

Special Education Overview

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SPECIAL EDUCATION OVERVIEW

Background

1. The Individuals with Disabilities Education and Improvement Act (IDEIA or IDEA04) was originally passed as the Education of the Handicapped Act in 1970.
2. The law essentially requires that a free appropriate public education be made available to all students with disabilities, including those who have been suspended or expelled from school. 20 U.S.C. §1415(k).

Minimum Standards Under the Law

1. Determination as to the appropriateness of a student's educational program is made on a case by case basis.
2. The standard articulated by the U.S. Supreme Court is that the educational placement must be personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. The state and the local education agency (LEA) are not required to maximize the potential of each disabled student. Board of Education of Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982).

Identification and Evaluation

1. The law requires that an LEA is required to find all students within its jurisdiction who may qualify for placement in special education.
2. A recent consent decree entered into by the Texas Education Agency requires the collection of data by LEAs for students with disabilities who reside in residential care and treatment facilities.
3. An LEA is required to evaluate each student suspected of having a disability or

disabilities to determine whether or not the student qualifies for special education placement.

4. Students may be placed in special education because of orthopedic impairments, speech impairments, auditory or visual impairments, other health impairments (OHI) for multiple reasons including ADD and ADHD, autism, emotional disturbance, mental retardation, multiple disabilities, or learning disabilities.
5. Consent by the student's parent (or individual acting as the student's parent) is required prior to any evaluation under IDEA04. If the parent refuses initial consent for evaluation, the LEA is not required to take further action to identify the student as eligible for special education or make a placement for the student.

Individualized Education Programs

1. An individualized education program (IEP) is written for each student with a disability requiring special education placement.
2. The IEP must contain goals and objectives for the student's academic and other needs. The IEP can include related services – such as transportation, occupational therapy, speech therapy, counseling, and other services – which are required for the student to receive an appropriate education.
3. A student's IEP is written at an admission, review, and dismissal (ARD) meeting which includes a representative from the LEA's administration, teachers familiar with the student, an educational diagnostician, the student's parent and perhaps the student, and any other individuals invited by the LEA or parent. Attorneys or advocates may be present at the meetings.
4. A student's progress on the IEP must be reexamined at least annually and the IEP

rewritten or adjusted based upon the student's progress and individual needs.

5. An IEP may contain a behavior improvement plan (BIP) if the ARD committee determines that the student's disability prevents the student from being able to conform to the school's behavior code of conduct.

Changes In Placement

1. The law requires that school districts provide prior written notice to a parent before any proposed change in the educational placement of the student. 20 U.S.C. §1415(b)(1)(C).
2. If the parent opposes the change in placement at an ARD committee meeting called to consider the change, the parent may request a due process hearing seeking an order from an independent hearing officer concerning the propriety of the change in placement.
3. During the pendency of the dispute about a change in placement, the LEA is required under the stay-put provision of the law to maintain the student in the current placement.

Discipline Provisions

(See 20 U.S.C. §1415(j) and (k))

1. School personnel have the authority to remove a student with a disability from the current placement to an appropriate AEP, another setting, or suspension, for not more than 10 school days for violations of the student code of conduct (to the extent such alternatives are applied to a students without disabilities).
2. School personnel (not necessarily the ARD committee [IEP team]) must decide whether to pursue a disciplinary removal and "...may consider any unique

circumstances on a case-by-case basis when determining whether to order a change in placement for a student with a disability who violates the code of student conduct.”

3. School personnel may also remove a student with a disability from the current placement for more than 10 school days for violations of the school code if it is determined that the behavior is not a manifestation of the student’s disability. In such situations, the relevant disciplinary procedures applicable to students without disabilities may be applied to the child in the same manner and for the same duration, except that it may be provided in an interim alternative educational setting.
4. Regardless of whether the student’s behavior is determined to be a manifestation of disability, the student shall (a) continue to receive educational services, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP; and (b) receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications which are designed to address the behavior violation so that it does not recur.
5. Manifestation determinations are to be completed by the LEA within 10 school days of any decision to change the placement of the student (more than 10 school days) because of a violation of a code of student conduct. The LEA, parent and relevant IEP Team members as determined by the parent and LEA shall review all relevant information provided by the parent to determine: (a) if the conduct in question was caused by, or had a direct and substantial relationship to, the

student's disability; or (b) the conduct in question was the direct result of the LEA's failure to implement the IEP.

6. If the behavior is determined to be a manifestation of a disability, then the IEP Team must (a) conduct a functional behavior assessment (if not previously done); (b) implement a behavioral intervention plan for the student or review and modify, as necessary, any existing behavioral intervention plan; and (c) except for special circumstances, return the student to the placement from which the student was removed unless the parties agree otherwise as part of a modification of the behavioral intervention plan.
7. Under special circumstances, school personnel may remove the student to the interim AEP for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability where a student (a) carries or possesses weapon ("dangerous weapon" as defined by 18 U.S.C. §930(g)(2)) to or at school, on school premises, or to or at a school function; (b) knowingly possesses or uses illegal drugs ("Illegal drugs" does not include a controlled substance legally possessed or used under the supervision of a licensed health-care professional, or any other authority under Controlled Substances Act [21 U.S.C. §812(c)] or any other provision of Federal law) or sells or solicits the sale of a controlled substance (a "controlled substance" being a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of 18 U.S.C. §812(c)), while at school, on school premises, or at school function; or (c) has inflicted serious bodily injury ("serious bodily injury" has the meaning given in paragraph 3, subsection (h) of 18 U.S.C. §1365) upon another

person while at school, on school premises, or at a school function.

8. The student's IEP Team makes the determination as to an interim AEP placement.
9. The LEA must notify the parent of the decision to take disciplinary action on the day the decision is made. And the LEA must advise the parent a of all procedural safeguards.
10. If a hearing officer determines that maintaining the current placement is substantially likely to result in injury to the student or to others, the hearing officer has authority, upon hearing, to order the return of the student to the placement from which the student was removed or to change the placement to an appropriate interim AEP setting for not more than 45 school days.
11. During the appeal, the student remains in the interim AEP pending the decision of the hearing officer or until the expiration of the time period provided for AEP placements for students without disabilities.

IDEA04 Expedited Hearings

1. A parent who disagrees with any decision regarding placement or the manifestation determination may request a hearing. And if the LEA that believes maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the LEA may request a hearing.
2. A hearing officer shall hear an appeal by the parent or LEA and make a determination regarding the appeal.
3. In making a determination, the hearing officer may order a change in placement of the student. In such situations, the hearing officer may (a) return the student to the placement from which the student was removed; or (b) order a change in

placement of a student to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such student is substantially likely to result in injury to the student or to others.

4. When an appeal had been requested by either the parent or the LEA, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for relevant disciplinary procedures applicable to children without disabilities which ever occurs first, unless the parent and the LEA agree otherwise.
5. An expedited hearing must occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

Due Process Hearings

1. Procedural safeguards under the law provide the means for students with disabilities and their parents to enforce their rights under the law. These safeguards include the right to an impartial due process hearing when the parent is dissatisfied with any matter relating to the identification, evaluation, or educational placement of the child. 20 U.S.C. §1415(f).
2. School districts may object to the sufficiency of a request for hearing within five (5) days from the date they receive notice of the request for hearing.
3. If the school district seeks to resolve the dispute with the parent, the district may hold a resolution session within fifteen (15) days of receiving notice of the parent's complaint. 20 U.S.C. §1415 (P)(i)(I).

4. The student's parent is required to attend the resolution session or the parent is precluded from proceeding to hearing.
5. The parties have thirty (30) days in which to settle the dispute at the resolution session or through mediation or through other informal means prior to the case going to hearing.
6. Mediation is provided at no costs to the parties in the community where the student resides.
7. Due process hearings are hearings on the record subject to the Administrative Procedures Act except as to rules specific to special education hearings.
8. Though a hearing officer may not award attorney's fees, the law provides for a recovery of reasonable fees for a parent who prevails at an administrative hearing. If a parent prevails at a hearing, the parties may settle on a fee claim or go into federal court for a determination of fees.

Statute of Limitations

Under the Texas Administrative Code, the statute of limitations for claims under the law is one year. Appeals of the decision are into either state or federal district court and must be filed within ninety (90) days of the date of the final decision.