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Special Education – A Practical Overview for Families

Introduction -

School Districts are required to provide the full range of special education services for a student to make meaningful progress and which are mandated by law. It is important that families receive accurate and complete information to properly address their children's special needs.

- I. Eligibility – The major federal law which protects children with special needs is the Individuals with Disabilities Education Act (“IDEA”). This Act entitles eligible children to receive a Free Appropriate Public Education (“FAPE”) under an Individualized Education Plan (“IEP”) which must implement research-based instruction and Related Services (defined below) in the Least Restrictive Environment (“LRE”).
 - A. IDEA – There are thirteen (13) specific disability classifications for children ages 3 to 21 who are eligible to receive special education.
 1. Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental changes or changes in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance.
 2. Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness.
 3. Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

4. Emotional disturbance
- a. Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
- (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (3) Inappropriate types of behavior or feelings under normal circumstances.
 - (4) A general pervasive mood of unhappiness or depression.
 - (5) A tendency to develop physical symptoms or fears associated with personal or school problems.
- b. Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted.
5. Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.
6. Intellectual Disability means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.
7. Multiple disabilities means concomitant impairments (such as an intellectual disability-blindness or an intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.
8. Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

9. Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, and that –
 - a. Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
 - b. Adversely affects a child’s educational performance.
10. Specific learning disability – Must involve a disorder as defined below, and also involves either 1) a severe discrepancy between ability and achievement, or 2) a failure to respond to a research-based program of intervention.
 - a. General: Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
 - b. Disorders not included: Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.
11. Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance.
12. Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
13. Visual impairment, including blindness, means an impairment in vision that, even with correction, adversely affects a child’s educational performance.

14. Developmental delay (Pennsylvania definition) – A child who is less than the age of beginners and at least three (3) years of age is considered to have a developmental delay when one of the following exists:
 - a. The child’s score, on a developmental assessment device which yields a score in months, indicates that the child is delayed by 25% of the child’s chronological age in one or more developmental areas.
 - b. The child is delayed in one or more of the developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests.

- B. Eligibility from birth to three: “Infants and toddlers with disabilities” means individuals from birth through age two who need early intervention services because they –
 1. Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:
 - a. Cognitive development;
 - b. Physical development, including vision and hearing;
 - c. Communication development;
 - d. Social or emotional development;
 - e. Adaptive development; or
 2. Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

- C. Eligibility under Section 504 of the Rehabilitation Act and Chapter 15 of 22 Pa. Code:
 1. The regulations implementing Section 504 include provisions on preschool, elementary, and secondary education. These provisions, though not as extensive as the regulations implementing the IDEA, impose similar obligations, including obligations to provide nondiscriminatory evaluations, a free appropriate public education (including special education-type services where necessary), procedural safeguards, and services in the least restrictive environment. These regulations provide a method for the provision of services to disabled children who may not be eligible under one of IDEA’s categories or may not need special education programs, but who, because of their disabilities, do need aids, accommodations, or services to gain equal access to all school activities.
 2. Section 504 provides an express definition of an “individual with a disability”:

[A]ny person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment.

The definition of "physical or mental impairment" is quite broad. A "physical or mental impairment" includes, among other things, any physiological disorder or condition that affects a wide variety of bodily functions, or any mental or psychological disorder, such as intellectual disabilities, emotional or mental illness, and specific learning disabilities. "Major life activities" include functions such as learning, walking, seeing, hearing, speaking, breathing, and caring for one's self.

3. Chapter 15 of the Pennsylvania Code are the regulations implementing Section 504 of the Rehabilitation Act of 1973 in Pennsylvania. Chapter 15 addresses the responsibilities of school districts to comply with the requirements of Section 504.
4. Chapter 15 requires that a "Service Agreement" be written and executed by a representative of the local educational agency and one or both parents if a child is eligible for protection under Chapter 15. Chapter 15 further mandates that the service agreement set forth the specific related aids, services, and/or accommodations the student shall receive.

II. Responsible Agencies

- A. School Age Children (ages 5 or 6 to 21) – Local School District or Charter School
- B. Children of Kindergarten Age (age 5) – Parent may choose between local School District or local Intermediate Unit (or in Philadelphia County, Elwyn Institute)
- C. Preschool Children (ages 3 to 5 or 6) – Local Intermediate Unit (in Philadelphia, Elwyn Institute)
- D. Infants and Toddlers (birth to age 2) – Local County Mental Health/Intellectual Disability Administration

III. Child Find

- A. Obligation of public agencies from birth to age 21, including obligations to private school children. The State must have in effect policies and procedures to ensure that:
 1. All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children

with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

2. A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

B. Child find also must include –

1. Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and
2. Highly mobile children, including migrant children.

IV. Free Appropriate Public Education (“FAPE”) – A program which is reasonably calculated to afford meaningful educational progress in all domains (academic, social, emotional, behavioral, physical).

A. Purpose of special education is to move the child to a reasonable level of independence and self-sufficiency consistent with potential.

B. Specially Designed Instruction must be based on peer-reviewed research.

C. Accommodations and supports must be provided as necessary to make meaningful educational progress, to be integrated with nondisabled peers, and to participate in extracurricular/nonacademic activities.

D. Transition services must be provided from at least age 16 and be based upon appropriate transition assessments which are specifically designed to improve the child’s academic and functional achievement and to facilitate the child’s movement to post-school activities.

E. Students must be placed in the Least Restrictive Environment (“LRE”) (see discussion below).

F. Extended School Year (“ESY”) – eligible when regression occurs over breaks with limited recoupment ability, or where the child is not making meaningful progress to fulfill IEP goals.

G. Related Services must be based on peer-reviewed research.

1. Related Services are defined under federal regulations to consist of transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Related Services include speech-language pathology and

audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

2. Audiology includes –

- a. Identification of children with hearing loss;
- b. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- c. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- d. Creation and administration of programs for prevention of hearing loss;
- e. Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- f. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

3. Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

4. Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

5. Interpreting services include –

- a. The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

- b. Special interpreting services for children who are deaf-blind.
6. Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
7. Occupational therapy –
- a. Means services provided by a qualified occupational therapist; and
 - b. Includes –
 - (1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
 - (2) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
 - (3) Preventing, through early intervention, initial or further impairment or loss of function.
8. Orientation and mobility services –
- a. Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
 - b. Includes teaching children the following, as appropriate:
 - (1) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - (2) To use a long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
 - (3) To understand and use remaining vision and distance low vision aids; and
 - (4) Other concepts, techniques, and tools.

9. Parent counseling and training means –
 - a. Assisting parents in understanding the special needs of their child;
 - b. Providing parents with information about child development; and
 - c. Helping parents to acquire the necessary skills that will allow them to support the implementation of their child’s IEP or IFSP.
10. Physical therapy means services provided by a qualified physical therapist.
11. Psychological services include –
 - a. Administering psychological and educational tests, and other assessment procedures;
 - b. Interpreting assessment results;
 - c. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
 - d. 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;
 - e. Planning and managing a program of psychological services, including psychological counseling for children and parents; and
 - f. Assisting in developing positive behavioral intervention strategies.
12. Recreation includes –
 - a. Assessment of leisure function;
 - b. Therapeutic recreation services;
 - c. Recreation programs in schools and community agencies; and
 - d. Leisure education
13. Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability.

The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

14. School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
15. Social work services in schools include –
 - a. Preparing a social or developmental history on a child with a disability;
 - b. Group and individual counseling with the child and family;
 - c. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
 - d. Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
 - e. Assisting in developing positive behavioral intervention strategies.
16. Speech-language pathology services include –
 - a. Identification of children with speech or language impairments;
 - b. Diagnosis and appraisal of specific speech or language impairments;
 - c. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - d. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - e. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
17. Transportation includes –
 - a. Travel to and from school and between schools;

- b. Travel in and around school buildings;
- c. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability;
- d. Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- e. Assisting in developing positive behavioral intervention strategies.

V. Least Restrictive Environment (“LRE”)

A. Each public agency must ensure that –

- 1. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or their care facilities, are educated with children who are nondisabled; and
- 2. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

B. The child’s placement –

- 1. Is determined at least annually;
- 2. Is based on the child’s IEP; and
- 3. Is as close as possible to the child’s home.

C. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.

D. In selecting the LRE, consideration is given to any potentially harmful effect on the child or on the quality of services that he or she needs.

E. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

F. A continuum of placements must be maintained and be available to meet the needs of children with disabilities. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals

and institutions; and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

- G. Residential placements for educational purposes: 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.
- H. “Instruction in the home” (a special education placement) versus “homebound instruction” (a medical reason to provide instruction at home) versus “home schooling” (a parental choice to provide instruction by family members and outside providers rather than by/at the public schools).

VI. Evaluations and Reevaluations

- A. Initial evaluation is required when there is reason to suspect that the child has a disability and needs special education.
- B. Scope of evaluation and reevaluation: In evaluating each child with a disability, the evaluation must be sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- C. A new evaluation procedure is being strongly encouraged for students suspected of having a Specific Learning Disability – A “Response to Intervention Model” is now preferred to the former “Ability-Achievement Model” which relied upon a severe discrepancy between ability and achievement and was a “wait-to-fail” process which cheated needy children.
- D. Parents have a right to obtain an Independent Educational Evaluation, often at public expense.

VII. Individualized Education Plan (“IEP”)

- A. Purpose – To guide instruction and insure the provisions of FAPE.
- B. Defined: Individualized Education Program, or IEP, means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting with parents and relevant professionals, and that includes the components listed below.
- C. Components:
 - 1. A statement of the child’s present levels of academic achievement and functional performance, including –

- a. How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - b. For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
2. A statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability;
3. A description of –
 - a. How the child's progress toward meeting the annual goals will be measured; and
 - b. When periodic reports on the progress the child is making toward meeting the annual goals will be provided (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);
4. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child –
 - a. To advance appropriately toward attaining the annual goals;
 - b. To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
 - c. To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
5. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in other school activities;
6. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state- and district-wide assessments.

VIII. Special Education Services for Private School Students

- A. Dual Enrollment under 24 P.S. §502
- B. Act 89 services through local Intermediate Unit
- C. Equitable participation by local school district using IDEA funds in proportional amounts for eligible private school children
- D. Child find obligations of local educational agencies to private school students
- E. No due process right of student to challenge most decisions by public agencies regarding private school services
Exception: child find – disputes may be raised through due process with the public educational agency in which the private school is located.

IX. Due Process Procedures to Challenge Decisions of Public School Agencies

- A. Impartial hearing officer appointed by a state agency from outside the school district
- B. Dispute resolution regarding the disabled child's identification, program, or placement
- C. Parents need not be represented by counsel, but chances of success are markedly improved with legal representation, and the public agency must pay the parent attorney's counsel fees if the parent/child prevails in the proceedings.
- D. Relief from due process can include a vastly superior school program, additional related services, tuition reimbursement to a private school, compensatory education services for past school district failures to provide FAPE, payment for outside evaluations, and an alternate educational placement.