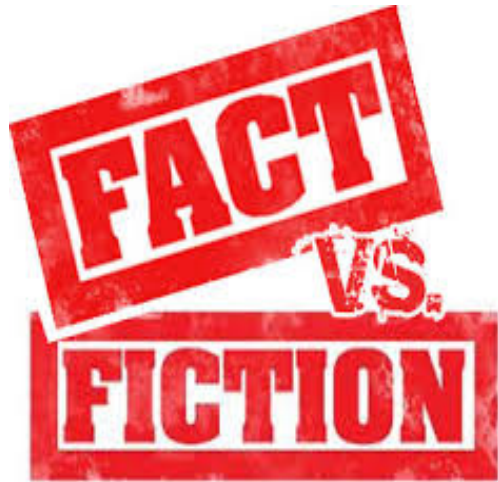


Separating Fact from Fiction:



Fundamentals of Special Education Law for School Board Members

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FACT

Special education law is a litigious area with a number of complex laws at play.

Applicable Federal Law

- **Individuals with Disabilities Education Act (IDEA)**
 - and Alabama Administrative Code (AAC)
- **Section 504 of the Rehabilitation Act of 1973(Section 504)**
- **Title II of the Americans with Disabilities Act (ADA)**

FICTION

Parents of children with disabilities think they know more than educators.

Fact: Parents want to trust school staff.

FACT

Special education law is filled with technical terms and acronyms. Parents may not know how to ask for what they really want.

IDEA Principal Concepts & Definitions

- **Child with a Disability**

intellectual disabilities	hearing impairments (including deafness)
speech or language impairments	visual impairments (including blindness)
developmental delay	emotional disturbance
orthopedic impairments	autism
traumatic brain injury	other health impairments
specific learning disabilities	multiple disabilities

- Must need special education and related services

IDEA Principal Concepts & Definitions

- **Child Find Obligation**

- School districts must identify, locate and evaluate children with disabilities within the jurisdiction of the school district.

- **Evaluations**

- Determine whether a child has disability and nature and extent of special education and related services

IDEA Principal Concepts & Definitions

- **Free Appropriate Public Education (“FAPE”)**
Special education and related services that:
 - Are free to the parents
 - Meet State standards, as determined by ALSDE
 - Include an appropriate preschool, elementary school, or secondary school education in the State
 - Are provided in conformity with the student’s IEP

IDEA Principal Concepts & Definitions

- *Individualized Education Plan (“IEP”)*

Key components:

- Present levels of academic achievement and functional performance
- Measurable goals
- Special education, related services and supplementary aids and services
- Participation in general education and activities

IDEA Principal Concepts & Definitions

- **Least Restrictive Environment (“LRE”)**
 - To the maximum extent appropriate, children with disabilities must be educated with children who are nondisabled.
 - Removal from general education environment only if a student cannot be provided FAPE there with use of supplementary aids and services.

IDEA Principal Concepts & Definitions

- **Procedural Safeguards**
 - Right to examine all records and participate in meetings
 - Right to receive prior written notice for proposals and refusals by the IEP Team
 - Right to refuse consent for an evaluation or services
 - Right to file a due process complaint, a State Department complaint or an OCR complaint
 - Right to recover attorneys' fees from the school district if prevailing party (even in settlement)

IDEA Principal Concepts & Definitions

- **Special Education**
 - “Specially designed instruction”
 - At no cost to parents
 - To meet child’s unique needs
 - Includes instruction in classroom, home, hospitals and institutions, and in other settings, as well as instruction in physical education

IDEA Principal Concepts & Definitions

- ***Specially Designed Instruction***
 - Adapting content, methodology, or delivery of instruction in order to:
 - Address child's unique needs that result from the disability
 - Ensure access to general curriculum in order to meet educational standards that apply to all children

FICTION

The school district has no child find duty until a parent requests an evaluation.

Child Find Tips

- **Child find under IDEA and Section 504 is an affirmative duty of the school district.**
- **There are no magic words needed from a parent to trigger the duty to evaluate. “When there’s debate, evaluate!”**
- **Triggered when there is “reason to suspect” or “reason to believe” that a child has a disability and is in need of special education**

FACT

Parents are not required to provide the school district with outside evaluations or doctor's diagnoses, even if they have them.

IDEA Evaluation Tips

- **School districts must conduct comprehensive evaluations and evaluate in all suspected areas of need, not just disability.**
- **Parents are not responsible for obtaining educationally-relevant evaluations, including medical evaluations for diagnostic/evaluative purposes.**
- **No matter how well intentioned, school personnel and board members must avoid making diagnoses or recommending medication.**

FICTION

Eligibility for special education is based solely on academic performance. If a student makes good grades, she cannot qualify.

IDEA Eligibility Tips

- **Eligibility under IDEA has three components.**
 - the student must meet the criteria of one of the specified disabilities under IDEA
 - the disability must adversely affect educational performance
 - the adverse effect must be to the degree that the student needs specially designed instruction

IDEA Eligibility Tips

- **Just because a doctor says so does not mean the child qualifies.**
- **Educational performance is broader than academics alone.**
 - Also includes social/emotional and communication skills
- **The need for specially designed instruction must be considered.**

FACT

“We did exactly what the parents wanted” is not a defense for failing to provide FAPE.

IDEA FAPE Tips

- **The obligation to provide FAPE is on the school district.**
- **The child is entitled to FAPE, not the parents.**
- **Parents are required members of the IEP Team, but they do not have veto power over Team decisions.**

IDEA FAPE Tips

The Legal Standard for FAPE

- Rowley – “Some educational benefit”
 - Has the District complied with the IDEA’s procedural requirements?
 - Is the IEP reasonably calculated to enable the child to receive educational benefits?

IDEA FAPE Tips

The Legal Standard for FAPE

- Andrew F. – Clarification
 - Must offer an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances
- Progress is demonstrated with data and documentation.

FICTION

If the school district cannot afford or does not have services a child needs for FAPE, the law does not require them.

IDEA FAPE Tips

- IEP recommendations/decisions must be based on the *individual needs and circumstances of the child*.
- These are NOT a defense for failing to provide FAPE:
 - Cost
 - Availability of programs and services
 - Lack of personnel

FACT

Federal law has established different rules of discipline for students with disabilities than non-disabled students.

IDEA Discipline Tips

- **Congress has chosen to maintain a dual-disciplinary system, and, as a result, students with disabilities cannot be disciplined like their nondisabled peers.**
- **The proper discipline procedures are very technical and confusing.**

FICTION

A school district can avoid IDEA's discipline rules by calling the parent to take the child home for a "cooling off" period when a child misbehaves.

IDEA Discipline Tips

- **School districts cannot make unilateral “changes in placement” through the use of suspension or other removal for disciplinary reasons.**
 - Any removal more than 10 school days (consecutively or cumulatively) is a change of placement.
 - The IEP Team must:
 - Make a manifestation determination
 - Develop a plan to address and try to prevent behaviors
 - Determine services needed for student to continue receiving FAPE

FACT

Placement and services for a student with a disability who violates the Code of Conduct depend on the outcome of the manifestation determination.

IDEA Discipline Tips

- **Manifestation: the student returns to his placement *unless* the parent agrees to change it**
- **No manifestation (placement is properly changed): the student continues to receive “FAPE” during the disciplinary removal**
 - Services to continue to participate in the general curriculum and advance toward IEP goals

FICTION

School boards can overrule IEP Team decisions and the IDEA's discipline rules by a majority vote.

School Board Member Tips

- **Avoid involvement in decisions about an individual child's eligibility, evaluations, programming or placement.**
- **Avoid questioning IEP Team decisions/recommendations.**
- **Do not unilaterally change the placement of a student with a disability for disciplinary purposes.**
- **Avoid questioning manifestation determinations.**

FACT

School board members have an important role in supporting special education programs to effectively serve students with disabilities.

School Board Member Tips

- **Review the school district's overall achievement and placement data and determine whether students with disabilities as a whole are progressing academically and behaviorally.**
- **Identify community/business partnerships willing to collaborate with the school district to help improve outcomes for students with disabilities.**
- **Ensure that special education funds are being properly used only for special education purposes.**

School Board Member Tips

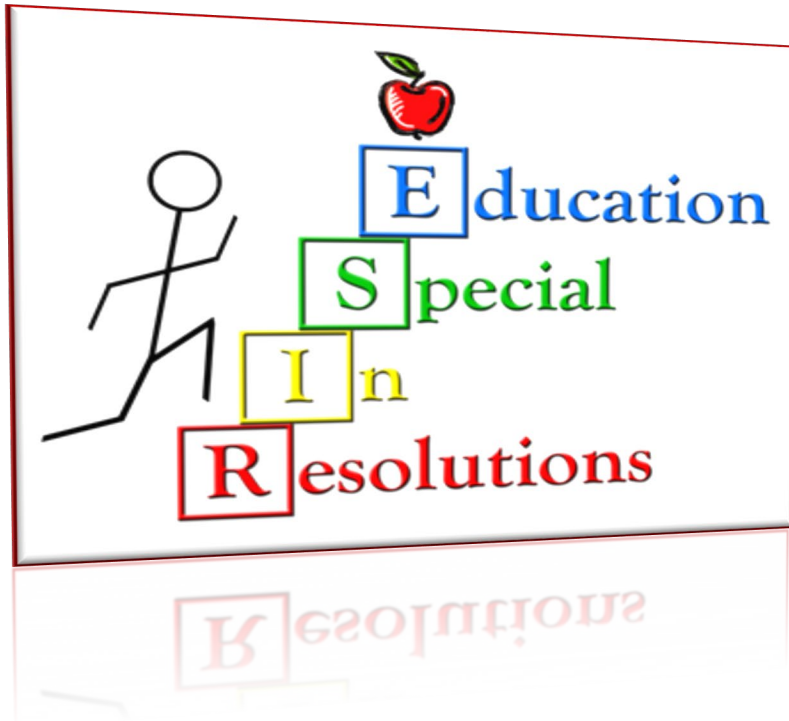
- **Take seriously requests from the Special Education Coordinator for needed personnel and services.**
- **Approve requested expenditures/contracts determined necessary by IEP Teams and/or administrators for the provision of FAPE.**
- **Listen to the Special Educator's guidance when trying to save the school district from litigation.**

Thank You!

"Thanks yall!
That was fun!"



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