Data:	Data:	Data:	Data:

Measurable Annual Goal: Alfredia will improve legibility, as measured by data collection (classwork)

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Objective:

By 08/28/2009, trace numbers 1-10 given appropriate writing utensil.

Supported by: OT PT AT

Mastery Criteria: 4 out of 5 trials over 5 consecutive data collection days

Extent of Progress toward Objective:

1	2	3	4	5	6

- Informal Assessment
 Other

- Data Collection
 Formal Assessment

- Work Samples
 Classroom Observation

Other evaluation method:

Objective:

By 08/28/2009, copy numbers 1-10 using a model given appropriate writing utensil.

Supported by: OT PT AT

Mastery Criteria: 4 out of 5 trials over 5 consecutive data collection days.

Extent of Progress toward Objective:

1	2	3	4	5	6

- Classroom Observation
 Informal Assessment

- Formal Assessment
 Data Collection

- Other
 Work Samples

Special Education for FOD/ OAA

- Individualized services to meet the educational needs of the student
- Address any educational weaknesses related to the medical condition
- Educational means
 - Cognitive
 - Academic
 - Social/Emotional
 - Motor
 - Communication/Language

What services should the school provide?

- Special Education Instruction
- Modifications (Environment, curriculum or method of instruction)
- Related services
- Supplementary Aids and Services
- Extended School Year
- Assistive Technology
- And more...

INDEPENDENT EDUCATIONAL EVALUATION

- ONE OF THE STRONGEST RIGHTS A PARENT HAS UNDER IDEA
- A parent has the right to an independent educational evaluation at public expense if the parent **disagrees with an evaluation** obtained by the public agency.
34 C.F.R. §502(b)
- The IEE, “ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion.” Schaffer, 546 U.S. at 60.

DISPUTE RESOLUTION

- State Board Complaints
 - 34 C.F.R. §300.151-.153
 - GBOE Rule §160-4-7-.10(1)
- Impartial Due Process Hearings
 - 34 C.F.R. §300.507
 - GBOE Rule §160-4-7-.10(3)
- Mediations
 - 34 C.F.R. §300.506
 - GBOE Rule §160-4-7-.10(2)
- Informal Resolution Sessions
 - 34 C.F.R. §300.510
 - GBOE Rule §160-4-7-.06(3)(d)

Hendrick Hudson School District v. Rowley, 458
U.S. 176 (1982) -

- First special education decision
- Court provides pillars of special education law
- “Specially designed instruction”
- “Appropriate instruction...to permit a child to benefit educationally”
- “Reasonably calculated to enable the child to achieve”

Denial of FAPE

- Has the state complied with the procedures set forth in the Act?
- Is the IEP reasonably calculated to enable the child to receive educational benefits?

Rowley, 458 U.S. at 206-07.

Procedural FAPE Denial

- Procedural violations which impact the development of the IEP resulting in actual harm to the parent
- Harm must be shown as
 - Exclusion of the parent from the collaborative process, or
 - Delay or denial of access to FAPE

Substantive FAPE Denial

- IEP not reasonably calculated to allow child to receive meaningful educational benefit
- No progress on IEP Goals and Objectives
- In the 11th Cir., must show a failure to provide the “basic floor of opportunity”.
JSK v. Hendry, 941 F.2d 1563 (1991)

IDEA Supreme Court Cases

- *Bd. Of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)
 - Defines “appropriate education” as one which the student benefits from instruction and makes educational progress
- *Burlington Sch. Comm. v. Massachusetts Dept. of Educ.*, 471 U.S. 359 (1985)
 - Establishes analysis for equitable remedy of private services as “two pronged” test of whether school has denied student’s right to procedural and substantive FAPE

IDEA Supreme Court Cases (con't)

- *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984)
 - Defined “medical services” not covered by IDEA
- *Honig v. Doe*, 484 U.S. 305 (1988)
 - “Stay - put”
- *Schaffer v. Weast*, 546 U.S. 49 (2005)
 - Burden of proof lies with complaining party

IDEA Supreme Court Cases (con't)

- *Arlington Central v. Murphy*, 548 U.S. 291 (2006)
 - No expert fee recovery for prevailing parties
- *Winkelman v. Parma City School District*, 127 S.Ct. 1994 (2007)
 - Parents have rights under IDEA and may represent those rights pro se in federal court

HOSPITAL/HOMEBOUND INSTRUCTION

- Educational placement, under Section 504, may be outside the traditional classroom
- In Georgia, the provision of hospital or homebound instruction is provided if an eligible student “will be absent a minimum of 10 consecutive school days”
- OR “has a chronic health condition causing him or her to be absent for intermittent periods of time”

THE REQUIREMENTS

- Student able to participate in instruction
- Absent for more than 10 days
- OR
- Has a chronic health condition causing him/her to be absent for intermittent periods of time
- Ga. Comp. R. & Regs. §160-4-2-.31

Eligibility Issues

- What health conditions are covered?
- What is “intermittent”?
- Communicable diseases
- Psychiatric/Emotional Disturbance
- Chronic or recurring conditions must be re-documented annually

What instruction?

- Comparable academic instruction working on mastery of the Georgia Performance Standards
- **A MINIMUM** of three (3) hours per week
- From a highly qualified teacher
- If the student has an IEP, implemented in conformity with the services agreed upon by the IEP team

Location of Instruction

- Hospital
- At home, with adult other than teacher present
- Telecommunications (on-line classes)
- Small Groups or One to One

Other H/H Issues

- H/H students placed outside school system are responsibility of resident school system
- School/Hospital Logistics
 - Communication
 - Contracts
 - Curriculum

Common Pitfalls

- Delays in Instruction
 - Referral vs. Need
- Eligibility Issues
 - Form vs. Substance
- Determination of Amount of Service
 - State minimum vs. Appropriate
- Making up for lost time

Who can help?

- TeamChild Atlanta with the Atlanta Legal Aid Society
 - clgoodmark@atlantalegalaid.org
 - 404-614-3955
- Parent to Parent of Georgia
 - <http://p2pga.org/>
 - 1-800-229-2038
- Georgia Advocacy Office
 - www.thegao.org
 - 404-885-1234
- Small private bar

Resources on the Web

- Wrightslaw - www.wrightslaw.com A good starting point for special education law. Website hosted by special education attorney Pete Wright. Good practical guides and some legal research available.
- Georgia Department of Education (GDOE) <http://www.doe.k12.ga.us> Our state department of education. Contains link to Georgia Administrative regulations, special education forms, and some statistical information regarding No Child Left Behind success.
- IDEA Practices <http://www.ideapractices.org> US Department of Education grantee website providing information about special education laws and regulations. Site also contains Topic Briefs from Office of Special Education Programs (OSEP).
- Center for Law and Education <http://www.cleweb.org> General information about education law. Several topical papers on children with disabilities in public schools.
- Council for Children with Behavioral Disorders (CCBD) <http://www.ccbd.net/> Information specifically children diagnosed with a behavioral disorder. Site contains information about advocacy for the child with a BD.

Web Resources (con't)

- U.S. Department of Education <http://www.ed.gov> Federal Department of Education website.
- U.S. Department of Education - Office of Civil Rights <http://www.ed.gov/about/offices/list/ocr/index.html?src=mr> Federal Department of Education, Office of Civil Rights Website which contains links to the formal complaint procedures for OCR.
- LD Online - <http://www.ldonline.org/> Provides information for evaluation, educational programming, and service provision for persons with specific learning disabilities. Good resource for research and IEP planning.
- Georgia CHADD <http://www.chaddga.org/> Organization providing information and advocacy support for persons diagnosed with Attention Deficit Disorder in Georgia.
- Georgia Legal Aid.Org <http://legalaid-ga.org/aw> This site contains information posted by the various legal service providers in Georgia. AVLF and ALAS both provide special education resources and forms for public use on this site.