

## What Schools & You Can Do to Support Students

- ▶ Early Childhood Mental Health Conference
- ▶ Presented by Seth Schwartz, Esq.
- ▶ From the Law Offices of Schwartz & Storey

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## Disclaimer: Every Situation is Different.

While we're providing legal information this information is not advice:

- ▶ These presentations cannot cover all aspects of law and education. The information and language in this presentation is limited in order to provide a broad discussion about the relationship between the law and special education. The information contained in these presentations, in not, nor, intended to be, general or specific legal advise or intended to replace legal services. The information is based on Federal and California law. You should not rely on any information *as legal advice*. Special education law is individualized. If you believe you have, or someone you are working with has, a legal concern we recommend seeking the advice and counsel of an attorney.

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## Interventions: General & Special Education

- ▶ Response to Intervention (RTI) - General Education Intervention
- ▶ Multi-Tier System of Supports - General Education Intervention
- ▶ 504 Plans - Rehabilitation Act
- ▶ Individualized Educational Program (IEP) - I.D.E.A.
  
- ▶ Student Study Team (SST) Meetings - for monitoring RTI/MTSS
- ▶ 504 Meetings - developing the 504 Plan
- ▶ IEP Meetings - for planning , reviewing, and revising the IEP

Q. Do we have to work our way through each method before an IEP?

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## Initial Assessment & Eligibility (IEP)

- ▶ **Child find** - An LEA has an affirmative duty to identify, locate, and evaluate all children with disabilities residing within their boundaries. The duty is not dependent on a Parent's request for assessment. The duty is triggered by knowledge or reason to suspect the need for special education.
  
- ▶ **Referrals** - a parent, teacher, or other service provider may refer a child for assessment by making a written request. The threshold for an initial assessment is whether a child should be referred not whether actual qualifies. (Q. What if initial assessment is denied?)
  
- ▶ **Eligibility** - depends on age, meeting one of the eligibility categories, and having an educational needs for special education. (Q. is a diagnosis required or determinative? Q. what is an educational need?)

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## The IEP Process (Generally) & Framework

Special education is an ongoing process:

- ▶ Referral - initial assessment, eligibility, and planning
- ▶ Review - annual meetings to review progress
- ▶ Reevaluate - when warranted or every three years
- ▶ Discontinue - if assessed and found no longer eligible

Framework for addressing concerns:

- ▶ Planning - the development of the Individualized Education Program ("IEP")
- ▶ Procedure - technical requirements and rights established by law
- ▶ Implementation - the delivery of the educational program

What is the policy underlying special education law? Access

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## Framework: Procedure & Implementation

Addressing procedural and implementation problems there needs to be more than just the error itself.

- ▶ Procedural - procedure and implementation, must show problem:
  - 1) Impeded the right of the child to a FAPE.
  - 2) Significantly impeded Parents opportunity to participate in the decision making process regarding the provision of a FAPE.
  - 3) Caused a deprivation of educational benefits.
- ▶ Implementation - material failure, more than just a slight deviation.

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## Framework: Planning (Generally)

Planning is the “substance” of the IEP process. The procedure is in place to protect the planning process, to ensure that the process is carried out timely and the IEP is carried out (Implemented).

- ▶ The IEP document is the centerpiece of special education.
- ▶ The law places a premium on parental participation (Meetings).
- ▶ A child is entitled to a FAPE in the LRE, determined through planning process.

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## F.A.P.E. in the L.R.E.

What does this standard mean and why is it important? Understanding what a LEA is responsible for providing, and how to meet this standard, forms the basis of the entire special education process.

- ▶ Free Appropriate Public Education (“FAPE”)
  - ▶ Free - at no cost
  - ▶ Appropriate - (we will discuss in much greater detail)
  - ▶ Public - supervised by the LEA
  - ▶ Education - educationally related
- ▶ Least Restrictive Environment (“LRE”) - location of placement and services

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## Least Restrictive Environment (“LRE”)

- ▶ **Statutory law** - an LEA must education a special needs student with non-disabled peers “to the maximum extent appropriate,” and may only be removed from GEN ED when the nature or severity of the disability is such that with supplementary aides and services this cannot be achieved satisfactorily.
- ▶ **Case law** - determines LRE by applying a balancing test, considering (1) education benefits; (2) non-academic benefits; (3) effect of student on the teacher and other children; and (4) costs of mainstreaming.
- ▶ **Practical considerations** - needs of the child and implementing the IEP.

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## FAPE: Appropriate (defined)

This definition, rule, comes from multiple cases.

- ▶ Reasonable calculation to confer some educational benefit.
- ▶ Based on what we knew or should have known at the time.
- ▶ Designed to meet the unique needs of the child.
- ▶ For 12-months of attainable progress.

This definition is a consolidation of case law. A recent Supreme Court ruling clarified the standard: a reasonable calculation to confer some educational benefit that is “appropriate in light of the circumstances.”

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## The IEP Document: Relationship to FAPE.

The following is a list of the general components of an IEP document. We will discuss how these components relate to the legal standard, or planning responsibility.

- ▶ General information
- ▶ Present levels of performance
- ▶ Areas of need
- ▶ Accommodations and modification
- ▶ Goals and baselines
- ▶ Services
- ▶ Placement
- ▶ Notes

Q. Why is this important to know?

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## Clear Offer & Providing Consent

Clear Offer - an IEP must be a clear written offer (Q. what does that really mean)?

Consent - an IEP must be consented to before being implemented.

- ▶ Signing the IEP - in attendance vs. consent?
- ▶ Implementation - as soon as possible following consent
- ▶ Partial consent - LEA must implement the consented portions
- ▶ Full consent - there can still be a disagreement?
- ▶ Inadvertent removal of services - didn't notice something was removed?
- ▶ Revocation - can withdraw consent but not retroactively.
- ▶ Written consent - email is sufficient if clear
- ▶ Stay put services - when parent does not consent

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## Assessment Plans (generally)

- ▶ What to assess for? An LEA should assess in all areas of suspected disability and need.
- ▶ Areas to assess - an assessment plan typically identifies areas to assess not the type of report or specific sub-tests. If a Parent feels the LEA missed an area they should let the LEA know before signing. The LEA can reissue the plan.
- ▶ Outside assessments and services - a Parent should always provide outside assessments to the IEP team and information about private services. It is customary for assessors to ask for an exchange of information. (very important).
- ▶ Timelines - must develop an assessment plan within 15 calendar days from referral, Parent has at least 15 calendar days to decide whether to consent.

Q. What if the District refuses to assess? PWN.

Q. What if Parent places conditions on their consent?

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## Assessment Process (generally)

For the purposes of discussing assessment, we are going to presume that the child is eligible for special education and receiving services:

- ▶ Triennial - an LEA must assess every 3 years, unless waived in writing, a Parent should never waive the triennial assessments.
- ▶ When warranted - an LEA should assess when warranted by the circumstances.
- ▶ 1-Year Limitation - but an LEA should not assess more than once a year unless the LEA and Parent agree (also should be cautious of test limitations)

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## Types of Assessments (common)

This is a limited list of assessments:

Psycho-Educational	Academic Achievement
Speech & Language	Occupational Therapy
Functional Behavior	Special Circumstances Instructional Aide
Physical Therapy	Adaptive Physical Education
Mental Health	Assistive Technology
Audiological Evaluation	Vision Therapy
Music Therapy	Augmentative Communication
Health & Medical	Neuropsychological

- ▶ When a LEA conducts an assessment it is to determine educational needs as opposed to clinical, therapeutic, or diagnosis.

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## Assessment Review & Reports

- ▶ **Review timeline** - following consent for assessment, a LEA has 60 days to complete the assessment and review it/them at an IEP meeting.
- ▶ **An assessor must produce a report** - to include, but not limited to:
  - ▶ Where the child may need special education and related services
  - ▶ The basis for making the determination
  - ▶ Relevant behavior noted during an observation in an appropriate setting
  - ▶ Relationship of behavior to academic/social functioning
  - ▶ Relevant health, development, and medical findings
  - ▶ The need for specialized services, materials, and equipment for pupils with low incident disabilities.
- ▶ Are recommendations required?

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## Independent Educational Evaluations (“IEE”)

- ▶ **Independent Educational Evaluations** - are conducted by someone not employed by the LEA. A Parent can request the LEA fund an IEE in response to an assessment the LEA conducted but Parent disagrees with.
- ▶ **Disagreements** - although a Parent is not required to identify “why” they disagree, simply disagreeing with the result is not enough. For example, an LEA may have forgotten to observe or speak with outside providers.
- ▶ **A LEA’s response to an IEE request:**
  - ▶ Agree - provide policies and procedures on obtaining an IEE
  - ▶ Disagree - file for a hearing and defend their assessment(s)
  - ▶ Wait too long - generally 90 calendar days

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## Related Services

- ▶ “Related services” are transportation and other *developmental, corrective and supportive services* as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).)
- ▶ Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
- ▶ However, nothing limits a LEA from appropriately monitoring and maintaining medical devices that are needed to maintain the health and safety of the child, including breaking, nutrition, or operation of other bodily functions during school or transportation. (34 C.F.R. section 300.34.)

Remember, the law is concerned with “access!”

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## Related Services (overview)

The law specifically identifies a non-exhaustive list of related services:

Audiological Services	Counseling Services
Early Identification and Assessment	Interpreting Services
Medical Services	Occupational Therapy
Parent Counseling & Training	Physical Therapy
Recreational Services	Rehabilitation Counseling
Health & Nurse Services	Social Work Services
Speech & Language	Transportation
Wrap Around Services*	

You can see that there's a lot of options that are not necessarily discussed.

Q. What about 1:1 support or a nurse?

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## Related Services

- ▶ Providers should hold the necessary qualifications in the area of their service
- ▶ When determining the level of services it's important to
  - ▶ Differentiate between direct, group, and consultative services
  - ▶ Clearly understand what the purpose of the service is
- ▶ Services should not be removed entirely without assessment
- ▶ A LEA can hire a non-public agency to come into the school
- ▶ A LEA is not required to allow a private provider to deliver services at school

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## Placements: a continuum of alternatives

- ▶ General education - with accommodations and modifications
- ▶ Resource classrooms - pull out for smaller group instruction
- ▶ Special day classes - grouped by need not disability (or, blended classrooms)
- ▶ Day treatments - intensive mental health services
- ▶ Dual enrollment - creative but rare
- ▶ Modified day - less than full day at school
- ▶ Non-public schools - when no public option is appropriate
- ▶ Residential placement - if necessary for educational purposes or response to problems apart from the learning process?
- ▶ Independent study programs - must be appropriate
- ▶ Home hospital - temporary or extraordinary (5 hours? Services?)
- ▶ Transition programs - 18 to 22 years old

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## Supporting a Family: Important Rights, Tools

Parents have some very important rights that are tools to get things done:

- ▶ Request an IEP meeting, and have it held within 30 calendar days.
- ▶ Receive educational records and get explanations.
- ▶ Participate in the decision making process.
- ▶ Request assessments.
- ▶ Request an IEE (independent educational evaluation)
- ▶ Periodically review progress
- ▶ Provide or withhold consent.
- ▶ The right to disagree and challenge a LEAs decision

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## Timelines (generally)

- ▶ For this one we're going to take a look at Cal. Ed. Code section 56043
- ▶ And, we're looking at the Quick Tip: Timeline card.
  
- ▶ Generally, timelines ensure that the process moves forward.
- ▶ However, timelines can also create delays?

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## Supporting Families, Documenting, Record Keeping

Nothing is more important than documenting everything and record keeping. Yet, this is something that very few families do well:

- ▶ Keep every document provided by, or to, the school;
- ▶ Make sure each document has a date and page number ( \_\_\_ of \_\_\_ );
- ▶ Organize chronologically, with paper clips, oldest to newest; and
- ▶ Keep emails and letters with the records, but separate protocols, data, and work samples.

Why is record keeping so important?

- ▶ Even school lose records;
- ▶ Records tell a story over time, for comparison, review in subsequent assessments; and
- ▶ Records are necessary when working with others.

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## Educational Records

- ▶ Parents have a right and opportunity to examine all school records
- ▶ And, to receive copies within 5 business days
- ▶ The request can be made orally or in writing
- ▶ Parent has a right to a response to any reasonable request for explanation or interpretation of the records
- ▶ Parent can also request a list of the types and location of records collected, maintained, or used by the agency
  
- ▶ A LEA may charge for the cost of reproduction, unless the cost would effectively prevent Parent from exercising the right to receive copies.

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## Educational Records (examples)

- ▶ What are general and special education records that are collected, maintained, or used by the agency?
  - ▶ Enrollment, residency, and immunization documentation
  - ▶ Report cards, standardized test results, transcripts
  - ▶ Copies of IEPs, audio recordings of IEP meetings, notices of meetings
  - ▶ Formal letters, exchanges of information
  - ▶ Assessments, protocols, assessment plans
  - ▶ Progress reports on goals
  - ▶ Behavioral and attendance records
  
- ▶ What about: Emails? Therapy Logs? Information provided to the school (medical)?

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## The Parent Team

- ▶ Every Parent should have a “Team” of their own.
- ▶ What is a “Parent Team” - a group of people who work with the child or Parent, who have professional expertise or knowledge.
  - ▶ Doctors - who understand the child’s disability and medical needs
  - ▶ Therapists - who work with the child on their needs
  - ▶ Assessors - who can provide independent information
  - ▶ Advocate - who can help communicate, participate in the IEP, and do observations
  - ▶ Attorney - extra set of eyes if concerns or periodically
- ▶ Support - of friends and families (if non-confrontational)
- ▶ A good team member is objective and can help ensure that information is available or provide a helping hand.

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## Letters from Doctors, Therapists, & Other Providers

Letters from doctors and or therapists can be very helpful!  
They can also cause all kinds of credibility problems.

- ▶ Letters should explain the severity and necessary standard of care.
- ▶ Letters need to contain factual information, details.
- ▶ Specific educational “recommendations” will cause problems.
- ▶ Unlikely to call placement into question - unless you’ve observed but be careful.

Example, severity of a peanut allergy.

Example, need for nurse.

Example, need for 1:1 support.

Example, calling out a specific placement.

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## Collaboration

Working together is always the best option to get things done:

- ▶ Encourage the family to engage in information gathering instead of confrontation;
- ▶ Turn disagreements into questions or make specific requests;
- ▶ Schools can always do more but violate the law when they do less than required; and
- ▶ Focus on needs and pick your battles;

Remember they are responsible for what they know or should know:

- ▶ Provide information and access to outside providers;
- ▶ Give the school copies of outside assessments or information that might be relevant;
- ▶ Communicate in writing or in recorded IEP meetings.

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## Parental Non-Cooperation

Is the IDEA a cooperative process? Yes. The Supreme Court has recognized that schools and Parents must work together cooperatively.

- ▶ Practical reality? Stressful for parents and hard to understand.
- ▶ General rule? Avoid confrontation by learning the process.

What can happen when a Parent is non-cooperative?

Tips to avoid confrontation?

- ▶ Ask questions to gather information when something doesn't make sense;
- ▶ Never raise your voice, as it will never be perceived well;
- ▶ Thank people for their time and energy;
- ▶ When necessary, ask for prior written notice.

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## Disagreements

How should a parent handle a disagreement about health service care?

- ▶ Do not to engage in a “fight” by making demands, present information.
- ▶ Ask questions to better understand the school’s position.
- ▶ Find out what outside providers they spoke with and what they said.
- ▶ Determine who is leading the school’s decision making. I.e. counselor, teacher.
- ▶ Use the IEP process, and audio record the meeting, to discuss concerns.
- ▶ Follow up with a written request for support and ask for prior written notice.

Remember, parental non-cooperation is a real issue.

Concerns are reviewed from the standpoint of reasonableness.

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## Final Thoughts on Supporting Families

- ▶ The best way to help a child and their family is to help them understand the process.
- ▶ Getting a family organized reduces stress and saves time when they need help.
- ▶ Help the family understand that information drives the process.
- ▶ Withholding information never helps a family.
- ▶ Offering and completing exchanges of information is usually the right thing (99% of the time).
- ▶ If a family is really having a difficult time communicating consider an advocate.

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## Questions

- ▶ Your questions?

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## Thank you!

- ▶ We hope the information provided will help you direct and educate families when it comes to the special education process and or to seek the help that they may require to making meaningful changes in their lives.
- ▶ We appreciate your hard work!
- ▶ If you have specific questions please feel free to give us a call: 858-430-8166.

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