

# Educational Rights of Students with Disabilities

Rights Training for Case Managers and  
Other Professionals

*Summer 2017*



*Advancing the Rights of People with Disabilities Since 1977*

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DISCLAIMER: This presentation and any accompanying materials are intended as an introduction to the legal rights of students in Maine. Nothing in this presentation should be considered legal advice. No attorney client relationship is created through this presentation.

# Individuals with Disabilities Education Act (IDEA)

- Enacted in 1973 - last reauthorized in 2004
- Covers students with disabilities who need special education and related services
- Two promises:
  - 1) free and appropriate public education (FAPE)
  - 2) least restrictive environment (LRE)
- Detailed procedural safeguards



## The Individuals with Disabilities Education Act *in 1 slide...*

IDENTIFY children suspected of having a disability and needing services

EVALUATE them in all areas of suspected disability to determine if they need special education

SERVE students by providing FAPE in the LRE.

*Free Appropriate Public Education*

Provided in conformity with Individualized Education Program (IEP) and “reasonably calculated to enable a child to make progress appropriate in light of their circumstances”

*Least Restrictive Environment*

Students must be educated, to the maximum extent appropriate, with non-disabled peers.

COMPLY with procedural safeguards

# Services and Eligibility based on Evaluation

- Initial Evaluation
  - “Child Find” = affirmative duty
- Re-evaluation
  - At least every three years
  - More often if needed (conditions or request)
- Timeline – from consent to evaluate
  - 60 calendar days for CDS
  - 45 school days for school age youth (5-20)

# Special Education Evaluation (cont.)

- Determine eligibility for services
  - In one of the categories identified by the IDEA (i.e. Autism, Developmental Delay (ages 3-5), Emotional Disturbance, Hearing Impairment, Intellectual Disability, Specific Learning Disability...).
- Determine educational needs
- Must assess *all* areas of suspected disability
- No single procedure or test may be sole criterion and must draw from a variety of services
- Assess cognitive, behavioral and developmental factors and ability to participate in general education

# Independent Educational Evaluation

IEE = Evaluation by a qualified examiner not employed by the child's school

- IEE at public expense
  - Parent disagrees with school evaluation
  - School can ask why s/he objects but answer not required and no delay
  - Only one IEE each time school evaluates and parent disagrees
  - On request, District must either pay for IEE or defend evaluation at hearing
  
- IEE at parent expense
  - Can be obtained at any time
  - Results must be considered by IEP Team

## Free Appropriate Public Education

*Rowley (1982)*: Not required to maximize. But must provide a program based on the Student's unique needs and reasonably calculated to provide some educational benefit.

*Endrew F. (2017)*: May have created two FAPE standards:

- 1) FAPE typically means providing services “reasonably calculated to permit advancement through the general curriculum;
- 2) If that is not reasonable for a student, FAPE = “reasonably calculated to enable a child to make progress appropriate in light of their circumstances”



## Free Appropriate Public Education

- All students with disabilities are entitled to a FAPE, regardless of the severity of their disabilities.
- In Maine, right to receive FAPE until either:
  - Graduation with a regular high school diploma fully aligned to state graduation standards; or
  - end of the year student turns 20

## Least Restrictive Environment

- Schools must ensure that “to the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled.”
- Schools may only remove children with disabilities from regular education environments if “education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily”.

# Least Restrictive Environment

- Determining LRE Placement
  - group of persons knowledgeable about needs of the child, meaning of evaluation data, and placement options
  - As close as possible to child's home
  - Presumption for school child would attend if nondisabled
  - Must consider any harmful effect on the child or on the necessary services
  - Must ensure that child is not removed solely due to need to modify the general education curriculum

# Least Restrictive Environment

## Nonacademic Settings

- Include counseling, athletics, transportation, meals, recess periods, health services, recreational activities, special interest groups or clubs sponsored by the school, referrals to outside agencies, and employment of students and assistance in obtaining outside employment.
- Schools must ensure that it takes steps, “including the provision of supplementary aids and services determined appropriate and necessary by the IEP team” to ensure children with disabilities are afforded “an equal opportunity for participation in those services and activities.”
- And LRE principles apply equally in these settings.

## Individualized Education Program

Written statement developed, reviewed and revised by a required, team process, includes (among other things):

- Statement of present levels of performance
- Statement of measurable annual goals
- Explanation of LRE
- List of special education *and* related services
- Description of accommodations, modifications, supplementary aids and services
- Transition planning for high school students

## Individualized Education Program (cont.)

- Developed through a Team process
  - Parent (or surrogate parent)
  - Student
  - Teachers (including regular ed.)
  - Administrator (someone knowledgeable about program options and that can commit resources)
  - Other individuals as determined by school or parent
  
- Revised at least annually
  
- Team must consider (among many other things)
  - Strengths of the child
  - Parental concerns
  - Evaluation data
  - Academic, developmental and functional needs

# Specially Designed Instruction

- Specially designed instruction: means adapting, as appropriate to the needs of the child, “the content, methodology, or delivery of instruction” in order to:
  - Address the unique disability related needs of the child

AND

  - “To ensure access of the child to the general curriculum, so that the child can meet the educational standards...that apply to all children”.

## Related Services

- Related services: transportation and other supportive services as are required to assist a child with a disability to benefit from special education
- Includes the following services: speech language pathology, audiology, interpreting, psychological, physical therapy, occupational therapy, recreation (and therapeutic recreation), counseling, rehabilitation counseling, orientation and mobility, medical services for diagnostic or evaluation purposes, school health, nurse and social work, parent counseling and training, and transportation.



## Supplementary Aids and Services

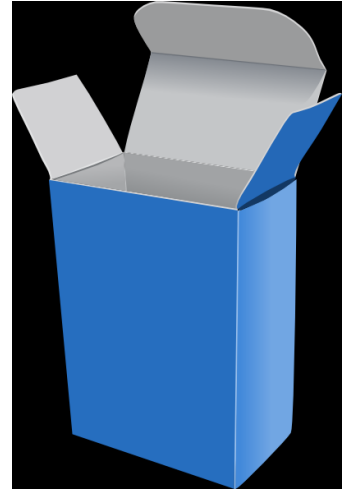
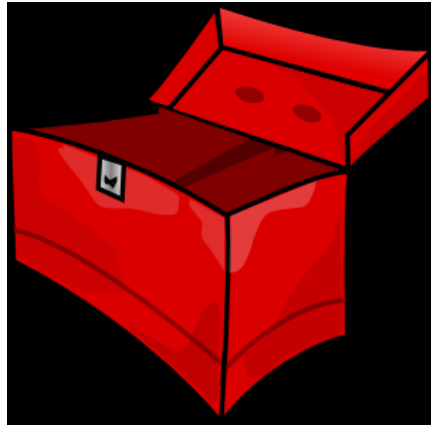
- Supplementary Aids and Services: Aids, services, and other supports that are provided in regular education, education related and in extracurricular and nonacademic settings “to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate”

# IEP Meeting

“The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions...”

IEP team “should work toward consensus, but the [district] has the ultimate responsibility to ensure” that the child is provided an appropriate IEP

If the team cannot reach consensus, then the district must provide written notice of the proposals and refusals.



# Keeping the I in IEP

1. Identify ALL disability related needs.
2. Develop present levels statement(s) for each need.
3. Develop an annual goal for each need.
4. Discuss specialized instruction, related services, and supplementary aids and services necessary to meet each need, to make progress toward goals, and to support involvement in general curriculum.
5. Determine the “least restrictive environment” where those services can be delivered.

# Procedural Safeguards

- Opportunity to examine all educational records
- Participate in meetings related to identification, evaluation, and educational placement
- Prior written notice whenever the District:
  - Proposes a significant change
  - Refuses to initiate a change requested
  - Regarding evaluation, educational placement or provision of a FAPE

# Procedural Safeguards

Prior written notice must include:

- A description of the action proposed or refused
- An explanation of the above
- Notice of procedural safeguards
- Description of other options considered
- Description of factors relevant to the decision

# Procedural Safeguards

- Tips for triggering the district's duty to issue written notice
  - Written requests
  - Specific requests
  - Provide evaluations, expert opinions or other information to consider

# Dispute Resolution under the IDEA

- IEP Team Meeting
- Mediation
- Maine Department of Education Complaint
- Due Process Hearing

\*In Maine “stay put” rights apply to any mediation, complaint or due process hearing. That is, during the resolution of any dispute, the student remains in the then current educational placement.

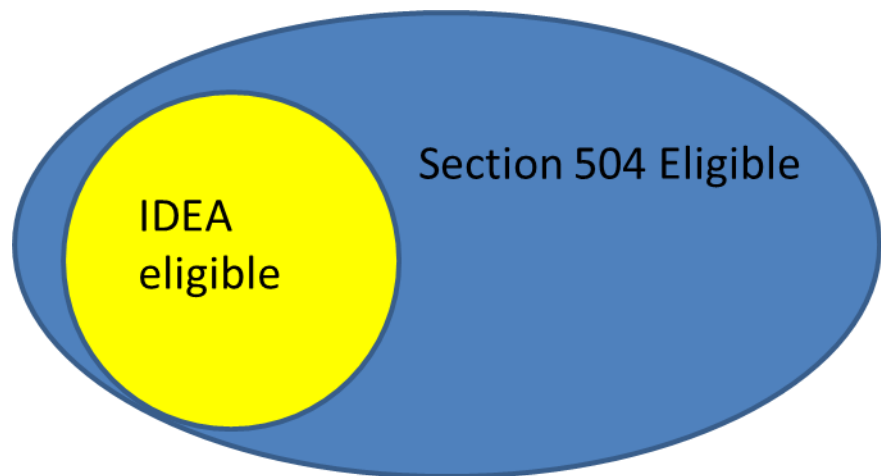


## Section 504 of the Rehabilitation Act of 1973

- Prohibits disability discrimination in educational programs and activities if the institution receives federal funds.
- Disability under Section 504 = physical or mental impairment that substantially limits one or more major life activities.
- A qualified student is entitled to a free, appropriate public education, regardless of the nature or severity of disability.

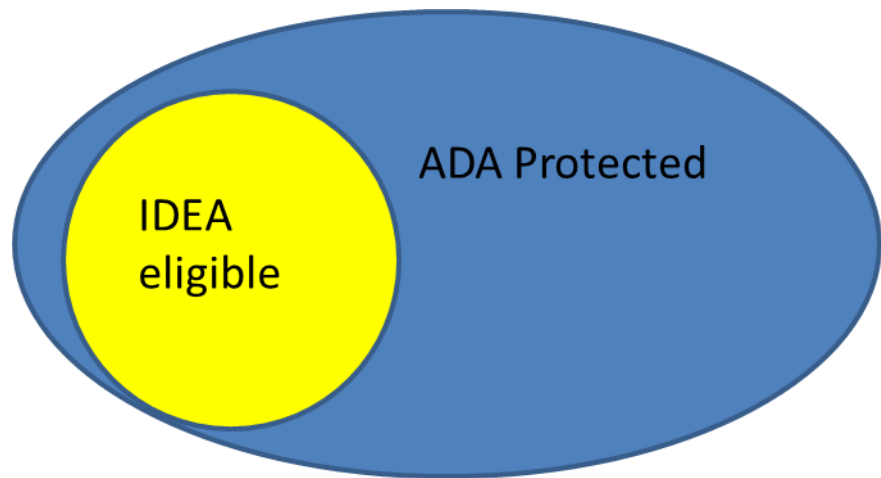
## Section 504 of the Rehabilitation Act of 1973

- FAPE = provision of regular or special education & related aids & services designed to meet the student's individual needs as adequately as the needs of children without disabilities are met.
- RA and equal access to all programs and activities



# Americans with Disabilities Act of 1990

- No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
- RA and equal access
- Olmstead and most integrated setting



# Discipline—all Maine students

- Grounds for discipline in Maine...
  - “deliberately disobedient or deliberately disorderly”
  - weapons, drugs infractions of violence
- School principals generally have authority to suspend up to 10 days, subject to due process rights of students (Goss v. Lopez)
- After 10 days, school board action is required.

## Expulsion—all Maine students

- SB may expel the student for a specific period of time (not more than # of instructional days for the current year).
- SB may expel the student for an unspecified period of time with provision of a reentry plan that specifies the conditions that must be met.
- The reentry plan is developed by the superintendent (or designee) in consultation student and the student's parents.

# Reentry plan—all Maine students

- Written notice of reentry plan meeting required;
- Resulting plan must be provided to student and family in writing;
- Superintendent's designee must review the student's progress with reentry plan at 1 month, 3 months and 6 months after the meeting and at other times as determined necessary by the school.
- For students without disabilities: Professional services determined to be necessary by the plan are at family's expense.
- For students with disabilities: Professional services determined to be necessary by the plan are at the district's expense.

Who are these students with disabilities? *Those eligible under IDEA (have an IEP) at the time of the incident and those who based on an evaluation following the incident, are determined eligible under IDEA.*

## Disciplinary protections for Students with Disabilities

*Q: What if a student with a disability engages in behavior that violates a student code of conduct and leads to a removal from school?*

A: Up to 10 school days in a year, the school may discipline the student in accordance with procedures applicable to all students.

A: After 10 cumulative days, the IEP Team must generally (if it is a pattern) conduct a manifestation determination.

# Manifestation Determination

## Who?

Student with a disability under the IDEA

OR

Student school had reason to know had a disability

- Parent expressed concern in writing that student needs SPED
- Parent requested a special education evaluation
- Teacher expressed specific concerns about a pattern of behavior directly to supervisor



# Manifestation Determination

## When?

- Proposed expulsion
- Proposed disciplinary change in placement (+10 days)
- Pattern of suspensions totaling over 10 days in a school year

# Manifestation Determination

## What?

IEP Team must ask...

- Did the child's disability cause or have a substantial relationship to the conduct in question?
- Was the conduct in question a direct result of the school's failure to implement the IEP?

If yes to either = conduct was a manifestation of disability.

# Manifestation Determination

If the conduct is NOT determined to be a manifestation:

- Student may be disciplined in the same manner as students without disabilities.

- Educational services must continue “to enable the child to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the child’s IEP.”

- They must receive as appropriate behavior intervention services designed to address the violation so it does not recur.

# Manifestation Determination

- If conduct is a manifestation of disability, school must...
  - Return the child to their educational placement
    - unless IEP Team (including the parent) determines another placement
    - Or unless “special circumstances” exist (weapons, drugs, serious bodily injury)
  - Conduct an FBA and implement a BIP (or modify and revise) to address the circumstances that led to the behavior.

Children are excluded from school programming in many ways, including:

- early dismissals / parent pick up
- requests to keep child home
- suspensions
- shortening a student's school day
- changing the student's placement to tutorial services
- keeping a student out pending a "risk assessment"
- expulsion

\*In most cases, these strategies disproportionately impact students with disabilities.

\*MDR likely required in all of the above at 10+ days

## Abbreviated School Day

*“IEP teams shall make every effort to maintain children in full-day programs utilizing supplementary aids and services, before determining that an abbreviated school day is appropriate or necessary.”*

Only two reasons to shorten a child’s day:

1) Educational Need

2) Medical Need

# Abbreviated School Day - Educational Need

- Identify how the child will have full access to the general curriculum and to IEP services.
- Determine how the child will participate in local and state assessments.
- Revise IEP and include development of an individualized re-entry plan.
- Document in the Written Notice the basis for the determination and how it meets the child's individualized needs.
- If child does not return to full-time in 45 calendar days, IEP Team must meet every 20 school days thereafter and continue to work toward transitioning the child to full-time.

# Abbreviated School Day - Medical Need

- Discuss and consider needs identified by qualified medical professional.
- Identify how the child will have full access to the general curriculum and to IEP services.
- Determine how the child will participate in local and state assessments.
- Document in the Written Notice the medical basis for the determination.
- Reconvene every 90 calendar days, however, the Team may exceed this timeframe if an extension is consistent with medical recommendation. When medically able to increase length of day, the Team reconvenes to revise IEP.



## Risk Assessments

- In Maine, Districts routinely tell parents that children must remain out of school until a “risk assessment” is conducted.
- There is NO legal authority for these forced evaluations.
- The ONLY legal way to remove a student from school for more than 10 days is through school board action.
- They are also of questionable validity.

## Dear Colleague Letter on PBIS in IEPs (8/1/2016)

“In the same way that an IEP Team would consider a child’s language and communication needs, and include appropriate assistive technology devices or services in the child’s IEP to ensure that the child receives a meaningful educational benefit, so too must the IEP Team consider and, when determined necessary for ensuring FAPE, include or revise behavioral supports in the IEP of a child with a disability exhibiting behavior that impedes his or her learning or that of others.”

## Dear Colleague Letter on PBIS in IEPs (8/1/2016)

“Therefore, a failure to provide appropriate behavioral supports (because they are not offered or because teachers and other staff are not adequately trained to implement such supports) that results in the child not receiving a meaningful educational benefit may constitute a denial of FAPE.”

<https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>

*Questions?*



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