

# THE BASICS OF SPECIAL EDUCATION LAW\*

## Introduction

Special needs services, including evaluations, are provided to school-age children in Virginia by local school divisions. Local school divisions are responsible for the special education needs of a child from age 2 through 21, or until the student receives a standard or advanced studies diploma. This fact sheet focuses on special education rights under the Individuals with Disabilities Education Improvement Act of 2004, as that law is implemented in Virginia (IDEA).

## Disabilities that Qualify a Child for Special Education

IDEA requires school divisions to have procedures in place to identify children who are eligible for special education and related services. Generally, eligibility is based on the presence of one or more disabilities that adversely affect a child's educational performance. Eligibility may be found even if the child has not failed a course and has been advancing from grade to grade. The disabilities covered by IDEA are:

- Autism

This is a developmental disability significantly affecting verbal and nonverbal communication and social interaction that is generally evident before age 3.

- Developmental delay (ages 2-8)

The child experiences delays in physical development, cognitive development, social or emotional development, or adaptive development.

- Deaf/blindness

Hearing and visual impairments which create needs that cannot be met by programs solely for children with deafness or children with blindness.

- Deafness

Hearing impairment so severe that child is impaired processing linguistic information through hearing, with or without amplification.

- Emotional disturbance

Exhibiting one or more of the following characteristics over a long period of

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\* Prepared by The Law Center for Children, a program of Legal Services of Northern Virginia. This fact sheet is not intended as a substitute for legal advice. Please consult with an attorney for advice regarding your particular case.

time and to a marked degree that adversely affects a child's educational performance:

- (1) inability to learn not explained by intellectual, sensory or health factors;
- (2) inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (3) inappropriate types of behaviors or feelings under normal circumstances;
- (4) general pervasive mood of unhappiness or depression;
- (5) tendency to develop physical symptoms or fears associated with personal or school problems.

□ Hearing impairment

Permanent or fluctuating hearing that is not included in deafness.

□ Mental retardation

Significantly sub-average general intelligence along with deficits in adaptive behavior.

□ Multiple disabilities

Having multiple impairments that combined have severe educational needs that cannot be accommodated in programs designed for just one of the impairments.

□ Orthopedic impairment

Severe orthopedic impairment.

□ Other health impairments

Limited strength, vitality or alertness due to chronic or acute health problems such as asthma, ADHD, diabetes, epilepsy, Tourette's Syndrome.

□ Specific learning disability

- (1) Not achieving commensurate with child's age and ability levels in one or more areas if provided with learning experiences appropriate for child's age and ability levels.
- (2) Severe discrepancy between achievement and intellectual ability in any of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculations, or mathematical reasoning.
- (3) the severe discrepancy is not primarily the result of a visual, hearing or

motor impairment, mental retardation, emotional disturbance, or environmental, cultural or economic disadvantage.

- ❑ Speech or language impairment

Communication disorder.

- ❑ Traumatic brain injury

Acquired injury, not congenital or degenerative or induced by birth trauma.

- ❑ Visual impairment.

Impairment in vision, even with correction, includes both partial sight and blindness.

### **FAPE and LRE**

If a school division determines that a child has a disability, and needs special education and related services to benefit from his or her education, then the child is entitled to a Free Appropriate Public Education (FAPE).

“Special education” is defined as “specially designed instruction to meet the unique needs of the child.” The term includes instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.

“Related services” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes many types of services, among them are: speech services, physical therapy, recreation, counseling.

FAPE is defined as special education and related services that are provided at public expense, under public supervision and direction, without charge and are provided under the terms of the child’s *Individualized Education Program* (IEP). These services must be sufficient to allow the child to receive a meaningful educational benefit.

FAPE must be provided in the least restrictive environment (LRE). This means that as much as possible, given the educational needs of the child, each child will attend classes and participate in other activities with children without disabilities.

### **Services Available for Special Education Students**

- (1) Specialized instruction, including remediation.
- (2) Related Services, including evaluations.

- (3) Supplementary aids and services.
- (4) Extended school year services.
- (5) Assistive technology.
- (6) Accommodations in the classroom and for testing.
- (7) Transition services.

## **Evaluations and Eligibility**

### Referral for Evaluation

*By the Parent.* If a parent believes his/her child has one of these disabilities and needs special education services, he/she should write a letter to the director of special education for the school division requesting an evaluation of the child in all areas of suspected disability. If the child is attending a public school in the school division at the time of the request, a copy of the written request should be also be sent to the principal of the school. The request should briefly describe why the parent thinks the child may have a disability.

*By Others:* Teachers, other school staff members, child study committee may refer the child for an evaluation.

### Decision to Evaluate/Parental Consent

When a student is referred for a child study evaluation, the decision to evaluate or not evaluate is usually made by the school's child study committee (CSC), after meeting with the parent. The school administrator may request a review by the CSC within 5 days of receipt of the referral, and the CSC must make a decision within 10 days of that request. If the committee decides not to evaluate, they must give the parent *prior written notice* within 10 school days of the decision.

The CSC includes the person who referred the child for the evaluation (unless this would violate the privacy rights of the student), the school principal or designee, at least one teacher and at least one specialist.

If a teacher refers a child for an evaluation, he/she must describe efforts that have been made to address the concerns. The CSC may want to try additional interventions in the classroom. These interventions cannot delay the evaluation.

If the CSC decides to conduct the evaluation, it must obtain the written consent of the parent. If the parent refuses to consent, the school division take the case to due process or mediation.

## **Evaluation**

If the school division decides to evaluate and the parent consents, the school division has 65 business days to complete the evaluation. However, if the student is subject to disciplinary removal from school, such as long-term suspension or expulsion, the evaluation must be conducted on a *expedited* basis.

The evaluation must include a review of existing data, including evaluations and information from parents, observation of the child in his/her class, and teacher reports, and the identification of any additional data that is needed to determine whether the child has a particular disability or disabilities, to find out how the child is performing in school, to understand the educational needs of the child, and to see if the child needs special education and any related services.

If additional data is needed, the school division administers tests needed to produce the data.

Evaluations obtained by parents must be considered by the IEP team in any decision regarding FAPE and can be used as evidence in a due process hearing.

Evaluation reports must be made available to parents two business days before the eligibility meeting.

*Independent Educational Evaluations.* If the parent disagrees with the school's evaluation, he/she has the right to an independent educational evaluation (IEE) at the school division's expense. If the school division disagrees with the request, it may initiate a due process hearing to defend its evaluation.

*Reevaluations.* Reevaluations are required at least every 3 years, but may consist of a review of existing data. Reevaluations may occur more frequently at the request of a parent or teacher, but not more than once per year.

## **Eligibility**

Eligibility for special education and related services is determined by a group consisting of school personnel representing the disciplines providing the assessments, at least one who has observed or assessed the child, the special education administrator and the parent or parents. If the child is suspected of having a specific learning disability, the group must include the child's regular education teacher and at least one person qualified to teach a child of that age and at least one person qualified to conduct diagnostic evaluations (school psychologist, speech-language pathologist, teacher of specific learning disabilities, teacher of remedial reading).

*Note: Before attending an eligibility meeting, the parent should obtain the evaluation reports and copies of the eligibility criteria worksheets the school division uses to determine eligibility.*

## **IEPs: Individualized Education Programs and Placement Decisions**

*Who Develops the IEP?* The IEP team including the parent, at least one regular education teacher (if the child is or may be participating in the regular education environment), at least one special education teacher of the child, a representative of the school division, an individual who can interpret the instructional implications of evaluation results, other individuals who have knowledge or special expertise regarding the child (invited by parent/school division or IEP team), if appropriate, the child, and the child's caseworker if the child is in the custody of a social services agency.

*What Needs to Be Considered When Developing the IEP?*

- strengths and weaknesses of the child
- parent's concerns
- evaluation results
- whether child needs additional assessments or evaluations
- child's performance on statewide and division-wide assessments
- strategies, interventions, supports to address behavior that impedes a child's learning or that of others
- language and communication needs of child
- whether the child needs assistive technology devices and services
- child's need for related services, including therapy, transportation, etc.
- child's interest in extracurricular activities and athletics
- FAPE
- LRE

*What are the major components of the IEP?*

- a. Statement of the present level of the child's educational performance
- b. How the disability affects the child's involvement and progress in the general curriculum
- c. Measurable annual goals, including benchmarks or short-term objectives if applicable.
- d. Statement of special education and *related services* and supplementary aids and services and program modifications or supports to enable the child to advance appropriately toward annual goals, be involved and progress in the general curriculum and in extracurricular and other nonacademic activities
- e. Statement of accommodations or modifications to be used in state and division-wide assessments. If child is not going to participate in the assessment, how the child will be assessed and how this will affect promotion, graduation, or other matters

- f. Dates for the beginning of services, modifications, anticipated frequency, location and duration of services
- g. Statement of how progress will be measured, how parents will be informed of progress, and the extent to which that progress is sufficient to enable the child to achieve goals by the end of the year
- h. Transition goals and services if appropriate
- i. One year before the student reaches majority, a statement that he/she has been informed of transfer of rights.
- j. If student will be removed from a regular class, a statement of the justification for such removal
- k. Statement of assistive technology devices and/or services
- l. Whether the child will receive extended school year services

*Related services* may include speech-language and audiology services, interpreting, counseling, physical therapy, occupational therapy, recreation, therapeutic recreation, early identification and assessment of learning needs, orientation and mobility therapy, medical services for diagnostic purposes, school health services, social work services, parent counseling and training, transportation.

*Placement.* A continuum of placements must be available for the IEP team to consider:

- regular classes
- special classes
- special schools
- home-based instruction
- instruction in hospitals and residential schools

Note: No single model of delivery of services based on the category of disability is acceptable. All placement decisions must be based on the individual needs of the child.

### **Implementing the IEP**

All teachers and others providing services to the child should read the IEP and implement it as written. If the IEP is not being implemented, there are several choices to attempt and resolve the issues:

- informal procedures, including a review by central office staff
- mediation
- filing complaint with the Virginia Department of Education
- filing a due process hearing request

### **Procedural Rights and the Resolution of Disagreements**

IDEA requires that school divisions inform families their special education rights, including procedural rights and ways that families and school may resolve disputes. These rights and dispute-resolution processes include:

- prior written notice
- native language
- the requirement for written parental consent
- confidentiality of school records
- access to school records
- mediation
- state complaint process
- due process
- procedures when schools discipline children with disabilities
- independent educational evaluations
- requirements for unilateral placement by parents of children in private schools at public expense

These rights are described in the updated version of the Virginia Procedural Safeguards Notice, which was revised in October, 2006.

**Additional Parental Rights under Virginia Regulations (not required by IDEA):**

- Evaluations are available to parents 2 business days before eligibility meeting.
- Parental consent is required before special education services can be terminated.
- Parents may audio tape or record IEP meetings as long as they give advance written notice.
- Eligibility and IEP teams work toward a consensus, not a majority vote.

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