

Understanding the Basics of Special Education Law

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www.educationlawgeorgia.com

Links

Georgia Special Education Law Blog
www.educationlawgeorgia.com/blog

GA Dep't of Edu. Rules
<http://www.doec.k12.ga.us/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/Special-Education-Rules.aspx>

Legal Resources
<http://www.wrightslaw.com/>

IEP Meeting Advice
<http://www.connecticutspededucationlawyer.com/>

Disclosure:
Tim Schwarz is the founder of the Law office of Tim Schwarz, which represents students with legal issues such as

- tribunal hearings
- civil rights
- bullying
- IEP & 504 execution.

Evaluations

Homer
We are worried about Bart because he doesn't make eye contact or interact with other kids his age.

Marge
And Lisa has a lot of trouble reading her assignments.

Krabapple
Let's enroll them both into the SST program.

Marge
Can we skip straight to writing an IEP?

Marge
The school's evaluation is really insightful about Lisa's cognitive processes and reading difficulties. Do you have diagnosis?

Chalmers
The district is not required to determine medical diagnosis.

Homer
The report does not say anything about Lisa's hearing loss.

Skinner
You didn't tell us about hearing issues.

IDEA, Section 504, ADA

IDEA

- Intellectual Disabilities
- Hearing Impairment
- Speech or Language Impairment
- Visual Impairment
- Serious Emotional Disturbance
- Orthopedic Impairments
- Autism
- Traumatic Brain Injury
- Specific Learning Disabilities
- Other Health Impairment

Section 504

No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...

Americans with Disabilities Act

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Free Appropriate Public Education

20 U.S.C. § 1401(9)

Board of Edu. v. Rowley, 458 U.S. 176(1982)

First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

1. Procedural rights
2. Substantive standard

Endrew F. v. Douglas County Sch. Dist., ___ U.S. ___ (2017)

Typical Classroom:
"Progressing smoothly from grade to grade"

Specialized Classroom:
"appropriately challenging"

"The state must provide the child only with 'a basic floor of opportunity.'"

Drew P. v. Clarke County Sch. Dist., 877 F.2d 927, 930 (11th Cir. 1989)

"maximum improvement is never required"

JSK v. Hendry County Sch. Bd., 941 F.2d 1563 (11th Cir. 1991)

Assessing the Special Education Plan

Marge

We just want what is best for Lisa.

Krabapple

...

Homer

We think that Bart needs some more staff support during transitions

Chalmers

I hear you saying that you want what is best for Bart.

Marge

It seems like Bart isn't doing well in this school.

Krabapple

He's doing fine in his classes, making appropriate academic progress. There's not much else we can do.

Individualized Education Program

Mandatory IEP Team members

1. Parent
2. Regular Education Teacher
3. Special Education Teacher
4. District Official (Programs & Resources)
5. Evaluation Interpreter

Purpose:
 Prepare students for:
 (a) further education,
 (b) employment, and
 (c) independent living
 20 U.S.C. § 1400(d)(1)

Krabapple

Bart seems to be doing fine with his fine motor skills. Should we end his occupational therapy sessions?

Skinner

If you want to add time with the SLP, your insurance could pay for it.

IEP Drafting

Marge
 Given Lisa's present levels, I think she needs additional reading tutoring

Skinner
 That's not available at Springfield Elementary

Homer
 Can we set the goal to raise her reading level by two grades?

Krabapple
 I don't think that is realistic to achieve over the next school year.

Krabapple
 I recommend three additional goals for Bart

- (1) Engage Appropriately with Peers
- (2) Transfer between classes with three physical prompts
- (3) Reduce Physical Aggression towards school staff to 50% of interactions

Homer
 Can we include some ABA therapy to achieve those goals

Chalmers
 Our highly trained teachers use a variety of techniques to address Bart's goals

School Discipline

Marge
 I know that Bart's aggressive behavior is a problem, but this is the fifth out-of-school suspension he received. And he's already had seven in-school suspensions.

Chalmers
 The district is allowed to impose punishments of less than ten consecutive days at our discretion.

Homer
 There must be something else that can be done to reduce the frequency of the attacks on teachers

Chalmers
 I have a duty to protect the teachers and students in Bart's class

Skinner
 School staff implement Lisa's IEP correctly. Further, she knew what she was doing was wrong when she yelled and cursed at the teacher.

Homer
 When can she return to school?

Skinner
 At the end of the school year. Until then, she's your problem.

Litigation

Skinner
We are ending Bart's BIP & Social Skills classes.

Homer
We don't agree with that decision.

Skinner
The IEP team's decision is final.

Marge
What about his right to LRE?

Homer
We don't agree that the school's evaluation identified Bart's problem. Can we get Dr. Hibbert's opinion?

Krabapple
No. The district doesn't pay for private evaluations.

Meeting Tips

Homer
Can we start planning extended school year for Lisa?

Krabapple
This is an amendment meeting, not an ESY meeting.

Skinner
Superintendent Chalmers would need to approve ESY

- **Inviting Witnesses**
20 U.S.C. § 1414(d)(1)(B)(vi)
- **Transition Plan**
Must plan for post-school needs - no later than age 16
20 U.S.C. § 1414(d)(1)(A)(i)(VII)
- **Review before Signing**
- **Get it in Writing**

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