

Warren Township Youth & Family Services

March 9, 2022

**Understanding Special Education Law:
Be an active and informed partner in the IEP
process**

Neal Takiff
Whitted Takiff, LLC
1200 Shermer Road, Suite 400
Northbrook, Illinois 60062
Office: (847) 564-8662
Fax: (847) 564-8419
www.whittedtakiff.com



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HOW TO FIND US

 ntakiff@whittedtakiff.com

 www.facebook.com/whittedtakiff/

 Whitted Takiff LLC

 @whittedtakiff

You can also find us on our website at:
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Just spoke in 2018

What's new?



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OVERVIEW

- A global pandemic shut down schools, resulted in remote learning and remote learning plans, teacher shortages, related service provider shortages, transportation issues, and lack of educational placements.
- Pro-Publica/Tribune article documented hundreds of illegal restraints and time outs occurring in Illinois, which led to an overhaul of restraint and time out laws.
- Age of special education eligibility extended beyond 22nd birthday so that students can continue to finish out their school year.
- Compensatory education becomes a hot topic due to the pandemic as thousands of students failed to receive a FAPE.



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WHAT ARE THE LAWS RELATING TO PARTICULAR DISABILITIES?

1. Title II of the Americans with Disabilities Act
2. Section 504 of the Rehabilitation Act of 1973
3. Individuals with Disabilities Education Improvement Act



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THE ADA

1. To be protected, one must have a disability
2. "Disability" is defined as:
 - A. A physical or mental impairment that substantially limits one or more major life activities
 - B. A record of such impairment, or
 - C. Being regarded as having such impairment
3. Guarantees that people with disabilities have the same opportunities to participate in mainstream American life, including public education



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SECTION 504 PLANS

SECTION 504 ELIGIBILITY IS BASED ON A THREE-PRONGED EVALUATION:

1. Does the student have a mental or physical impairment?
2. Is the student substantially limited?
3. Is the student substantially limited in one or more major life activities (this includes learning)?

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SECTION 504 PLANS

GENERALLY:
Section 504 prohibits discrimination on the basis of disability from all school programs and activities in both public and private schools receiving direct or indirect federal funding

PURPOSE:
To provide equal access and fairness in general education to students with disabilities

PLANS:
Section 504 Plans are less formal than IEPs.

SERVICES:
Generally, direct services are not provided under Section 504 Plans, just modifications/accommodations (related services can be provided)

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INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT

- Identification
- Free Appropriate Public Education (FAPE)
- Least Restrictive Environment (LRE)
- Procedural Safeguards



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FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

- Provided through the Individualized Education Program (IEP) designed to provide educational benefit to the student
- Includes necessary related services
- Includes transition services for students in grade 9 and older



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FAPE

- A free and appropriate public education ("FAPE") must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school



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Public Act 102-172

An eligible student who requires continued public school educational experience to facilitate his or her successful transition and integration into adult life is eligible for such services through age 21 inclusive, which, for purposes of this Article, means the day before the student's 22nd birthday, unless his or her 22nd birthday occurs during the school year, in which case he or she is eligible for such services through the end of the school year.



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**PRACTICAL
APPLICATION
OF SPECIAL
EDUCATION LAW**



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**HOW TO OBTAIN
SPECIAL EDUCATION SERVICES**

- Child Find responsibilities – affirmative duty
- Referral for initial Case Study Evaluation (“CSE”)
 - May be made by a parent or a public agency (i.e. employee of school district, a State agency, another State agency, or a community service agency)
 - For any child suspected of having a disability
 - RTI does not delay District’s need to respond to a parent request for CSE
 - NOTE – typically, referrals are made by school district, parents, or professionals with knowledge of the child



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**HOW TO OBTAIN
SPECIAL EDUCATION SERVICES**

- District has **14 school days** to respond to parents requesting case study evaluation
- Can use screening data and conduct preliminary procedures to assist in making determination
- If decline to do a CSE – must provide notice in **writing with an explanation**



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**HOW TO OBTAIN
SPECIAL EDUCATION SERVICES**

- Parents can request a due process hearing to contest District’s refusal to conduct CSE
- If District agrees to CSE, parent must sign consent for evaluation (@ domain meeting)
- Date parents sign starts the 60 school day timeline for District to complete CSE



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IS A DENIAL OF A CSE JUSTIFIED?

- Grades
- Behavior
- Peer relationships
- Emotional well being
- Attendance
- Home Issues
- Court Involvement
- Drug and Alcohol Issues
- Hospitalizations



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EVALUATION

- Comprehensive, non-discriminatory assessment of strengths & needs in all areas of concern
- Uses a variety of testing methods
- If a child is in crisis, consider a diagnostic placement



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IF PARENTS DISAGREE WITH RESULTS

- May request an Independent Educational Evaluation (IEE)
- IEE conducted by a qualified examiner not employed by the public agency responsible for educating the child



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**HOW TO OBTAIN
SPECIAL EDUCATION SERVICES**

- Conference is then held to determine eligibility
- If eligible, an IEP is written for the child within 30 days of eligibility determination (can be immediately following)
- Initial placement decision made
- School must wait 10 days before placement and services are made (parents can waive this waiting period)



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IEP TEAM MEMBERS

- Parents
- At least one regular education teacher, if the student is or will be participating in regular education
- At least one special education teacher or provider
- An administrative representative



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IEP TEAM MEMBERS

- An individual who can interpret the evaluation
- Other individuals requested by the school district or parents who have knowledge or special expertise regarding the student
- The student (as determined by the parent)



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INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- Written plan
- Developed by the student's IEP team (you are part of that team!)
- Outlines plan of service



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IEP: INDIVIDUALIZED & PERSONALIZED

- The “I” in IEP stands for individualized. This means that the document must be individually and personally tailored to meet the identified needs of the student with a disability. In order to grasp and translate the full meaning of the term individualized into the IEP document, the document’s author(s) must have a full and complete understanding of the comprehensive case study evaluation.



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INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- PLAAFP (Present Level of Academic Achievement & Functional Performance)
- Statement of measurable annual goals including short term objectives



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OBJECTIVES



- Steps to the goal
- Measure of progress towards the goal
- Must keep and be able to show data



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SPECIAL EDUCATION SERVICES

- Designed to meet the unique needs of the student
- Must include direct services and may include indirect & related services
- Amount & type of services based on individual student's needs



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INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- Statement of any individual accommodations in the administration of state or district wide tests
- Beginning at 14 ½ years old, a statement of transition service needs



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INDIVIDUALIZED EDUCATION PROGRAM (IEP)

- Statement of how the student's progress will be measured & reported
- Statement of the need & responsibilities of a paraprofessional and related services
- Accommodations and Modifications
- Extended School Year Services (ESY)



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LEAST RESTRICTIVE ENVIRONMENT (LRE)

- Students should be educated, to the maximum extent possible, with peers without disabilities
- Districts must make available a continuum of placement options

← Least restrictive

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HOW DO YOU DEFINE PROGRESS?

- Start with the Case Study Evaluation
- Goals must be measurable
- Progress updates
- Annual reviews
- Reevaluations
- Drafts of reports/goals
- School Observation

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COMMUNICATION

- Remember you can call an IEP meeting at any time
- Keep the focus on the student
- Be careful what you say in email

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COMMUNICATION

- Take notes of conversations. Write down the date of your contact & describe the conversation
- You can be an advocate and be kind
- Call the special education director to voice your concerns



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WHEN DO I NEED TO BRING IN AN ATTORNEY?

ATTORNEY INVOLVEMENT CAN TAKE MANY DIFFERENT FORMS:

- Ensure appropriateness of services
- Dispute about placement on the LRE
- To review documents
- To work with you "behind the scenes"
- Because of a disciplinary infraction and what will happen next
- Various other reasons



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TOP 5 TIPS FOR PARENTS

- **Do Your Homework**
- **Stay Organized**
- **Stay Focused, Brief, And Realistic**
- **Use Reputable Experts**
- **Do Not Be Intimidated**
- And a bonus – document, document, document!



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Physical Restraint



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Notification

- Parents or guardians are to be notified annually or upon enrollment of school policies regarding the use of isolated time out, time out or physical restraint.
- If a student is subject to isolated time out, time out, or physical restraint, the school must make a **reasonable attempt** to notify the student's parent or guardian **on the same day** the isolated time out, time out, or physical restraint is imposed.
- Within **one business day** after any use of isolated time out, time out, or physical restraint, the school serving the student shall send the form to the student's parents or guardians.
- The State Superintendent shall be notified **no later than 2 school days** after any use of isolated time out, time out or physical restraint.

See 23 Ill. Admin. Code 1.285(f)-(h).



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Complaint Procedures

Any person or organization may file a signed, written complaint with the State Superintendent alleging a violation of this Section.

The complaint shall include:

- Facts & description of the problem
- Signature & contact information of complainant
- Names & addresses of the students and school, if known
- Description of the problem, including any facts relating to the problem
- Proposed resolution to the extent known

The State Superintendent shall only consider alleged violations occurring **not more than one year prior** to the date the complaint is received and shall issue a written decision addressing each allegation.

See 23 Ill. Admin. Code 1.285(k).



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PA 102-0339:
Review of New Meeting Requirements

PARENT REQUESTED MEETING

- Within 2 school days of an incident, schools must notify parent that he or she may request a meeting to discuss the incident.
- This meeting is separate and apart from an IEP meeting or Section 504 meeting.
- If parent requests meeting, meeting must be held within 2 school days of the request, unless parent requests an extension. Parent may request the meeting via telephone or videoconference.
- Meeting must include student, if appropriate, at least one school staff member involved in the incident, parent, at least one staff member not involved, such as a social worker, psychologist, nurse, or behavioral specialist.

105 ILCS 5/10-20.33(g).



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PA 102-0339:
Review of New Meeting Requirements

PARENT REQUESTED MEETING (continued)

- Staff, student and parent must be provided an opportunity to describe the antecedents, the incident, and what followed the event.
- All parties shall have the opportunity to discuss what school personnel could have done differently to avoid the incident and how to alternatively support the student in the future.
- Schools cannot exclude a student solely because a meeting has not occurred.
- Summary of meeting shall be documented in writing and become part of the student's school record, with a copy provided to parent.
- If parent fails to request a meeting within 10 school days after school provided documents to parent or parent fails to attend a requested meeting, that fact will be documented as part of student's school record.



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LEARN & COMPENSATORY EDUCATION DURING THE PANDEMIC

What are the legal implications of not being able to provide the student all of the services per his/her IEP during the pandemic?



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September 28, 2020 U.S. Dept. of Education
OSEP Q&A Document

As public agencies and officials grapple with challenging decisions, administrators, educators, and parents may need to consider multiple options for delivering instruction, including special education and related services to children with disabilities. Those options could include remote/distance instruction, in-person attendance, or a combination of both remote/distance instruction and in-person attendance (hybrid model). However, OSEP reminds SEAs and LEAs that **no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities.** If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA.



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FAPE in a Pandemic:
The Nature of the Service

State Complaint: *In re: Student with a Disability* (Kansas SEA, July 27, 2020)

A District's shift to remote learning does not relieve it of its obligation to provide accommodations and modifications to a student with a disability who needs to access the general education curriculum. In this case, the 7th grade student was functioning at a 6-year-old level in the areas of reading and math. The student had a remote learning plan that failed to include the accommodation in her IEP regarding her assignments be modified to her academic levels. The failure to modify her assignments was determined to be a violation of FAPE. Further to the extent that the remote learning plan was to act as the student's IEP, the Kansas State investigator indicated that Prior Written Notice ("PWN") was required before removing a service.



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FAPE in a Pandemic:
Impact on the Student

State Complaint:
Brookings School District (S. Dakota Educ. Agency, Aug. 7, 2020)

Minor discrepancies between services provided and those called for by an IEP don't give rise to a denial of FAPE. Moreover, a **district can establish substantial compliance by showing the student made progress toward his goals, improved his grades, and passed state assessments.**

The state investigator pointed out that the high schooler's service logs and progress reports indicated he generally received speech services twice-weekly as required by his IEP. While the minutes provided were less than those required by the IEP, providers' logs indicated that the district implemented teletherapy and that the student performed well and made progress toward his IEP goals.



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Due Process Hearing: CPS School District #299
(September 29, 2020)

- Absent an agreement between the parent and the district, there is no flexibility on timelines due to COVID-19. ISBE SPED-FAQ dated 04-20-20; ISBE Frequently asked Questions for Special Education on the Transition to In Person Instruction, Last Updated June 30, 2020.
- "Districts must adhere to timelines for annual IEP meetings and required evaluations. Illinois State Board of Education, "Starting the 2020-21 School Year, June 23, 2020, Part 3 Transition Joint Guidance. (Parents Exhibit 87, p. 1113.)
- "The failure to complete all necessary evaluations results in a substantive denial of FAPE which results in harm to the disabled child." *Long v. District of Columbia*, 780 F. Supp. 2d 49 (D.D.C. 2011).
- There is no dispute in this case that the COVID-19 pandemic has impacted the educational process. The District repeatedly argued that it was unable to complete Student's evaluations due to the pandemic. While the Hearing Officer is sympathetic to the District's argument. Sympathy, does not change the law.



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Due Process Hearing: CPS School District #299
(September 29, 2020)

- The Parents provided consent for Student's re-evaluation on February 6, 2020. Even providing the District maximum consideration, including Gubernatorial "Act of God" dates, and the District's reopening date of April 13, 2020, Student's re-evaluation would be due on June 8, 2020. Other than the Social Work evaluation, which was completed timely but never considered at an IEP meeting, the District has offered no evidence, that it attempted to complete Student's re-evaluation.
- "School authorities cannot properly address problems which they do not understand." *Bd. of Educ. of Pak Park and River Forest High School Distr. No 200 v. Illinois State Board of Educ.*, 21 F. Supp. 2 862, 870 (N.D. Ill. 1998). Evidence demonstrates that Student's April 2020 IEP is based entirely on Winter 2017 evaluations. Therefore, in light of Student's established pattern of regression, Student's educational IEP programming, without updated evaluations, could not be calculated to provide any educational benefit to Student.
- This IHO finds that Parents have met their burden on this issue.



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QUESTIONS?

Thank you!



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