

# SPECIAL EDUCATION ADVOCACY: BEYOND THE BASICS

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# Hot Issues in Special Education

- **Navigating Early Steps and Pre-Kindergarten**
- **Next Steps After Eligibility**
- **Compliance**
- **Behavior and Discipline**
- **School Choice Issues**
- **Common Core Issues**
- **New Florida Diploma Options**
- **Transition to Adulthood**
- **Surrogate Parents**
- **Working with Families in Conflict**

# Navigating Early Steps and Pre-Kindergarten

early steps



# EARLY STEPS PROGRAM

Recognizing an infant and toddler's first three years are the most important time for learning...

EARLY STEPS is a partnership between families and local providers

For any child with significant delays or an established medical condition that will likely result in a delay in the child's development.

# Florida Department of Health's Children's Medical Services

For any child **BIRTH THROUGH TWO** (infants & toddlers) with...

- Significant delays or
- An established medical condition

that will **likely result in a delay in the child's development.**

# Florida's EARLY STEPS Directory

**(800) 218-0001.**

# NEXT STEPS AFTER ELIGIBILITY

You made it through the evaluation and obtained ESE eligibility.....now what?????????



How do you get the services and accommodations the student needs?

# ANATOMY OF AN INDIVIDUALIZED EDUCATION PLAN (IEP)

- **Eligibilities and Background Information**
- **Present Levels of Performance**
- **Goals and Objectives**
- **Special Education Services**
- **Related Services**
- **Accommodations**
- **ESY**
- **Transition**
- **Training for Staff**

# Background Information

- Make sure any relevant medical information is listed. This includes all diagnoses that affect education, medications, allergies.



# CURRENT LEVELS OF ACADEMIC PERFORMANCE

- Use information obtained from teachers regarding the child's strengths and needs and prioritize them to help guide the discussion of current levels of academic performance.
- Include input from evaluations, which may provide some clarification.
- Produce samples of the child's work illustrating areas of concern when the school's perception of current levels differs from yours.

# DRAFTING GOALS AND OBJECTIVES

- Clearly defined
- Measurable
- Realistic and achievable
- Meaningful—will lead to real progress for child
- Set within a specific timeframe (usually one year)
- Make sure they connect back to present levels of performance

Wrightslaw uses SMART (specific, measurable, achievable, relevant/realistic and time-limited)

# SELECTING APPROPRIATE SERVICES AND ACCOMMODATIONS

- Use recommendations in evaluations and reports from professionals working with your child to identify appropriate interventions.
- Research services and accommodations that are used for the child's particular disability(ies) and needs and adapt specifically for your child.
- Ensure that appropriate training for staff is addressed.

# SERVICES/ACCOMMODATIONS

- Make sure that all services, accommodations and interventions discussed and agreed upon by the team are reflected in the relevant sections of the IEP, including time, frequency and location.
- Consider all things that are needed to help student perform and access the curriculum. For instance, transportation, regular communication between teachers and parents.

# SUPPLEMENTARY AIDES & SERVICES

- Regular education teachers through the NEA and AFT had a new section added to the IEP document where the SUPPLEMENTARY AIDES AND SERVICES the TEACHER, other STAFF, & the STUDENT can be provided with the supplementary supports critically necessary such as:
  - Consultation/training for the teacher, para, lunch room personnel, administrators on the
    - nature and need of a child with the disability
    - Implementation of a behavior plan
    - Grading and homework policies
  - 1 on 1 facilitator in the classroom for the teacher & child

# What next for 504 Plans

Many districts have 504 plan forms that have a short list of common accommodations.

You are not limited to that list. Any accommodation that will help the child should be considered and be added when appropriate—Be Creative!

Auxiliary Services—such as occupational therapy (OT), physical therapy (PT), and language therapy can be added to 504 plans. Anything other than modified curriculum or special education services.

# COMPLIANCE

Once you have an IEP or 504 plan, you are not done!!!

You must ensure there is ongoing compliance with the plan!



# Florida schools are often out of compliance

1. Because people running the special education process in the schools are not well trained and **honestly don't know**

2. Because the district has taught everyone:

**“We offer what we have vs. what the child needs...”**

- Educational placement
- Services provided

Being in compliance with federal and state laws and regulations is not just something nice to do for the student

**It Is Legally Required!**

*Mills vs. D.C. Board of Education (1970s)*

# Some of the most difficult compliance issues include:

- **Home-school communication**
- **Accepting late work when extra time listed as accommodation**
- **Checking planners**
- **Lost service hours when providers/therapists in IEP meetings, absent, or for other reasons**
- **Support facilitation**

# HOW TO DEAL WITH NONCOMPLIANCE

- Write letter to district contacts
- Call another IEP or 504 meeting

If noncompliance persists:

- File State Complaint
- File OCR Complaint
- Due Process

# BEHAVIOR AND DISCIPLINE



# WHAT IS BEHAVIOR?

For the purposes of our work, behavior is **ACTIONS** and **INACTIONS** by the student that interferes with that student's learning and/or the learning of others.

- Refusal to do work or otherwise avoiding work
- Does not have to be loud, disruptive or aggressive

Behavior should be evaluated and addressed.

# FUNCTIONAL BEHAVIOR ANALYSIS

When behavior is an issue, request a Functional Behavior Analysis (FBA), preferably conducted or supervised by a certified Behavior Analyst (BCBA).

The FBA should identify the ABCs:

- The **Antecedent** to the behavior
- The Target **Behavior** that is interfering with education
- The Consequence of the behavior

The student should be observed in different settings, at different times, and on different days.

# BEHAVIOR INTERVENTION PLAN

The FBA should be used to develop a Behavior Intervention Plan (BIP) that helps the student replace inappropriate/unproductive behaviors with positive ones.

The BIP should focus on up to three target behaviors and provide a detailed plan with strategies on how they should be handled by staff.

The Behavior Analyst should train staff on the BIP. The BIP should be followed with fidelity by all staff.

The BIP should be revisited every 4-6 weeks to ensure it is working, to make adjustments, and to address any additional behaviors once original ones are extinct.

# Behavior Interventions Should Be Positive

Effective BIPs should provide **Positive Behavioral Supports** (PBS) that provide incentives or rewards for positive behavior, rather than punitive.

- Schools often take away recess or take away rewards when the student engages in target behaviors. This rarely works and often makes things worse.
- If student is not achieving goals and receiving rewards, should shorten the compliance period so that student achieves success.
- Once the student shows success, the frequency or reward can be diminished.
- Rewards used must be important/attractive to student.

# DISCIPLINE

Students with **known or suspected disabilities**—whether or not they have a 504 plan or IEP—are afforded certain protections and due process rights with regard to discipline.

- If they are suspended, expelled, or otherwise sent home by school staff for more than 10 days in a year, they are entitled to a manifestation determination.
- If they are suspended at all or given multiple referrals, I often call a 504 or IEP meeting (or request evaluation for initial eligibility if I suspect they need a BIP or need their BIP revised).

# MANIFESTATION DETERMINATION

Determination made by the district, **the parent**, and relevant members of the student's Team

After review of all relevant information in the student's file including the IEP, teacher observations, and relevant information provided by the parents whether...

- (1) the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or
- (2) the conduct in question was the direct result of the district's failure to develop and/or implement the student's IEP.

# MANIFESTATION DETERMINATION

The meeting can be an **emotional** and **complicated** one when the student violates the district's Code of Student Conduct.

- **Hidden** disabilities
- Key **school officials don't want to accept** that the behavior is a manifestation of the underlying disability
- Perceived to be an **unfair** dual discipline system
- Concern **how it will appear to the public** or the family of a student victim

# SCHOOL CHOICE



# SCHOOL CHOICE ISSUES

- McKay Public and Private Options
- Charter Schools
- Public Magnet Schools and their special rules
- Caveat emptor!

# McKay Scholarships

## Process for qualifying for McKay

- Attendance during FTE periods in October and February
- Must have 504 Plan or IEP
- Must register intent on McKay website  
<https://www.floridaschoolchoice.org/Information/McKay/>
- Deadlines

# Private McKay

Private scholarships determined by matrix

- Matrix issues should be resolved before withdrawing/registering

Private schools not covered by IDEA, and often not covered by Section 504/ADA

Read contracts and materials carefully!

Note: Public money may be available for services not provided by private school.

# Private Schools that Accept McKay, PLSA and Vouchers

- Private schools that accept McKay, PLSA or vouchers are not covered by all the laws that govern public schools. These funds are considered state funds, not federal, thus the IDEA does not apply, and Section 504 only applies if the school accepts federal funds.
- However, most non-religious private schools are public accommodations covered by Title III of the ADA, so they must not discriminate, they must provide reasonable accommodations to otherwise qualified students, and they must provide auxiliary services to students with disabilities.

# Public McKay

- Public McKay is in accordance with what schools are available for reassignment.
- No transportation is provided.

# New Statewide Transfer Law

- Students now may attend virtually any school in the state that has openings.
- No transportation is offered.
- How this will play out is to be determined.

# Charter Schools

- Charter schools are public schools and are required to follow federal and state disability laws.
- Unfortunately, many of them do not know this.
  - Education process—invite district staff to meetings.
- While not allowed to discriminate, their charter may limit students accepted/what they offer.
- The chartering organization (often the district) is ultimately responsible.

# Magnet Schools

- Magnet schools are public schools and are covered by all special education laws.
- However, they are also covered by special rules that often work against students with disabilities.
  - Otherwise qualified issues
  - Student or parent contracts

# COMMON CORE/FSA WOES

The Common Core variation adopted by the State of Florida and the high-stakes testing that is part of it puts many of our disabled students at risk of retention, failure and loss of self-esteem—especially students with Specific Learning Disabilities.



# OPTING OUT

Opting out of the Florida Standards Assessment (FSA) and End of Course exams (EOC) can be risky—especially for 3<sup>rd</sup>-grade students.

- Portfolio and other options for proving mastery are harder than the FSA itself, and often portfolios aren't started until the spring.
- Opting out does not prevent the students from being subjected to all the assessments throughout the year to make sure students are progressing.

# EARLY INTERVENTION

- We really need to **look for problems** with reading, math and writing **early on** (Kindergarten through third grade) and **push to get them appropriate interventions as soon as possible.**
- RTI cannot be used to delay ESE identification—**RTI must be concluded within 60 days of request for evaluation.**
- Schools may try to push kids at risk of failing into Access Points rather than help them succeed. **Only agree to Access Points if they are appropriate.**

# DIPLOMA OPTIONS



# DIPLOMA OPTIONS FOR STUDENTS WITH DISABILITIES

Until two years ago (2014) Florida had two primary diplomas for students with disabilities.

- A Standard High School Diploma
- A “Special Diploma” for students whose disabilities made meeting the requirements for standard diplomas impossible.

# TODAY...

ALL Florida students work to receive a STANDARD HIGH SCHOOL DIPLOMA, with some variations:

- 24-credit program
- 18-credit, Academically Challenging Curriculum to Enhance Learning (ACCEL) option
- An International Baccalaureate (IB) curriculum.
- An Advanced International Certificate of Education (AICE) curriculum

# Two Additional Options for Students With Disabilities

These are IEP Team determined

1. Participation in the Florida Alternate Assessment and instruction in the access points curriculum
2. Mastery of both academic and employment competencies

# SURROGATE PARENTS

A requirement under the Individuals with Disabilities Education Act (IDEA)

Reauthorized & signed into law on Dec. 3, 2004, by President George W. Bush.

***Each public agency must ensure that the rights of a child are protected by determining the need for, and assigning, a surrogate parent whenever:***

- No parent (as newly defined at 34 CFR 300.30) can be identified;
- The public agency, after reasonable efforts, cannot locate a parent;
- The child is a ward of the State under the laws of that State; or
- The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)). [34 CFR 300.519(a) and (b)] [20 U.S.C. 1415(b)(2)(A)]
- ALSO: When it is legally determined the parent is unable due to illness, cognitive deficiencies or mental illness to advocate for the child.

## **IN THE CASE OF A CHILD WHO IS A WARD OF THE STATE**

**The surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in 34 CFR 300.519(d)(2)(i) and (e) (that...**

### **A SURROGATE PARENT MAY NOT BE AN EMPLOYEE OF:**

- The State educational agency (SEA),
- The local educational agency (LEA), or
- Any other agency that is involved in the education or care of the child

**The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.**

**BUT UNFORTUNATELY...**

- This legal requirement has in some Florida school districts not been implemented with fidelity.
- Many school district employees are unaware of this requirement and do not implement this provision of federal statute under the IDEA

# **RESPONSIBILITY OF THE SURROGATE PARENT**

- **ADVOCATE FOR AND PROTECT THE CHILD IN THE SPECIAL EDUCATION PROCESS (Exceptional Student Education ESE) within the schools as mandated under the Federal IDEA**
- **Referral for A COMPREHENSIVE SPECIAL EDUCATION EVALUATION to determine eligibility for Exceptional Student Education and/or Section 504 of the Vocational Rehabilitation Act when the child is experiencing learning problems that may be ADVERSELY IMPACTING THE CHILD'S ABILITY TO FUNCTION IN SCHOOL due to a PHYSICAL, INTELLECTUAL or EMOTIONAL DISABILITY.**

- **ACT AS THE PARENT at all ESE team meetings within the school:**
  - **DETERMINING AND PROVIDING CONSENT for the EVALUATIONS to be completed**
  - **Development of a child's INDIVIDUAL EDUCATION PLAN (IEP)...ensuring that all specialized instruction, necessary related services and supplementary aids and services are provided**
  - **Consent to PLACEMENT into special education**
  - **Consent to the Educational PLACEMENT in the LEAST RESTRICTIVE ENVIRONMENT (LRE)**
  - **Consent to ANY CHANGE IN EDUCATIONAL PLACEMENT from one level of restrictiveness to another**

# TRANSITION



© Chazda

# TRANSITION GENERALLY

- For students about to rise to the next-level school (middle to high school, high school to post-secondary), there needs to be a transition plan.
- It should reflect the student's goals and interests and list services and supports that will be needed for the child to succeed at the next level.
- The ultimate goal is to give the student the skills and strategies for a fulfilling, independent, and inclusive life.

# TRANSITION PLANNING

- It is critical to be thinking **from the beginning of education planning** about what the child's life has the potential to be when they are an adult!
- When children with disabilities reach adolescence, **FORMAL planning is mandated** within the IEP process for post-secondary education, employment opportunities and independent living.
- **FULL INCLUSION MUST BE A FOCUS!!!!!!**

# TRANSITION SERVICES

A coordinated set of activities for a child with a disability that is:

- A results-oriented process
- Focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities including
  - Postsecondary education
  - Vocational education
  - Integrated employment (including supported employment)
  - Continuing and adult education
  - Adult services
  - Independent living, or
  - Community participation;

- Based on the individual child's needs, taking into account the child's strengths, true potential, preferences, and interests; and includes:
  - Instruction
  - Related services
  - Community experiences
  - The development of employment, and
  - Other post-school adult living objectives, and, if appropriate,
  - Acquisition of daily living skills

NOTE: This may include a functional vocational evaluation.

Beginning not later than the first IEP to be in effect **when the child turns 16**, or younger if determined appropriate by the IEP Team, and updated annually thereafter...

The IEP must include appropriate measurable postsecondary goals based upon **age-appropriate transition assessments related to:**

- Training
- Education
- Employment
- Independent living skills

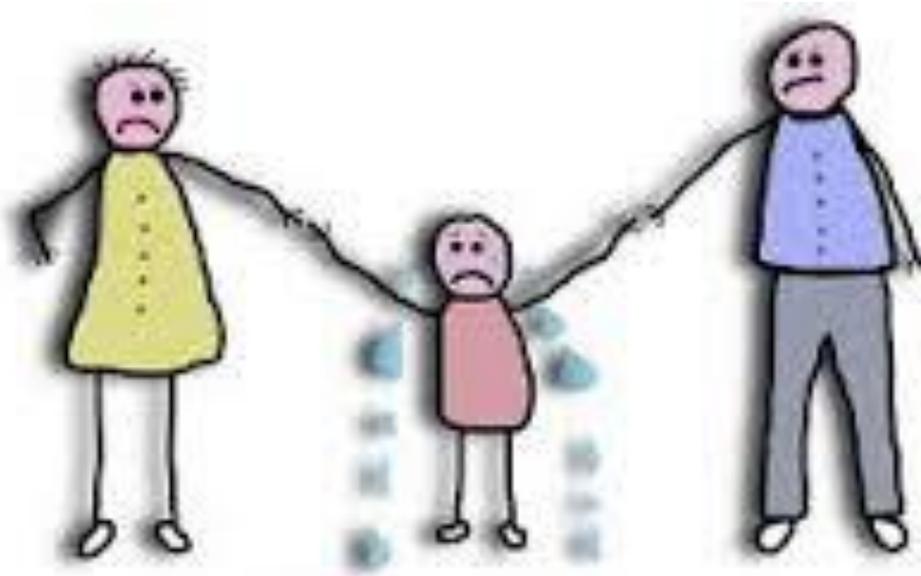
The transition services (including courses of study) needed to assist the child in reaching those goals.

## **Additional Members of the IEP Meeting for Transition Planning**

**THE STUDENT MUST BE INVITED to the IEP meeting  
when post-secondary planning takes place.**

To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

# WORKING WITH FAMILIES IN CONFLICT



# FAMILIES IN CONFLICT

## **Working with families in conflict can be tricky:**

- Need to determine who has decisionmaking authority over education (and often health)
- If shared responsibility, should try to get both parents to work together as a team
- If teamwork not possible, schools will go with the wishes of whichever parent is most aligned with the school's position.

# FAMILIES IN CONFLICT

- If one parent is clearly working against the best interest of the child, you can try to build a collaborative relationship with the other parent's family attorney to help the attorney understand the educational issues.
- You can sometimes form a team of family and special education attorneys and healthcare and therapeutic providers to work in the child's best interests.

# Resources

- **Florida Department of Education ESE Website**  
<http://www.fldoe.org/ese/ese-home.asp>
- **US Department of Education Office of Special Education Programs**  
<http://www2.ed.gov/about/offices/list/osep/index.html>
- **Disability Rights Florida**  
<http://www.disabilityrightsflorida.org/>

# RESOURCES

- **Florida Association of Special Education Attorneys**  
<https://www.facebook.com/pages/Florida-Association-of-Special-Education-Attorneys/195577053816539> (E-mail [kimberley@ksolawfirm.com](mailto:kimberley@ksolawfirm.com) for membership information)
- **Council of Parent Attorneys and Advocates (COPAA):**  
<http://www.copaa.org/>
- **Wrightslaw:** [www.wrightslaw.com](http://www.wrightslaw.com)
- **Disability Rights Bar Association:** <http://disabilityrights-law.org/>
- **Special Education Law & Advocacy** pages on spedlaw:  
<http://www.flspedlaw.com/ESESubject.html>

# Special Education Advocacy: Beyond the Basics

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