FREQUENTLY ASKED LEGAL QUESTIONS ON SERVING PRESCHOOLERS WITH DISABILITIES

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Preschool Matters

“Let’s do this!”
General Considerations

“Consider this!”
General Considerations

1. Parents want to trust school staff.

2. Parents may not know how to ask for what they really want.

3. Parents often feel overwhelmed at IEP meetings.

4. Making the parent happy does not necessarily equate with legal compliance. Parents are happy … until they aren’t.
General Considerations

5. Remember that issues involving a child’s education are private matters; maintain confidentiality.

6. Remember that you are the professionals – act like it.

7. Documentation is important, but be careful of emails.

8. The special education coordinator is a great resource for guidance and training on special education matters, including preschool services.
Principal Concepts & Definitions

“Let’s take a closer look...”
Principal Concepts & Definitions

A. **Child with a Disability**

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

- Must need special education and related services
Principal Concepts & Definitions

B. **Child Find Obligation**
   - School districts must identify, locate and evaluate children with disabilities within the jurisdiction of the school district.

C. **Evaluations**
   - Determine whether a child has disability and nature and extent of special education and related services
   - Initial evaluation - when there is reason to suspect a disability and need for special education
   - Reevaluation - at least once every 3 years, or more often if conditions warrant
Principal Concepts & Definitions

D. Free Appropriate Public Education

Special education and related services that:

• Are provided at public expense, under public supervision and direction and without charge to the parents

• Meet State standards

• Include an appropriate preschool, elementary school, or secondary school education in the State

• Are provided in conformity with the student’s IEP
E. *Individualized Education Plan*

Key components:

- Present levels of academic achievement and functional performance
- Measurable goals
- Special education, related services and supplementary aids and services
- Participation in general education and activities
F. **Least Restrictive Environment**

- To the maximum extent appropriate, children with disabilities must be educated with children who are nondisabled.

- Removal *only* if:
  - Nature or severity of disability is such that regular education setting with use of supplementary aids and services cannot be achieved satisfactorily.
Principal Concepts & Definitions

G. **Procedural Safeguards**

- Opportunity for parents to examine records and participate in meetings

- Procedures when parents are not known or cannot be located or when child is ward of the State, including for assignment of surrogate

- Prior written notice for proposals and refusals

- Procedures to provide special education documents in parents’ native language, unless clearly not feasible

- Procedures for dispute resolution, including mediation and due process
Principal Concepts & Definitions

H. Related Services

• Required to assist child with disability to benefit from special education

  • Transportation
  • Speech language services
  • Psychological services and counseling
  • Physical therapy
  • Occupational therapy
  • Orientation and mobility services

  • Medical services for diagnostic and evaluation purposes only
  • School health services and school nurse services
  • Social work services in schools
  • Parent counseling and training
  • Not surgically implanted medical device
Principal Concepts & Definitions

I. Special Education

• “Specially designed instruction”

• At no cost to parents

• To meet child’s unique needs

• Includes instruction in classroom, home, hospitals and institutions, and in other settings, as well as instruction in physical education
Principal Concepts & Definitions

J. *Specially Designed Instruction*

- Adapting content, methodology, or delivery of instruction in order to:
  - Address child’s unique needs that result from the disability
  - Ensure access to general curriculum in order to meet educational standards that apply to all children
Frequently Asked Questions

“How can I help you?”
1. When does FAPE begin? What if the child turns 3 during the summer? And what about transition planning?

- No later than 3rd birthday.
  - If child turns 3 during summer, IEP Team determines date when services begin.
  - BUT do not interrupt flow of services from EI. Provide ESY if needed for FAPE.

- Smooth and effective transition requirement:
  - Participate in transition meeting arranged by EI agency at least 90 days before 3rd birthday.
  - If child turns 3 during summer and personnel are not available to evaluate, determine eligibility and hold IEP meetings, do it before end of school year.
The Takeaway…

“Don’t let that 3rd birthday sneak up on you!”
2. Does the district need RTI data before evaluating for preschool services?

• No. Same rules as child find generally.

• Cannot delay or deny evaluation because child has not participated in or completed PST/RTI process.

• Cannot require private school to implement RTI before making referral for initial evaluation if duty to evaluate is triggered.

• Cannot require outside agency like Head Start to implement RTI before making referral for initial evaluation if duty to evaluate is triggered.
3. Are FAPE considerations different for preschoolers?

- NO! FAPE is FAPE once child turns 3.

- FAPE requirements are same for children ages 3-5 as for children in k-12, notwithstanding different funding methods and amounts.

- Dear Colleague Letter: Preschool Least Restrictive Environments, 69 IDELR 106 (OSEP 2017). IDEA-eligible preschool child and parents are entitled to all rights and protections of Part B.
4. So can we talk about the Endrew F. decision?

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

- **Endrew F.** – Clarification
  - Must offer an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances
5. Are required IEP Team members different for preschoolers? Who is the “regular education teacher”?

- Same IEP Team member requirements, **PLUS 1:**
  - For child transitioning from EI, **invite** EI service coordinator to **initial IEP meeting** at parent’s request.

- If no preschool for nondisabled children, “could designate an individual who, under State standards, is qualified to serve nondisabled children of the same age.”

- Consider using excusal procedures (but be aware of LRE requirement).
The Takeaway…

“Include all required IEP Team members!”
6. Are IEP content requirements different for preschoolers?

- No. Same content requirements apply.

- When appropriate, PLOPs for preschooler should include statement of how disability affects participation in appropriate activities.

  - “Age-relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved.”

- Academic goals written to Developmental Standards for preschoolers.
7. What if a district does not have needed services? What about lack of personnel? What about cost?

- IEP recommendations/decisions must be based upon the *individual needs and circumstances of the child* and nothing else.

- CANNOT make service recommendations based on:
  - availability of programs or services
  - lack of personnel or resources
  - cost
8. Does FAPE for preschoolers mean a full school day?

- Amount of time for preschool services is IEP Team decision based on unique needs of child.

- No “minimum” amount of time of preschool services required for FAPE.

- Programs and services must be individually tailored for child’s unique needs, not disability.

- AAC: Sped programs must be in operation for at least length of regular school term and school day, unless IEP specifies differently based on child’s needs.
The Takeaway…

“Let’s assume I’m here all day…”
9. Does LRE apply to preschoolers?

- YES, even if district does not operate program for nondisabled preschoolers.

- Must consider child’s needs for inclusion with and exposure to nondisabled peers, regardless of preschool setting for child.

- For full-time preschool programs for nondisabled children, presume that preschoolers with disabilities can participate full time, unless unique needs require less.

- No specific ratio or number of nondisabled students required.
10. Can parents pick and choose services? Should a district provide only the services that the parents want to supplement a child’s private preschool program?

- If parents disagree with proposed service, Team decides whether child would receive FAPE without it.
  - If Team agrees, it can be removed from IEP.
  - If Team decides necessary for FAPE, parents may file due process. Otherwise, IEP can be implemented.

- District “may not use a parent’s refusal to consent to one service or activity … to deny the parent or child any other service, benefit, or activity….” 34 C.F.R. § 300.300(d)(3).

- If Team decides to provide only services parents want, be cautious! Document full proposal of FAPE and send NOPR.
11. Does a school district have to provide transportation to preschoolers?

- If transportation is not provided to preschoolers generally, it is not required for preschoolers with disabilities unless it is related service.

- IEP Team determines if it is required to benefit from special education and related services, and how transportation services should be implemented.

  Case-by-case basis.

- If IEP Team determines that transportation is not required as result of disability, district is only required to provide in same manner as for children without disabilities.
The Takeaway…

“Transportation might be required if it’s a related service!”

“But I’ll just drive myself.”
12. Do Section 504 protections apply to preschool children?

- “Qualified handicapped person”:
  - of an age when nondisabled persons are provided services;
  - of any age when it is mandatory under state law to provide services to persons with handicaps; or
  - entitled to FAPE under IDEA.

- At least beginning at age 3, Section 504 applies to preschoolers with disabilities. (FAPE needs likely to be met with IEP).
Thank You!

“Thanks y'all! That was fun!”
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