

# Educational Rights Overview

CMHACY Presentation

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EAST BAY  
CHILDREN'S  
LAW OFFICES



Every student has the right to a  
**Free and Appropriate Public Education**  
(FAPE)

- ❖ At public expense
- ❖ In the least restrictive environment

# 504 Plan or IEP?

Section 504 of the Rehabilitation Act is an anti-discrimination law designed to **remove barriers** to learning in order to meet the needs of students with disabilities.

504

A student qualifies for a **504 plan** if s/he has a physical or mental impairment that substantially limits learning or another major life activity.

IDEA is designed to provide **specialized instruction & related services** to meet the unique educational needs of students with disabilities.

IDEA

A student qualifies for an **IEP** if s/he has a disability falling into one of 13 specified eligibility categories and requires specialized instruction or services to benefit from his/her education.

# The Plans

## 504

There are no specific legal requirements for a written plan pursuant to section 504. School districts have their own forms and practices.

## IEP

- Statement of student's present levels of academic and educational performance
- Measurable annual goals for every identified area of educational need
- Offer of specialized instruction & services, specifying the frequency, duration & location in which they will be provided
- Offer of educational setting, specifying the amount of time the student will be in general education environments
- Transition Plan for youth 16 and older

# The Decision Makers

504

School districts must ensure that placement decisions are “made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.” (34 CFR § 104.35(c))

## IEP “Team”

- Parent/Educational Rights Holder
- At least 1 general education teacher
- At least 1 special education teacher
- Representative of school district
- Someone who can interpret instructional implications of evaluation results
- Child when appropriate (right to attend at age 16)
- Other individuals and service providers at parent’s discretion

# The Enforcement Options

## 504

- Alternative Dispute Resolution or Mediation
- Impartial Hearing pursuant to school district procedures
- Appeals to Office of Civil Rights

## IEP

- Resolution Session or Mediation
- Due Process hearings before an administrative law judge
- State Compliance Complaint



# Getting an IEP

# Identification

- **Child Find** – the district “shall actively and systematically seek out all individuals with exceptional needs, from birth to 21 years of age, inclusive, including children not enrolled in public school programs, who reside in a school district or are under the jurisdiction of a SELPA or county office of education.” (California Ed Code § 56300)
- **Written Request** – anyone (not just the parent) can request that a student be evaluated for an IEP. The request must be in writing.
- **Assessment Plans** – the school has 15 days from receipt of a written request for assessment to provide the parent with an Assessment Plan outlining the educational areas in which the student will be assessed. The parent must sign the Assessment Plan in order for the school to begin the evaluation.

Assessment Plan

Student Name \_\_\_\_\_ Date of Birth \_\_\_/\_\_\_/\_\_\_ Date \_\_\_/\_\_\_/\_\_\_  
 Initial  Annual  Triennial  Transition  Interim  Other \_\_\_\_\_

To parent/guardian of \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_

District \_\_\_\_\_ School \_\_\_\_\_

Grade \_\_\_\_\_ Date of Birth \_\_\_/\_\_\_/\_\_\_

Native Language \_\_\_\_\_ English proficiency/CELDLT Level \_\_\_\_\_

The district proposes to assess your child to determine his/her eligibility for special education services or continued eligibility and present levels of academic performance and functional achievement. Your child will be assessed in all areas of suspected disability as needed.\* To meet your child's individual education needs, this assessment will consist of an evaluation in only the areas checked by the local educational agency (LEA)/district. \*Tests conducted pursuant to these assessments may include, but are not limited to classroom observations, rating scales, one-on-one testing or some other types or combination of tests.

Evaluation Area	Examiner Title
<input type="checkbox"/> Academic Achievement These tests measure reading, spelling, arithmetic, oral and written language skills, and/or general knowledge	_____
<input type="checkbox"/> Health Health information and testing is gathered to determine how your child's health affects school performance	_____
<input type="checkbox"/> Intellectual Development These tests measure how well your child thinks, remembers, and solves problems.	_____
<input type="checkbox"/> Language/Speech Communication Development These tests measure your child's ability to understand and use language and speak clearly and appropriately.	_____
<input type="checkbox"/> Motor Development These tests measure how well your child coordinates body movements in small and large muscle activities. Perceptual skills may also be measured.	_____
<input type="checkbox"/> Social/Emotional These scales will indicate how your child feels about him/herself, gets along with others, takes care of personal needs at home, school and in the community.	_____
<input type="checkbox"/> Adaptive/Behavior These scales indicator how your child takes care of personal needs at home, school and in the community.	_____
<input type="checkbox"/> Post-Secondary Transition Age appropriate transition assessments related to training, education, employment and where appropriate independent living skills.	_____
<input type="checkbox"/> Other _____	_____
<input type="checkbox"/> Alternative Means of Assessment (Describe alternative methods of assessing the child, if applicable) _____	_____

I consent to the assessment. I understand that the results will be kept confidential and that I will be invited to attend the IEP team meeting to discuss the results. I also understand that no special education services will be provided to my child without my written consent.

I do not consent to the proposed assessment described above.

I would like the following assessment information to be considered by the IEP team \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_  
 Parent  Guardian  Surrogate  Adult Student

# Assessment

- **Timeline** – the school has 60 days (not counting holidays in excess of 5 days) to complete the assessment and hold an initial IEP meeting
- **Medication** – the school cannot require the student to be prescribed medication as a pre-condition to assessment (24 USC § 1412(25)(A))
- **Methods** – the assessment should include a variety of tools and sources of data including observation and interview. Assessments must be conducted by trained and knowledgeable personnel. Eligibility cannot be determined on the basis of any single measure.

# Qualification

- Autism
- Emotional Disturbance
- Hearing Impairment or Deafness
- Intellectual Disability
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech/Language Disorder
- Traumatic Brain Injury
- Visual Impairment or Deaf-Blindness
- Multiple Disabilities



**The student requires specialized instruction or services in order to benefit from education.**

One/more of the following characteristics over a long period of time with an adverse effect on educational performance:

- ✓ Inability to learn not explained by intellectual, sensory, or other health factors
- ✓ Inability to build or maintain relationships
- ✓ Inappropriate behavior or feelings under normal circumstances
- ✓ General pervasive mood of unhappiness or depression
- ✓ Tendency to develop physical symptoms or fears associated with personal or school problems
- ✓ Schizophrenia

“Emotional Disturbance?”

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- ✓ Limited strength, vitality or alertness, including heightened alertness to environmental stimuli, that results in limited alertness to the educational environment
  - ✓ Due to a chronic or acute health problem (i.e., asthma, ADD/ADHD, diabetes, epilepsy...)
  - ✓ Adversely affects educational performance

“Other Health Impairment?”

# Disputes

- **Independent Educational Evaluation (IEE)** – the parent has a right to one independent educational assessment at public expense
- **Alternative Dispute Resolution** – the parent can ask for ADR or mediation with the school to resolve the conflict
- **Due Process** – the parent can proceed to a hearing before an administrative law judge
- **504** – even if the student is ultimately found ineligible for an IEP, the student may qualify for needed services under section 504



# Educationally Related Mental Health Services (ERMHS)

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- In 2011 funding for mental health services changed. School districts are now solely responsible for provision of educationally related mental health services
  - ERMHS are not limited to students in the “emotional disturbance” eligibility category, but available to any student with a disability needing mental health services to benefit from education

# Counseling



Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2))

# Parent Counseling & Training

- Assisting parents in understanding the special needs of their child
- Providing parents with information about child development
- Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP

(34 CFR 300.34(c)(8))

# Psychological Services

- Administering psychological and educational tests and assessments
  - Interpreting assessment results
  - Obtaining, integrating and interpreting information about child behavior and conditions related to learning
  - Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation and behavioral evaluations
  - Planning and managing a program of psychological services, including psychological counseling for children and parents
  - Assisting in developing positive behavioral intervention strategies
- (34 CFR 300.34(c)(10))

# Social Work Services

- Preparing a social or developmental history on a child
- Group and individual counseling with the child and family
- Working in partnership with parents and others on those problems in a child's living situation that affect the child's adjustment in school
- Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program
- Assisting in developing positive behavioral intervention strategies

(34 CFR 300.34(c)(14))

# Residential Placement



If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(34 CFR 300.104)



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# QUESTIONS?

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