

Special Education for School Directors

Quakertown Community School District
March 10, 2022

Presenter: Mark Cheramie Walz

SWEET | STEVENS | KATZ | WILLIAMS

Two Main Laws

- * **Individuals With Disabilities Education Act (IDEA)**
 - * Federal Law - enacted by Congress 1975
 - * Implemented by US Dept. of Education (regulations)
 - * Additional State Protections (Chapter 14)
- * **Section 504 of Rehabilitation Act of 1973 (Sec 504)**
 - * Federal Law prohibiting recipients of Federal funding from discriminating because of an individual's disability.
 - * Implemented by US Dept. of Education (regulations)
 - * Additional State Protections (Chapter 15)

Some Key Points

- * Not all children with a "diagnosis" are eligible
- * Eligibility criteria is established by the law
- * Schools must evaluate to determine if a student is eligible for special education

Evaluations

- * May be requested by parents
- * May be initiated by school district (known as "child find" duty)
- * Purpose: determine eligibility and needs

Eligibility

- * Section 504
- * Eligible if student has a mental / physical impairment which substantially limits one or more major life activities
- * Example major life activities: learning, walking, speaking, sitting, etc.
- * Examples - Epilepsy, Diabetes, Crohn's Disease

Eligibility

- * IDEA

- * Far more complicated analysis

- * "Child With A Disability" - a child evaluated as having:

- * Serious emotional disturbance
 - * Orthopedic impairment
 - * Autism
 - * Traumatic brain injury
 - * Other health impairment
 - * Specific learning disability
 - * Mental retardation (ID)
 - * Hearing impairment
 - * Speech or language impairment
 - * Visual impairment
 - * Deaf-blindness
 - * Multiple Disabilities

- * and who, by reason thereof, **needs special education and related services.**

Needs Special Education

- Special education means **specially designed instruction**, at no cost to the parents, to meet the unique needs of a child with a disability...
- Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--

Important Point

- * IDEA Eligibility requires BOTH a disability, and the need for "replacement" instruction
- * Either because of a deficit or because of adaptation, we are replacing a part of the regular curriculum
- * There are many reasons why a child with a disability may not have an IEP.

If Eligible

- * We Need A Plan For School
- * IDEA = Individualized Education Program (IEP)
- * Section 504 = Service Agreement (504 Plan)

504 Service Agreement

- * Only provides for modifications and services necessary to allow the Student to access the regular education environment.
- * Example modifications: prompts to stay on task, shortened homework, use of the school elevator, safety plan for allergies, school counselor services, frequent breaks, sign language interpreter, etc.

IEP

- * Developed by IEP team (including teachers, parents, student, principal, etc.)
- * Required to be updated annually
- * Can be changed at any time by convening the IEP team or by agreement between the school and parents
- * Unique to each eligible student

Placement

- * Not all students can receive all of their instruction in the regular education classroom with non-disabled peers
- * School district MUST ensure that each student is educated with non-disabled peers to the maximum extent appropriate
- * This is called the least restrictive environment (LRE)
- * At the end of every IEP, we report the % of time that the student is fully included

LRE

- * Students must be educated to the greatest extent appropriate in the regular education class at his/her neighborhood school.
- * The IEP team can only propose a change to a more restrictive placement if that child cannot successfully be educated in the regular classroom, with the addition of supplemental aides and services.
- * Practically - this often means that we will exhaust options in the neighborhood school before exploring alternatives.

Placements

- * Some students may require a separate learning environment where they can be instructed in the skills they need.
- * Examples: Learning Support, Autism Support, Life Skills Support, Emotional Support, Instruction In The Home, Partial Hospitalization Programs, Residential Placements.

Inclusion

- * There is a significant movement by some parents and advocates to have all children included in the regular education environment, with supports.
- * This often spurs conflict between parents and the District. Key Q - is what the District is proposing an appropriate education?

Discipline of Eligible Students

- * It is unlawful for school districts to punish students for manifestations of their disability.
- * The IDEA has procedures in place to consider whether behaviors are a manifestation or not - this is called a "manifestation determination." It is decided by the IEP team as a whole, and not by any single administrator.
- * If the conduct is a manifestation of the student's disability, or is caused because the IEP was not properly being implemented, the discipline cannot be imposed.

Procedural Safeguards

- * All parents of special education students are provided with a copy of their "procedural safeguards" - a long list of procedures for how to file a complaint or to handle a dispute.
- * Explains mediation, due process, right to independent evaluation, resources to contact with questions, etc.

Denial of FAPE

- * The primary "cause of action" in a due process complaint is an allegation that the student was denied a "free and appropriate education."
- * The key standard is whether the IEP or 504 provided "meaningful benefit."
- * There are two main potential remedies:
 - * Compensatory Education
 - * Tuition Reimbursement

2020-2021

Due Process Review

The Statistics: 2020-2021



- ODR 2020-2021 Annual Report: 851 due process requests received statewide
- The largest number of requests, in descending order, came from constituent school districts in:
 - Philadelphia County Intermediate Unit 262
 - Delaware County Intermediate Unit 85
 - Montgomery County Intermediate Unit 93
 - Northeastern Educational Intermediate Unit 60
 - Bucks County Intermediate Unit 48

The Statistics 2020-2021 continued



- Of the 851 due process hearing requests, most resolved prior to a hearing (96%)
- 33 decisions rendered by hearing officers
- 21 decisions later appealed to federal court

The Statistics 2020-2021 continued



- 33 decisions (school age special education):
 - In favor of parents or partially in favor of parents 18 (55% success)
 - In favor of district 15 (45% success)
- Prevailing Party Attorney Fees - if the parents win, even a little bit, the District is obligated to pay all of the attorney fees for the Parents. This can mean \$50,000 to \$60,000 for a single case.
- A word about advocates and attorneys*

Quakertown Due Process

- * 2019-2020 Reporting Year
 - * Three cases filed - resolved prior to hearing.
- * 2020-2021 Reporting Year
 - * One case filed - resolved prior to hearing.

Strategies To Position The District To Minimize Litigation Costs

Staff Training

- * Working toward continuous improvement - writing better evaluations, better IEPs, and better 504s.
- * Training is not limited to special education teachers - it requires training for principals, counselors, psychologists, and regular education teachers too!
- * Key Aspects - writing defensible IEPs, behavior, discipline, progress monitoring

Waiver Agreements

- * Fall outside of the typical IEP Process, but allow for the district to fund private placements.
- * Added benefit to school district may be assurances that the District is not responsible for the private placements and for the student's progress while there.
- * Should also be used whenever we are moving forward with something the Parents want, but is "less than FAPE"

Insurance Policies

- * Standard insurance agreements cover defense costs, to defend the suit, but NOT any order of compensatory education or tuition reimbursement.
- * Some insurance policies cover, or partially cover, prevailing party attorney fees also.

Paperwork Audits

- * Half of the battle is getting the paperwork right.
- * We encourage routine internal audits of progress monitoring data, evaluations, IEPs, and 504 accommodation plans.
- * Do these documents pass legal muster on their face?

Special Education for School Directors

Quakertown Community School District
March 10, 2022

Presenter: Mark Cheramie Walz

SWEET | STEVENS | KATZ | WILLIAMS