

# WHAT EDUCATORS & PARENTS NEED TO KNOW ABOUT SPECIAL EDUCATION LAW

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Designed for educators working with students with disabilities (SWD) and parents, this guide provides a general orientation to key legal issues under federal laws. Because school districts are also governed by state law, this information is not a substitute for guidance to the extent state law sets higher standards than federal law. Nor does it substitute for legal advice which requires analysis of the law and the facts.

"The core of the statute (Individuals with Disabilities Education Act) is the cooperative process that it establishes between parents and schools...The central vehicle for this collaboration is the IEP process."

—Schaffer v. Weast, The U.S. Supreme Court, 2005

## Major Federal Laws

**The Individuals with Disabilities Education Improvement Act (IDEIA)**, commonly known as the **IDEA** provides federal funding to states to extend to SWD between the ages of 3 and 21, who have not earned a high school diploma, the right to a free appropriate public education (**FAPE**) which provides special education and related services through the development of an individualized education program (**IEP**) (see pages 2 & 4 for more information). <http://idea.ed.gov/IDEA>.

**Section 504 of the Rehabilitation Act (§504)** is a federal civil rights law that protects individuals with disabilities of all ages, including school age children, individuals regarded as disabled or with a history of disabilities, from discrimination in programs and activities that receive federal funds. **NOTE:** SWD under the IDEA are automatically protected against discrimination under §504.

§504 provides for monetary damages against individuals and districts upon a finding of discrimination involving "bad faith" or "gross misjudgment." [www.ed.gov/policy/speced/leg/edpicks.html](http://www.ed.gov/policy/speced/leg/edpicks.html).

**No Child Left Behind (NCLB)**, also known as the Elementary and Secondary Education Act, mandates that all students have a fair, equal and significant opportunity to obtain a high-quality education and reach, at

a minimum, proficiency on state academic standards and assessments. NCLB requires annual statewide testing of all students, including SWD, to assess annual yearly progress (**AYP**), disaggregated by disability, race and nationality, with options available to parents whose children attend failing public schools. [www.ed.gov/policy/elsec/leg/esea02/index.html](http://www.ed.gov/policy/elsec/leg/esea02/index.html).

**Family Educational Rights and Privacy Act (FERPA)** protects the privacy of students through rules that govern the confidentiality and release of personally identifiable information from educational records maintained by educational institutions receiving federal funds. [www.ed.gov/policy/gen/guid/fpcol/ferpa/index.html](http://www.ed.gov/policy/gen/guid/fpcol/ferpa/index.html).

## Basic Legal Principles

One of the most important tenets of both IDEA and §504 is the obligation to provide SWD "equal access" to education, school programs and school-sponsored activities. SWD must:

- Receive education in the same classes and buildings as they would if not disabled, with supports and services, where necessary;
- Receive the same curriculum as their non-disabled peers, with accommodations and modifications, where necessary, to address their special education needs;
- Have the same opportunities to participate in all school-related activities, including extracurricular activities and sports program

## Key Terms & Acronyms

**A Student with a Disability under IDEA:** A child between the ages of 3 and 21 (unless state law provides otherwise for children between 3-5 and 18-21) with a disability including mental retardation • visual impairments • speech or language impairments • emotional disturbance • autism • hearing impairments (including deafness) • specific learning disabilities • multiple disabilities • other health impairments • traumatic brain injury • or orthopedic impairments who, as a result, need special education and related services (except in states that define related services as special education, a student may qualify for related services only) to benefit from the general education curriculum.

## An Individual with a Disability under §504:

An individual regardless of age who:

- Has a physical or mental impairment which substantially limits one or more major life activities such as walking, seeing, hearing, speaking, breathing, learning, reading, thinking, concentration, working, caring for oneself and performing manual tasks (which may be in remission or episodic as long as when active it substantially limits a major life activity);  
In determining whether a disability substantially limits a major life activity, a district may not consider the effects of mitigating measures such as medications, hearing aids, cochlear implants, learned behavioral or adaptive neurological modifications, etc. (except for eyeglasses or contact lenses)
- Has a history of such impairment; or
- Is regarded as having a disability.

**Accommodations:** Involve the adaptation of a policy, program or service, to enable a SWD under IDEA /§504 to participate fully and derive benefits (e.g. alternate format, extended time, scribe; a reader etc.). To determine if an accommodation is necessary, the §504 Team must find an identifiable relationship between the accommodation requested and the individual's disability. An accommodation is only appropriate, when necessary, to accommodate the individual's disability and "balance the playing field," and may be discriminatory if it affords the student an "unfair advantage." Often confused with test/ program modifications, an accommodation simply alters the manner of presentation but does not change the content of the program/ test.

**Behavior Intervention Plan (BIP):** An intervention plan developed to address a student's behavior problems, based on results of an FBA (see definition on page 2).

**Education Records:** Records directly related to a student, maintained by an educational institution, recorded in any fashion, including but not limited to handwritten notes, print, e-mail, video or audio tape, film, microfilm.

**Free Appropriate Public Education (FAPE):** Under the IDEA, includes special education and related services provided at no cost to parents in conformity with an individualized education program (IEP) that is designed to

*continued on next page...*

afford SWD meaningful opportunities to meet their annual goals, access general education and meet state standards in the LRE appropriate to meet their needs.

**Functional Behavioral Assessment (FBA):** A problem-solving process to address a student's behavior which identifies the cause or function of the behavior before developing a planned intervention which must be either reviewed or conducted, following a disciplinary change of placement to develop a BIP.

**Requirements for Highly Qualified Teachers of SWD:**

- Full state certification as a special education teacher (which may be obtained through alternative routes);
- Passing the applicable state licensing exam and obtaining a state license as a special education teacher; or if teaching in a public charter school, meeting relevant state law requirements;
- No waivers on an emergency, temporary or provisional basis; and
- At least a bachelor's degree.

In addition, to teach core curriculum to SWD, a special education teacher must either:

- Have proper certification to teach core curriculum to nondisabled students; or
- If certified in math, language art, or science, demonstrate competence in other core subjects through the High Objectives Uniform State Standard of Evaluation (HOUSSSE); or
- If a veteran teacher, teaching two or more core academic subjects, become highly qualified through the HOUSSSE;

To teach core curriculum to SWD who are subject to alternative standards (most severely disabled), a special education teacher:

- May demonstrate subject matter competence to teach elementary school student through a single HOUSSSE covering multiple subjects;
- May demonstrate subject matter knowledge appropriate to the level of instruction as determined by the state for middle and high school students.

**Independent Educational Evaluation (IEE):** An evaluation conducted by a qualified examiner not employed by the public school responsible for the education of the student in question. An IEE may be requested/obtained by the parent at public expense when the parent disagrees with the district's evaluation and the district does not schedule a hearing to establish that its evaluation was appropriate.

**Individual Alternative Educational Setting (IAES):** A program recommended by the IEP Team following a disciplinary change of placement; for a SWD; it must continue to provide educational services to enable the student to:

- Continue to participate in the general education curriculum, although in another setting; and
- Progress toward meeting the goals on the student's IEP.

**Individualized Education Program (IEP):** A written plan required for an SWD identified under IDEA, updated annually, and developed, reviewed and revised as described on page 4 of this guide.

**Least Restrictive Environment (LRE):** SWD are entitled to an education in the LRE appropriate to their needs. The law provides that removal of a SWD from the general education environment with non-disabled peers, whether in public or private schools, special classes, separate schooling, or other location, occurs only when the nature and severity of the disability is such that education in general education classes even with the use of supplementary aids and services cannot be achieved satisfactorily.

**Modifications:** A change in the program or activity that is necessary to enable the student to derive meaningful benefits. (e.g. Alternate testing).

**Pendency:** Provides for SWD, during legal proceedings brought under the IDEA, the right to remain in the last educational placement or program mutually agreed to by the parents and the district, unless the parent and the state or district agree otherwise. If the student is an initial applicant to the public schools, the student, with the consent of the parents, must be placed in the public school program until proceedings are completed.

**Response to Intervention (RTI):** A multi-tiered, general education initiative for struggling learners that provides individualized, systematic, research-based instructional interventions that are monitored through on-going data collection and analysis and modified, as needed, to address the lack of adequate progress. Initially developed for struggling readers, RTI principles have been extended to other areas, including, for example, behavioral problems (Positive Behavior Intervention Strategies—PBIS), writing and mathematics.

In response to research which found that many children were improperly identified as learning disabled because they were never properly taught to read, IDEA 2004 incorporated RTI into the law:

To serve as an assessment tool in place of the discrepancy model (which compared student achievement with IQ) to identify learning disabilities; and

To rule out the lack of appropriate instruction in reading or math as the determinant basis for the student's difficulties, which is required before a student can be identified as a SWD.

**Related Services:** Corrective and other supportive services identified in an IEP or §504 Plan, as necessary to enable a SWD to benefit from special education, including but not limited to: speech/language, physical or occupational therapy, audiological and interpreting services, psychological or social work services, school nurse services, parent counseling/training, transportation and recreation services.

**Section 504 Accommodation Plan:** A plan developed under §504 which provides accommodations and/or related services (in states that do not define related services as special education under the IDEA) that are necessary to enable a SWD to access the general curriculum, school activities and/or programs for which the student is eligible.

**NOTE:** A student identified as disabled under §504 is protected against discrimination. However, only those students who require accommodations to access school programs and activities are entitled to a §504 accommodation plan (e.g. a remediated dyslexic who requires testing accommodations; a diabetic who requires health related accommodations; a hearing impaired student who only requires assistive technology; a visually impaired student who only requires Braille; scheduling adjustments to access district programs).

**Special Education:** Specially designed instruction, offered to SWD at no cost to parents, to meet a student's unique needs, which may include instruction in the classroom, at home, in hospitals and institutions, and/or in other settings, and physical education.

**Specially-Designed Instruction:** Instruction adapted as appropriate to the needs of SWD, including the content, methodology and/or delivery of instruction designed to address the student's unique needs that result from the disability, and to ensure access to the general curriculum so that the student can meet the educational standards applicable to all students.

**Supplementary Aids and Services:** Aids, services, and other supports provided in general education classrooms, and in extracurricular and non-academic settings, to enable SWD to be educated with non-disabled peers to the maximum extent appropriate to meet the student's needs.



## The Process of Evaluation/Eligibility

The initial evaluation under IDEA requires written parental consent and must be completed within 60 calendar days from receipt. Specific procedures to determine whether a student has a disability include:

- Current classroom-based, local and state assessments; and
- Observations of general education classroom teachers and related service providers, where applicable.

The evaluation must:

- Be individualized (not based on group tests);
- Not discriminate on a racial or cultural basis;
- Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the student including information provided by the parent;
- Assess specific areas of educational need related to the suspected disability and not merely a single IQ;
- Not be based on any single measure or assessment to determine existence of a disability and an appropriate educational program;
- Ensure that the tests administered accurately reflect the student's aptitude or achievement level rather than impaired sensory, manual or speaking skills (unless those are the skills being tested);
- Be administered in a student's native language or other mode of communication in the form most likely to yield accurate information.

**The Eligibility Team:** Determines whether a student qualifies for services as a SWD which must include the student's parents and a team of qualified professionals. If the student is suspected of having a learning disability the Team must include:

- The student's regular education teacher or, if the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age; or, if less than school age, an individual qualified by the state to teach the student; and
- At least one person qualified to conduct individual diagnostic examinations of students (e.g. school psychologist).

To determine a student's eligibility and educational needs, the Team must consider information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, information about the student's physical condition, social and cultural background and adaptive behavior.

**Determining Eligibility:** As a general rule, the eligibility meeting must be held within 60 calendar days (or another date established by state law) from the date of receipt of parental consent to conduct the evaluation. A student may not be identified as a SWD if the student does not otherwise meet the eligibility criteria and/or if the determinant factor for finding a disability is due to:

- Lack of appropriate instruction in mathematics or reading, which in reading includes phonics, phonemic awareness, fluency, vocabulary and comprehension ("Appropriate instruction" is defined as scientific research-based instruction); or
- Limited English Proficiency.

**Re-evaluation:** Must occur at least every three years unless waived by the parent and district, but no more than once a year unless mutually agreed to. A re-evaluation consists of a review of existing evaluation data to determine:

- Whether the student continues to be a SWD;
- Educational needs of the student;
- Student's present levels of academic and related developmental needs;
- Whether the child needs special education and related services; or
- Whether any additions or modifications to the special education program are needed to enable the student to meet annual goals in the IEP and to participate in the general education curriculum.

If, after consultation with the parent, the Team concludes that it has sufficient information to address the items identified above without a formal assessment, the Team must give the parent prior written notice, including notice of reasons and notice of the right to request a formal assessment.

## Common Disabilities

**Attention Deficit Disorder (ADD) (inattentive or hyperactive):** Is included in IDEA's definition of Other Health Impairment. A neurologically based disability, ADD manifests itself in behavioral symptoms of inattention or hyperactivity with clear evidence that the impairment adversely affects a student's ability to function in two or more settings (e.g. school and home) and requires special education and/or related services to derive educational benefits and access school-sponsored activities. To meet criteria, there should be evidence of onset by the age of seven with symptoms present for at least six months.

**Autism:** A developmental disability, generally evident before the age of three, that affects both verbal and nonverbal communication and social interaction that adversely affects a child's educational performance. Other characteristics: engagement in repetitive activities and stereotyped movements, resistance to changes in routine and unusual responses to sensory experiences.

**Emotional Disturbance (ED):** 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:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of unhappiness or depression; OR
- A tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia but does not apply to students who are socially maladjusted, unless they also meet the criteria of a student with an emotional disturbance as set forth above.

**Learning Disabilities (LD):** In accordance with state law, eligibility criteria for determining a LD:

- May not require and may prohibit findings of a severe discrepancy between intellectual ability and achievement;
- Must permit use of a process based on the student's response to scientific, research-based interventions, known as Response To Intervention (RTI);
- May permit the use of alternative research based procedures.

A student may be found eligible if the Team finds that the student does not achieve adequately for the student's age or does not meet state approved grade-level standards in one or more of the following areas when provided with appropriate learning experiences and instruction:

- |                           |                               |
|---------------------------|-------------------------------|
| ✓ Oral Expression         | ✓ Listening Comprehension     |
| ✓ Written Expression      | ✓ Basic Reading Skills        |
| ✓ Reading Fluency Skills  | ✓ Reading Comprehension       |
| ✓ Mathematics Calculation | ✓ Mathematics Problem Solving |

OR does not make sufficient progress to meet age or state approved grade-level standards in one or more of the areas identified above when using RTI;

OR based upon appropriate assessments, the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, determined by the group to be relevant to identification as learning disabled;

AND is not primarily the result of:

- A visual, hearing, or motor disability;
- Emotional Disturbance;
- Environmental or economic disadvantage;
- Mental Retardation;
- Cultural factors;
- Limited English Proficiency.

## The IEP

Within 30 calendar days following the initial eligibility determination, the IEP Team must meet with the parent to develop an IEP.

### The IEP Team includes:

- The parent of the student under review, unless the parent chooses not to participate;
- A general education teacher who is or may be the student's teacher if the student is receiving education in a general education setting;
- A special education teacher or provider who is or may be the student's teacher or provider;
- The student, where appropriate (must be invited if the purpose of the meeting involves consideration of post-secondary goals and discussion of transition services);
- A representative of the district who is knowledgeable about the general education curriculum, knowledgeable about district resources, and can interpret instructional implications of evaluation results;
- Other individuals, with knowledge or special expertise regarding the student as determined by either the parent or district, including related services personnel, as appropriate.

### IEP Components include:

- (1) A statement of the student's present levels of academic achievement and functional performance;
- (2) A statement of how the student's disability affects involvement and progress in the general education curriculum;
- (3) The specific disability classification;
- (4) A statement of measurable annual goals, academic and functional, designed to meet the student's needs resulting from the disability, to enable the student to be involved in and make progress in the general education curriculum; and for SWD who take alternative assessments, benchmarks or short-term objectives;
- (5) A statement of how progress toward meeting the student's annual goals will be measured and a timeline of when reports on student progress toward meeting them will be provided to the student's parents (concurrent with issuance of report cards);
- (6) A statement of the recommended special education, related services, and/or supplementary aids and services;
- (7) A statement of the program accommodations, modifications, and/or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual goals, be involved in the general education curriculum and participate in extracurricular and other non-academic activities;
- (8) An explanation of the extent, if any, to which the student will not participate with non-disabled peers in the general education classrooms and in extracurricular and non-academic activities;
- (9) A statement of any accommodations necessary to measure the student's academic achievement and functional performance on state and district-wide assessments. For students whom the IEP Team determines must take alternate assessments, a statement why:
  - The student cannot participate in the general education assessment, and
  - The particular alternate assessment that is appropriate for the student;

- (10) The anticipated date for beginning services and program modifications, and their anticipated frequency, location and duration.

**NOTE:** Beginning the year when the student turns 16 (unless a state provides earlier) and updated annually, transition services must also be documented which include:

- Appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, employment and independent living skills, where appropriate;
- The transition services (including courses of study) needed to assist the student in reaching the identified transition goals.

## Critical Considerations for the IEP

When developing IEP recommendations, the IEP Team must consider:

- Results of the initial or most recent evaluation;
- Student's strengths and abilities;
- Concerns of the parents for enhancing the education of their child;
- The academic, developmental and functional needs of the student including results of performance on state and district-wide assessments.

When revising an IEP and at the annual review, the Team must also address:

- Any lack of expected progress toward meeting the student's annual goals in the general education curriculum, if appropriate;
- The results of any re-evaluation;
- Current student information provided to/by parents;
- Student's anticipated needs.

### Special Considerations:

*If behavior interferes with learning*—the Team must consider strategies, including positive behavioral interventions and supports, as well as other strategies to address that behavior.

*If limited English proficient*—the Team must consider the student's language needs and how they relate to the IEP.

*If visually or hearing impaired*—the IEP must provide for instruction in Braille and/or language/communication needs, as appropriate; if not, an explanation is required.

*If Assistive Technology*—the Team must consider whether assistive technology devices and services are necessary.

## Disciplinary Change in Placement

The removal of a SWD from his/her current placement for disciplinary reasons for either:

- More than 10 consecutive school days, or
- More than 10 non-consecutive school days in the same school year if they constitute a pattern because the student's behavior is substantially similar to behavior in the previous incidents, resulting in removal; and due to such other factors as the length of each removal, the total amount of time of the removals, and the proximity of each removal to the others.

**RULE:** Before a student faces a disciplinary change of placement, the Manifestation Team must meet to determine whether the behavior leading to discipline is related to the student's disability.

**EXCEPT:** A SWD may be removed from the current IEP placement for up to 45 school days where the student, either at school, on school property or at a school function:

- Carried or possessed a weapon;



- Inflicted serious bodily injury upon another person; or
- Knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance.

### MANIFESTATION DETERMINATION

With the exception of the 45 school day exclusion set forth above, a SWD or student suspected of having a disability cannot be subject to a disciplinary change of placement until the district holds a Manifestation Meeting to decide whether the behavior is related to the student's disability. The meeting must involve the parent and relevant members of the student's IEP / §504 Team and review all relevant information including teacher observations and parent input to determine whether the conduct in question was:

- (1) Caused by, or had a direct and substantial relationship to the student's disability; or
- (2) The direct result of the school district's failure to implement the IEP/§504 Plan.

If the answer to either question is YES—the student's behavior must be found to be a "manifestation" of his /her disability and the student may not be removed from the current educational placement unless the parent and district agree otherwise as part of the modification of the student's behavioral intervention plan (BIP) or the IEP Team agrees to a change of program/placement.

If the student's behavior is a manifestation of the student's disability, the Team must:

- Arrange for an FBA and develop a BIP or, if one exists, review and modify it to the extent necessary;
- Arrange for the student's placement in an IAES for the duration of the suspension.

When a removal does not constitute a disciplinary change of placement and the student has been suspended for more than 10 school days during one school year, school personnel, in consultation with one of the student's teachers, must develop the IAES (as defined above) which does not automatically require development or review of an FBA and BIP.

### THE §504 EXCEPTION

If a student is protected under §504 but not identified as a SWD under IDEA, and the Manifestation Team finds that the behavior leading to discipline was not related to the student's disability, the student may be disciplined to the same extent as nondisabled students and is not entitled under federal law to placement in an IAES.

If the infraction is drug or alcohol related, regardless of manifestation, the §504 protected student, not identified under IDEA, is subject to the same disciplinary action as a non-disabled peer.

### Confidentiality of Educational Records

FERPA prohibits the release of personally identifiable information from a student's educational records without written consent from parents or, if the student is over 18 years of age, the student, with specific exceptions which allow the release of such information without consent:

- To other school officials, including teachers/consultants determined by the district to have legitimate educational interests;
- To any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Personally identifiable information includes:

- The name, address, parent's name, birthdate, personal identifier, such as the student's social security number, student number, or biometric record;
- Indirect identifiers and other information that, alone or in combination, are linked or linkable to a specific student that would enable a person in the school community to identify the student with reasonable certainty based on that information; or
- Information requested by a person whom the school reasonably believes knows the identity of the student to whom the education record relates.

FERPA also ensures parents and eligible students (18+) access to all of the student's educational records, with the exception of notes kept in the exclusive possession of the teacher and not shared with anyone other than a substitute teacher, and treatment records to eligible students.

### REPORT CARDS

According to Office for Civil Rights (OCR), a teacher may indicate on a report card, as opposed to an official transcript, that a SWD is receiving special education or related services when assigning grades based on a modified curriculum, and may distinguish between special education programs/services and general curriculum classes if the course content is different.

### Rights & Responsibilities of General Education Teachers

General education teachers are vital members of IEP and §504 Teams whenever SWDs are receiving some or all of their services, supports and/or accommodations in regular classes. At a minimum, the teacher must:

- Unless excused from the meeting in accordance with law, participate in the development of the IEP/§504 Plan, including the determination of:
  - Appropriate positive behavioral interventions/supports and other strategies;
  - Supplementary aids and services, and program modifications and support for school personnel necessary to enable the child to advance appropriately towards attaining annual goals.
- Ensure that the student receives those accommodations recommended on the IEP/§504 Plan;
- Implement positive behavior strategies and behavior intervention programs included on the student's IEP/§504 Plan;
- Refer the student back to the Team, when there is reason to believe that the student may require a change in program/placement/services/supports etc. or a re-evaluation;
- Maintain confidentiality of the student's status as a SWD in accordance with FERPA;
- Identify and address discriminatory practices including peer harassment and/or bullying of SWD;
- Seek appropriate training and supports, where necessary, to enable the student to advance academically;
- Access the student's IEP, §504 plan and other relevant background information that is necessary to provide the student with an appropriate education.

## Rights & Responsibilities of Parents

### Parental Rights include:

- Initiating a referral if they suspect their child has a disability;
- Participating as an essential member of their child's IEP/\$504 Team;
- Reviewing their child's educational records;
- Being informed of their child's progress in meeting annual goals as frequently as report cards are issued;
- Receiving explanations of results of individual assessments prior to formal meetings;
- Withholding consent to conduct an evaluation;
- Withholding consent to classification and initial placement in special education;
- Revoking consent for special education and related services any time after student is identified and receiving services under IDEA;
- Being informed, in writing, of proposed changes in program or placement before they are implemented (Prior Notice);
- Requesting an IEE if they disagree with the district's evaluation;
- Requesting a re-evaluation;
- Challenging at an impartial hearing and, subsequently in court, any matter involving the identification, evaluation and placement of their child with a disability, including any matter involving the right to a FAPE, and being represented by an attorney in such proceedings and obtain, if they ultimately prevail, attorneys' fees from the district. [www.idea.ed.gov/download/modelform3\\_Procedural\\_Safeguards\\_Notice.pdf](http://www.idea.ed.gov/download/modelform3_Procedural_Safeguards_Notice.pdf);
- Filing a complaint with the state for alleged violations of the right to FAPE;
- Filing a complaint with the OCR for alleged discrimination;
- Receiving a procedural safeguard notice, at least annually, in understandable language, native language, or other mode of communication, unless clearly not feasible.

### Parental Responsibilities include:

- Participating in the development of their child's IEP or §504 Plan;
- Providing timely notice of any objections to a proposed IEP or §504 Plan, to enable the district to address them; in cases involving claims for tuition reimbursement, timely notice to the district of objections to the proposed IEP and the intent to seek tuition reimbursement (at least 10 days prior to enrollment in the nonpublic school or at the last IEP meeting).

## Discriminatory Policies and Practices

- Policies that automatically disqualify SWD from participation in school-sponsored activities without an evaluation and/program review to consider whether, with accommodations, the student may participate.
- Failure to provide appropriate accommodations, services and/or supports, necessary to enable SWD participate in school-sponsored activities (e.g. school trips, extra curricular activities, school-sponsored performances and events, assemblies, graduation ceremonies) to the same extent as non-disabled peers.
- Teacher refusal to implement testing or classroom accommodations recommended on the student's IEP/\$504 Plan.
- A disciplinary change of placement without written notice to the parents to participate on the Manifestation Team and except in those cases under one of the exceptions listed on page 5, its determination that the student's behavior leading to the disciplinary removal, is not related to the student's disability.
- The failure to provide parents with genuine opportunities for involvement in decisions regarding the evaluation, identification and placement of a student suspected of having a disability or identified disabled (e.g. failure to seek and obtain written consent, where required, to conduct evaluations; failure to schedule meetings at mutually convenient times to enable parents to attend).
- Changes in a student's program or placement without parental notice to participate in a meeting prior to such changes.
- The failure to investigate and address known discrimination or harassment of a student based on a disability.

## Web Site Resources

[www.ed.gov/oseps](http://www.ed.gov/oseps)      [www.NPRinc.com](http://www.NPRinc.com)  
[www.wrightslaw.com](http://www.wrightslaw.com)      [www.nectac.org](http://www.nectac.org)  
[www.idea.ed.gov](http://www.idea.ed.gov)      [www.cast.org](http://www.cast.org)  
[www.nectac.org](http://www.nectac.org)      [www.nlchy.org](http://www.nlchy.org)  
[www.ed.gov/policy](http://www.ed.gov/policy)  
<http://education.umn.edu/nceo/>  
[www.ideapartnership.org](http://www.ideapartnership.org)  
[www.osepideasthatwork.org/toolkit](http://www.osepideasthatwork.org/toolkit)  
[www.interventioncentral.org](http://www.interventioncentral.org)

## Common Mistakes

- Over focus on "technical legal rules" while losing sight of the collaborative process.
- Over-reliance on computers to develop IEPs and §504 Accommodation Plans.
- Making changes in special education program or placement without an IEP Meeting or a legally authorized agreement with the parent to such changes without a meeting.
- Failing to provide prior written notice of proposed changes to parent before implementation.
- Failing to seek review/request re-evaluation and/or amend Plans, as appropriate, when the SWD is not progressing towards meeting IEP goals.
- Failing to request a FBA and develop a BIP when behavior continues to affect learning.
- Lack of objective data to support progress reports on annual goals.
- Over-identification of "minority students" as disabled; and over representation of minority students in separate programs.
- Disproportionate suspensions of SWD.

## Print/Media Resources

- Hehir, Thomas. 2003. *New Directions in Special Education: Eliminating Ableism in Policy and Practice*. Cambridge, MA: Harvard Education Press.
- Fisher, Roger & Wm. Ury. 1991. *Getting to Yes*. New York, NY: Penguin Group.
- Kemp, Karen & M.A. Eaton. 2007. *RTI: The Classroom Connection for Literacy*. Port Chester, NY: NPR, Inc.
- Norlander, Karen. 2007. *RTI Tackles the LD Explosion: A Good IDEA Becomes Law* (DVD). Port Chester, NY: NPR, Inc.
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