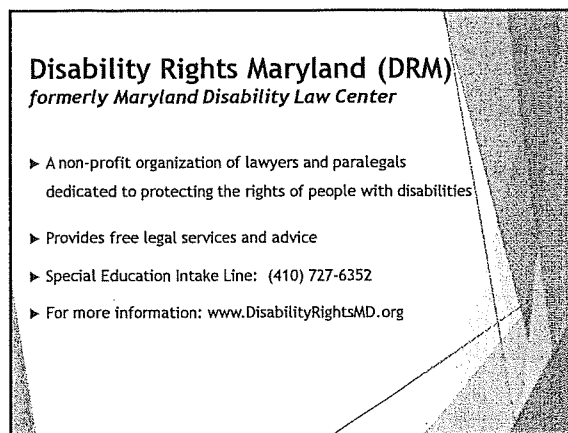
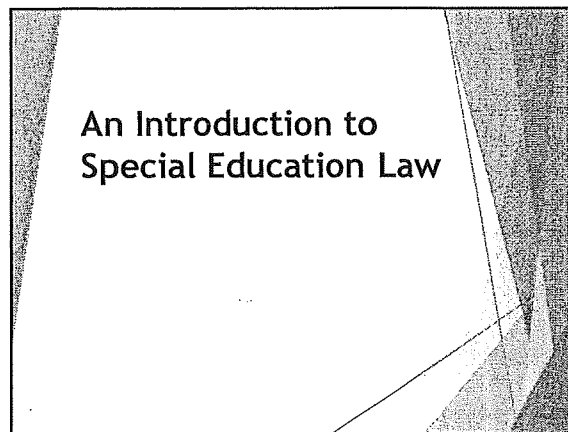


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2



3

The Relevant Laws

- ▶ Individuals with Disabilities Education Act,
20 U.S.C. Sec. 1400 et seq.
- ▶ Section 504 of the Rehabilitation Act,
34 C.F.R. Part 104
- ▶ Code of Maryland Regulations,
COMAR 13A.05.01

4

What Does the Law Require?

- ▶ FAPE
 - ▶ All children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to *meet their unique needs and prepare them for further education, employment, and independent living...*
20 U.S.C. 1400(d)
- ▶ LRE
 - ▶ To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled in the least restrictive environment.
20 U.S.C. §1412(5)(B); CFR §§300.550-300.556

5

What is FAPE?

Federal and state law guarantees a "free and appropriate public education" to all eligible children with disabilities.

6

FREE

- ▶ At no cost to the parent.
- ▶ Schools may bill Medical Assistance for services such as counseling or physical therapy if:
 - ▶ parent consents;
 - ▶ it is at no cost to the parent;
 - ▶ it does not result in a decrease in lifetime coverage.

7

APPROPRIATE

- ▶ Educational services must be designed to meet the individual needs of the child.
- ▶ The IEP sets forth what services the child will receive in order to benefit from his/her education.

Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982); Hall v. Vance County Board of Education, 774 F.2d 629 (4th Cir. 1985); M.C. ex rel. J.C. v. Central Regional Sch. Dist., 81 F.3d 389 (3d Cir. 1996).

8

PUBLIC

- ▶ The public school system must:
 - ▶ provide an appropriate education at a public school, or
 - ▶ arrange for it to be provided through a non-public school.

9

EDUCATION

- ▶ Special education means specially designed instruction:
 - ▶ The content, methodology, or delivery of instruction has been adapted to meet the unique needs of the student.
 - ▶ Allows the student to have access to the general curriculum.
- ▶ Includes Related Services

10

Who Is Eligible Under the IDEA for Special Education Services?

- ▶ Who is Eligible for Special Education Services?
 - ▶ Children with disabilities from birth to 21.
 - ▶ Because of their disability, they need special education and related services to access the general education curriculum.
- ▶ Who Decides?
 - ▶ The IEP team determines eligibility.
 - ▶ (IEP means *Individualized Education Program*.)

11

IEP DISABILITY CODES

- ▶ Intellectual disability
- ▶ Emotional disability
- ▶ Learning disabilities
- ▶ Autism
- ▶ Hearing impairment
- ▶ Visual impairment
- ▶ Other health impaired (*including ADHD*)
- ▶ Physical disabilities
- ▶ Traumatic brain injury
- ▶ Speech or language impairment
- ▶ Multiple disabilities
- ▶ Deaf-blindness

12

Who Makes Up the IEP Team?

- ▶ Parent(s)
- ▶ A general education teacher
- ▶ A special education teacher
- ▶ A representative of the school system who knows about special education, the general curriculum, and the availability of resources

13

IEP Team (cont.)

- ▶ A person who can interpret the assessment results
- ▶ Other individuals at the discretion of the family and the school who have knowledge about the child (i.e: other teachers)
- ▶ The student, if appropriate

14

Referral to the IEP Team

- ▶ Children are usually first referred to an IEP team by parents, teachers, doctors, or other professionals.
- ▶ The purpose of the referral is to determine whether the student needs additional assessments.

15

When a Parent Requests an Evaluation

- ▶ Requests for a special education evaluation should be made in writing.
- ▶ Parents can send a request for an evaluation to the principal of their child's school.
- ▶ Parents should consider sharing with the school any outside evaluations that they may have that would support the need for special education services.

16

The Evaluation Process

- ▶ The initial evaluation must be completed within 60 calendar days from parental consent and within 90 calendar days from the date of the written referral and includes:
 - ▶ An initial meeting with the IEP team to review existing information on the child and determine if assessments are necessary
 - ▶ Completion of assessments within 60 calendar days
 - ▶ A follow-up IEP meeting to review assessment results

17

Assessments

- ▶ Must:
 - ▶ be in the area of the suspected disability.
 - ▶ be consented to by the parents.
 - ▶ use a variety of tests and procedures.
 - ▶ be performed and interpreted by professionals.
 - ▶ be done in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally.

18

Special Rule for Learning Disabilities 20 U.S.C. §1414(a)(b)(6)

- ▶ When determining whether a child has a specific learning disability, the school system is not required to consider whether the child has a severe discrepancy between achievement and ability in oral and/or written expression, listening and/or reading comprehension, and mathematical calculation and/or reasoning.
- ▶ The school system may use a process that determines if the child responds to scientific, research-based intervention- also referred to as *Response to Intervention* (RTI).

19

Assessment Review

- ▶ The IEP team meets to review the assessment results and to consider the results of evaluations by outside agencies.
- ▶ Parents are entitled to copies of the assessments and should request copies prior to the IEP meeting.

20

Assessment Review (cont'd)

IEP Team Determines:

- ▶ Whether the child has or continues to have a disability and needs special education and related services
- ▶ The present levels of performance and educational needs
- ▶ Modifications needed to enable the child to meet annual measurable goals and to participate, as appropriate in the general curriculum.

21

Re-Evaluations

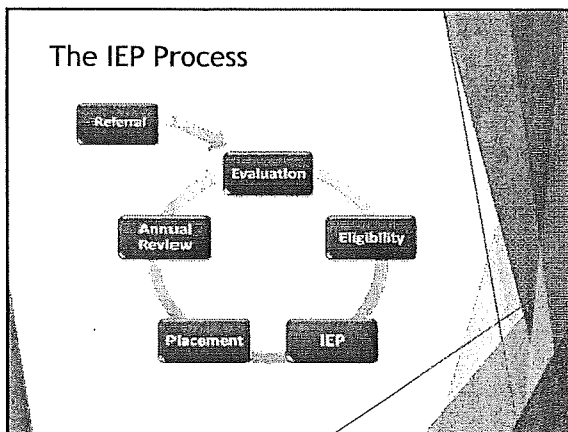
- ▶ Should occur at least every three years.
- ▶ IEP team reviews the IEP and determines the need for new assessments.
- ▶ If the team determines that no new assessments are needed, it must notify the parents.
- ▶ The parents can request new assessments.

22

Independent Evaluations

- ▶ Parents may disagree with the assessment results and/or the decision of the IEP team regarding eligibility.
- ▶ If parents disagree, they can request that the school system pay for an independent evaluation.
- ▶ If the school system refuses, it must put its reason in writing and is required to file for a due process hearing.

23



24

Individualized Education Program (IEP)

- ▶ The IEP is a written statement of the educational program designed to meet a child's individual needs.
- ▶ Two general purposes:
 - ▶ to set reasonable learning goals for a child, and
 - ▶ to state the services that the school district will provide for the child.
- ▶ Within 30 days from the evaluation meeting, the IEP team must meet to develop the IEP.
- ▶ The school system must implement the IEP as soon as possible after the meeting.
- ▶ An IEP meeting must be held at least once a year to review the child's progress and the IEP.

25

Parts of the IEP

- ▶ General Information
- ▶ Eligibility
- ▶ Graduation and Assessment Information
- ▶ Present Levels of Academic/Functional Performance
- ▶ Parental Input
- ▶ Communication/Assistive Technology Needs
- ▶ Accommodations
- ▶ Supplementary Aids and Services and programmatic modifications and supports
- ▶ Related Services
- ▶ Extended School Year
- ▶ Transition
- ▶ Goals and Objectives
- ▶ Placement/LRE

26

INDIVIDUALIZED EDUCATION PROGRAM (IEP)		STUDENT INFORMATION	
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Date of Birth: _____ Sex: _____ Ethnicity: _____ Current School: _____ Current Grade: _____ IEP Meeting Date: _____			
GENERAL INFORMATION IEP Team Members: _____ IEP Team Chair: _____ IEP Team Secretary: _____ IEP Team Members (Other): _____		PARENTS/GUARDIAN Parent/Guardian Name: _____ Parent/Guardian Address: _____ Parent/Guardian City: _____ Parent/Guardian State: _____ Parent/Guardian Zip: _____ Parent/Guardian Phone: _____	
ELIGIBILITY Is the child eligible for special education services? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, what is the child's disability? _____ How was the child identified? _____ Date of identification: _____		PRESENT LEVELS OF ACADEMIC/FUNCTIONAL PERFORMANCE Describe the child's present levels of academic and functional performance, including how the child's performance compares to that of children of the same chronological age and to the child's previous performance. _____ Describe the child's present levels of communication and functional performance. _____	
GOALS AND OBJECTIVES Describe the child's annual goals and objectives, including short-term objectives and benchmarks, that are measurable, meaningful, and meaningful. _____ Describe the child's communication goals and objectives, including short-term objectives and benchmarks, that are measurable, meaningful, and meaningful. _____		ACCOMMODATIONS AND SERVICES Describe the accommodations, services, and programmatic modifications and supports that will be provided to the child to ensure access to the general education curriculum. _____ Describe the related services and supports that will be provided to the child. _____	
PLACEMENT Describe the child's placement and the extent to which the child will be educated with children who are not children with disabilities. _____ Describe the child's placement and the extent to which the child will be educated with children who are not children with disabilities. _____			

27

IEP Checklist

- ▶ Present levels of academic and functional performance
- ▶ Academic and functional annual goals and short-term objectives
- ▶ Related services
- ▶ Supplemental aids, services, modifications
 - ▶ Includes program modifications and staff supports that are provided in education-related settings and extracurricular and non-academic settings to allow the student to be educated with non-disabled peers to the maximum extent appropriate. This underutilized provision helps to individualize the IEP and gives teachers/providers assistance in meeting the needs of the student.

[20 U.S.C. §1414(d)(1)(A)(i)(IV)]

- ▶ Measuring Progress
- ▶ Programs/activities with regular education students

28

IEP Checklist (cont.)

- ▶ Amount of special education
- ▶ Behavior programs
- ▶ Assistive technology
- ▶ Transition services
 - ✦ *Under MD law, transition planning begins at 14.*
- ▶ Extended school year services (ESY)
- ▶ Adapted physical education
- ▶ Health concerns

29

Assistive Technology (AT)

- ▶ **AT Device:** Any item, piece of equipment or product system that is used to increase, maintain, or improve the functional capabilities of children with disabilities.
- ▶ **AT Service:** Any service that directly assists a child with a disability in the selection, acquisition, or use of AT device.
 - ▶ Evaluation, providing devices, selecting/repairing, coordinating, and training and technical assistance for child, child's family, and professionals.
- ▶ AT devices and services, if appropriate, can be available to the child as part of his or her special education, related services, or supplementary aids and services.

30

Developing a Behavior Intervention Plan (BIP)

- ▶ A Functional Behavior Assessment (FBA) is an integral part of developing an effective behavior intervention plan.
- ▶ The FBA is a systematic process for identifying and describing challenging behavior exhibited by a student, determining the functions of the behavior, and identifying the environmental and other settings that contribute to or predict the occurrence, non-occurrence, and maintenance of the behavior over time.
 - ▶ The FBA requires the collection of hard data.
- ▶ The BIP describes the actions adults will take to respond to the behavior, the replacement behavior that will be taught, and how data will be collected.

34

Functional Behavioral Assessment: Part 1 (Description)		Date: 2/15/19
Student Name:	Casey J. Lee	DOB: 10/21/03
Case Manager:	Mr. Escobar	
Data Sources: <input type="checkbox"/> Observation <input type="checkbox"/> Student Interview <input type="checkbox"/> Teacher Interview <input type="checkbox"/> Parent Interview <input type="checkbox"/> Rating Scales <input type="checkbox"/> Normative Testing		
Description of Behavior (No. 1):		
Student solitary himself from others during class, refuses to go to lunch in the cafeteria, and prefers to stay in class during scheduled breaks. Student's academic achievement is below.		
Settings in which behavior occurs:		
In Classroom		
Frequency:		
3-4 days a week, 2-3 times a week.		
Antecedents/Consequences of problem behavior in student, person, professional environment, situation, features of task/setting and situation/role/objects:		
No significant features of task/setting and situation/role/objects.		
Duration:		
3-4 days a week		
Interventions/Prevention interventions:		
Counseling, verbal instruction as appropriate, social skills, parent involvement, student conferences, classroom behavior management programs.		
Educational needs:		
Several academic deficits, completion of class projects and activities, lack of appropriate socialization and development of peer relations.		

35

Functional Behavioral Assessment: Part 2 (Function)		Date: 2/15/19
Name: Casey J. Lee		
Function of Behavior (No. 1): Self-isolation during class		
1) Attention: The student seeks attention from the teacher and other students during class by being disruptive and making noise.		
2) Escape: The student seeks to avoid the classroom by being disruptive and making noise.		
3) Tangible: The student seeks to obtain a tangible item or activity by being disruptive and making noise.		
4) Sensory: The student seeks to obtain a sensory experience by being disruptive and making noise.		
5) Affiliation: The student seeks to establish or maintain a relationship with others by being disruptive and making noise.		
6) Power: The student seeks to exert control over others by being disruptive and making noise.		
7) Self-stimulation: The student seeks to obtain a sensory experience by being disruptive and making noise.		
8) Avoidance: The student seeks to avoid a task or situation by being disruptive and making noise.		
9) Communication: The student seeks to communicate with others by being disruptive and making noise.		
10) Power: The student seeks to exert control over others by being disruptive and making noise.		
11) Self-stimulation: The student seeks to obtain a sensory experience by being disruptive and making noise.		
12) Avoidance: The student seeks to avoid a task or situation by being disruptive and making noise.		
13) Communication: The student seeks to communicate with others by being disruptive and making noise.		
14) Power: The student seeks to exert control over others by being disruptive and making noise.		
15) Self-stimulation: The student seeks to obtain a sensory experience by being disruptive and making noise.		
16) Avoidance: The student seeks to avoid a task or situation by being disruptive and making noise.		
17) Communication: The student seeks to communicate with others by being disruptive and making noise.		

36

AT (cont.)

- ▶ AT needs must be considered for every student.
- ▶ The IEP team must determine if AT evaluation is necessary.
- ▶ If the AT evaluation is necessary, it must be completed.
- ▶ If the AT evaluation determines that the student needs AT devices and/or services to receive FAPE, AT must be written as component of the IEP.
- ▶ The school system must implement the AT provision of the IEP.

31

INSTRUCTIONAL AND TESTING ACCOMMODATIONS

Accommodations

PRESENTATION ACCOMMODATIONS

Visual Presentation Accommodations

- J-1: Large Print
- J-11: Magnification Device
- J-12: Screen Enlarger

Touch Presentation Accommodations

- J-12: Braille
- J-12: Tactile Feedback

Auditory Presentation Accommodations

- J-1: Human Reader, Audio Tape, or Computer Data Response for Verbatim Reading of Entire Test
- J-1: Human Reader, Audio Tape, or Computer Data Response for Verbatim Reading of Selected Sections of Test
- J-1: Audio Amplification Device
- J-1: Speech on Tape
- J-1: Recorded Reader

Multi-Sensory Presentation Accommodations

- J-1: Visual Line and Directional Aids
- J-1: Screen Reader for Verbatim Reading of Entire Test
- J-1: Screen Reader for Verbatim Reading of Selected Sections of Test
- J-1: Visual Aids
- J-1: Non-Verbal Responses
- J-1: Tactile Materials

Other Presentation Accommodations

- J-1: Other

* Use of the selection tool by users does not constitute an agreement to accept all accommodations.

Adjustments in this tool are subject to the user's discretion.

32

Supplemental Aids and Program Modifications

Each supplementary aid, service and support should be described in the IEP, including location and manner of implementation.

- ▶ Providing alternative assignments
- ▶ Modifying workload or length of assignments/tests
- ▶ Allowing use of manipulatives
- ▶ Providing immediate feedback
- ▶ Home-School Communication
- ▶ Providing visual daily schedule
- ▶ Allowing daily check-in with case manager or special education teacher
- ▶ Providing one-on-one aide
- ▶ Allowing rest breaks
- ▶ Provide peer buddies
- ▶ Preferential seating

33

Documentation of Restraint and Seclusion

- ▶ Each incident must be documented including:
 - ▶ Other less intrusive interventions that failed or were deemed inappropriate;
 - ▶ The precipitating event;
 - ▶ The behavior that prompted the intervention;
 - ▶ Names and signatures of all staff involved;
 - ▶ Length of the intervention
 - ▶ Justification for the intervention;
 - ▶ Student's behavior and reaction during the intervention;
 - ▶ Parent notified within 24 hours.

40

Extended School Year Services (ESY)

- ▶ The IEP team *must* consider whether the student's IEP contains goals related to critical life skills and:
 - ▶ regression /recoupment
 - ▶ degree of progress
 - ▶ emerging life skills or breakthrough opportunities
 - ▶ interfering behaviors
 - ▶ nature and severity of the disability
 - ▶ special circumstances
- ▶ The IEP Team must determine if student's ability to make progress during the year will be significantly jeopardized if he/she does not receive ESY.

41

Transition Services

- ▶ Set of activities that facilitate the child's transition from school to post-school activities, including higher education, vocational education, independent living, and community participation
- ▶ Transition services should be included in the IEP.
- ▶ Transition planning begins at 14 years old. Students should be included in this process.

42

Goals and Objectives

SMART IEP Goals are:

- Specific
- Measurable
- Action words
- Realistic
- Time-limited

43

Goals

▶ GOALS should include direction, skill area, from level, to level, methods/strategies/supports.

- ▶ K will improve functional reading skills from ability to read simple sentences to ability to read directions to successfully complete a process using small group instruction, explicit instruction and active learning methods.
- ▶ T will decrease disruptive behavior (yelling, cursing, throwing objects) from an average of 25 incidents per week to 5 or fewer incidents per week using teacher proximity, small group instruction, and token economy.

44

Objectives

▶ OBJECTIVES should include performance (verb), condition (given...), and criteria for mastery

- ▶ Given common food words in flash presentation, K will orally ID 90% of the words w/in 2 seconds.
- ▶ When upset or frustrated and cued by a familiar adult, T will take a "self-help" appropriately in 3 of 4 instances.

45

Andrew F. v. Douglas County School District, 580 US _____ (2017)

- ❖ In order to provide children with disabilities the free appropriate public education guaranteed under the IDEA, school districts must offer children an Individualized Education Plan (IEP) that is reasonably calculated to enable each child to make progress appropriate for that child's circumstances.
- ❖ In conducting its fact-intensive inquiry, a reviewing court must ensure that an IEP is reasonably calculated to enable each child to make progress appropriate for that child's circumstances.

46

Andrew F. v. Douglas County School District (Cont.)

- ❖ The Andrew F. Court notes that most students with disabilities are capable of meeting grade-level academic expectations, and the decision requires schools to provide these students with special education designed to enable them to become academically proficient and to advance from grade to grade. For the small number of students whose disabilities preclude them from meeting grade level standards, the Andrew F. decision requires that schools provide them with special education designed to enable them to meet challenging and "appropriately ambitious" goals.

47

Related Services

Include, but are not limited to:

- ▶ Transportation
- ▶ Speech pathology
- ▶ Audiology
- ▶ Psychological services
- ▶ Physical and occupational therapy
- ▶ Social work services
- ▶ Medical, school health services and school nurse services

48

Related Services (cont.)

- ▶ Rehabilitation services
- ▶ Parent counseling and training
- ▶ Counseling
- ▶ Assistive technology devices or services
- ▶ Orientation and mobility services
- ▶ Interpreting services

RELATED SERVICES MUST BE:

- ▶ Specified in the IEP, including the type, amount and frequency.

49

Placement

- ▶ Placement refers to the type of place where a child may be educated (e.g., regular education classroom, self-contained classroom, separate day school, nonpublic school).
- ▶ Placement is the last decision made in the IEP team meeting.
- ▶ Placement determination is driven by all of the aids, services, and supports the student will need as recorded in the IEP.

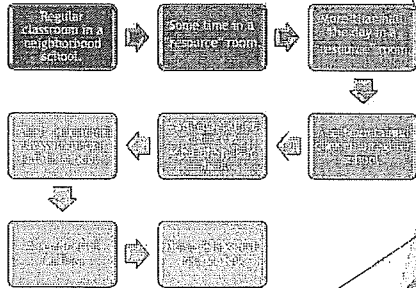
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Placement in the Least Restrictive Environment (LRE)

- ▶ Students with disabilities must be educated with non-disabled peers to the greatest extent possible. This is called the least restrictive environment (LRE) for the student.
- ▶ Inclusion means that the student is truly a part of the general education program and participates in general education classes with students without disabilities. The word "inclusion" does not appear in the law.
- ▶ Schools must provide supplementary aids and services to allow a child to stay in the least restrictive environment.

51

Determining Appropriate School Placement



52

Non-Public Placements

- ▶ If the school system cannot find an appropriate public placement, then the school system must pay for the child to attend a non-public school.
- ▶ There is a list of MSDE approved non-public school placements. (www.mansef.org)
- ▶ The IEP must support the need for a non-public school placement.

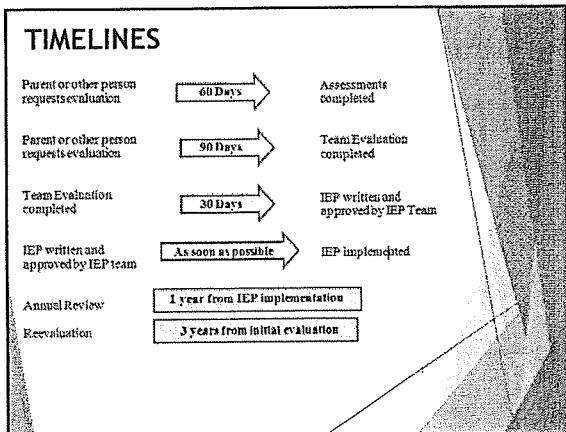
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Home and Hospital Instruction

COMAR 13A.05.01.10(C)(5)

- ▶ Provided for children who cannot attend school due to medical or mental health reasons.
- ▶ It is a temporary placement: not more than 60 consecutive school days unless a child's IEP allows for an extension.
- ▶ Related Services must also be provided.
- ▶ Cannot be forced upon a child.
- ▶ Cannot be used as an alternative educational setting when a student has been suspended or expelled.

54



55

New Legislation from 2017

Parent Consent Law

- ▶ School must obtain written consent before they:
 - ▶ enroll a child in an alternative education program that does not issue or provide credits towards a Maryland high school diploma;
 - ▶ identify a child for an alternative education assessment aligned with Maryland's alternative curriculum; or
 - ▶ include restraint or seclusion in a child's IEP for a non-emergency situation.
- ▶ The parent or guardian may consent or decide not to give consent. If the parent or guardian does neither, the IEP team can move forward with the proposed action. If the parent or guardian disagrees with the proposed action, the refusal to provide consent must be in writing.

56

Facilitated IEP Meetings

- ▶ An independent, trained "facilitator" keeps the IEP team focused on the needs of the child when trying to resolve problems. All parties are supported in a non-confrontational manner;
- ▶ An independent facilitator may be requested by either parent or school but both must agree;
- ▶ Facilitation occurs at a regular IEP meeting and all legal requirements are the same;
- ▶ No cost to parent or school;

57

Maryland IEP Facilitation Project

Community Mediation Maryland (CMM) and the Maryland State Department of Education (MSDE) have partnered to provide free facilitation for IEP Team Meetings in 13 counties.

To determine if a county is participating in the program, contact:

- 1) The school system; and,
- 2) Community Mediation Maryland at www.mdmediation.org or call 301-270-9700

58

PROCEDURAL SAFEGUARDS

59

Notice Requirements

- ▶ **NOTICE:** Parents are entitled to a 10 day notice of all IEP meetings.
- ▶ **WAIVER:** Parents have the right to waive the 10 day notice if they need an immediate IEP meeting. The 10 day notice requirement is waived for manifestation meetings.
[20 U.S.C. § 1415]

60

Mediation

- ▶ An informal conference with an independent mediator through the Office of Administrative Hearings.
- ▶ A request for mediation must be made in writing to the school system.
- ▶ It is a voluntary process and either party can refuse to mediate.
- ▶ Any agreement must be in writing and is legally enforceable and binding.
- ▶ Discussions during mediation are confidential and may not be used in subsequent due process hearings and civil proceedings.

[20 U.S.C. § 1415(e)(2)(G); COMAR 13A.08.01.15]

64

MSDE Complaint Process

- ▶ Parents/Advocates can file a written complaint with the Maryland State Department of Education if they believe a child's rights have been violated. A copy of the complaint should also be sent to the local director of special education.
- ▶ Examples of possible complaints:
 - ▶ Student did not receive services set forth in IEP.
 - ▶ School system failed to conduct timely evaluations.
 - ▶ School system violated discipline procedures.
- ▶ MSDE must complete its investigation within 60 calendar days.
- ▶ The 60 day time period can be extended if the parent and school system agree to engage in mediation or other alternative means of dispute resolution.
- ▶ The complaint must be filed within 1 year of the violation.

65

Filing for a Due Process Hearing

- ▶ A hearing request must be sent to the school system and to the Office of Administrative Hearings.
- ▶ The hearing request must
 - ▶ Allege a violation that occurred within 2 years of the date that parent or school system knew or should have known
 - ▶ Include the name, address and school of the child
 - ▶ Describe the nature of the problem; and
 - ▶ Include a proposed resolution.
- ▶ The non-complaining party must respond to the hearing request within 10 days.
- ▶ STAY PUT: A student stays in his or her last agreed upon placement until a due process hearing is resolved.
 - ▶ (There are some exceptions under school discipline).

[20 U.S.C. § 1415]

66

Who Is a Parent under the IDEA?

- ▶ A biological or adoptive parent
- ▶ A guardian
- ▶ A person acting as a parent of a student, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare
- ▶ A foster parent if granted limited guardianship for educational decision-making purposes by the court
- ▶ A surrogate parent

[20 U.S.C. § 1401 (25)] [34 C.F.R. §300.30]

61

Parent Surrogates

- ▶ Under the Reauthorized IDEA, juvenile courts now have authority to appoint an education surrogate parent. (See H.R. 1350, Sec. 615(b)(2)(A)).
- ▶ A surrogate must be appointed whenever the parents of the child are not known; after reasonable efforts, the parent cannot be located; or the child is a ward of the State.
- ▶ The surrogate parent cannot be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child.
- ▶ A school system must make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination that the child needs a surrogate.

62

Resolving Disputes

- ▶ Mediation
- ▶ Administrative Complaints may be filed with the Division of Special Education, Maryland State Department of Education
- ▶ Due Process Hearing

63

Challenging the Sufficiency of a Hearing Request

- ▶ A party can challenge the sufficiency of the due process hearing request within 15 days of receiving it.
 - ▶ Within 5 days of receiving the notice challenging the sufficiency of the request, the ALJ must determine whether the hearing request is sufficient on its face. If insufficient, the complaining party may submit a new request and the timeline starts again.
 - ▶ A party may amend a hearing request if
 - ▶ The other party consents in writing, or
 - ▶ The ALJ grants permission.
- [20 U.S.C. § 1415(c)(2)]

67

Resolution Session

- ▶ Within 15 days of receiving a due process complaint notice from a parent, the school system shall convene a meeting with the parents and IEP team members.
 - ▶ If a written settlement is reached, the parties have 3 business days to void the agreement.
 - ▶ The school system is given the opportunity to resolve the complaint within 30 days of the receipt of the due process request.
 - ▶ The meeting shall not include a school system attorney unless the parents bring an attorney.
 - ▶ This meeting can be waived by the parties or the parties can agree to use mediation.
- [20 U.S.C. § 1415(f)(1)]

68

Due Process Hearing

- ▶ If the resolution session does not resolve the matter, or if the parties waive resolution, or if the parties do not successfully mediate the matter, the parties may proceed to a due process hearing before an Administrative Law Judge (ALJ) through the Office of Administrative Hearings (OAH). The 45 day timeline begins to run at this point.
 - ▶ At least 5 business days prior to the hearing, the parties must exchange witness lists and the documents (including evaluations) that they intend to use at the hearing.
 - ▶ There is no other formal discovery.
 - ▶ OAH can issue subpoenas: the request to have subpoenas issued must be received by OAH at least 10 days prior to the hearing.
- [20 U.S.C. § 1415(f)(1); Education Article § 8-413(f)]

69

Appeals

- ▶ Maryland law gives either party 120 days to appeal the decision of an ALJ.
[Education Article Sec. 8-413(j)]
- ▶ Appeals may be brought in either federal district court or the circuit court for the county in which the student resides.

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Attorneys' Fees

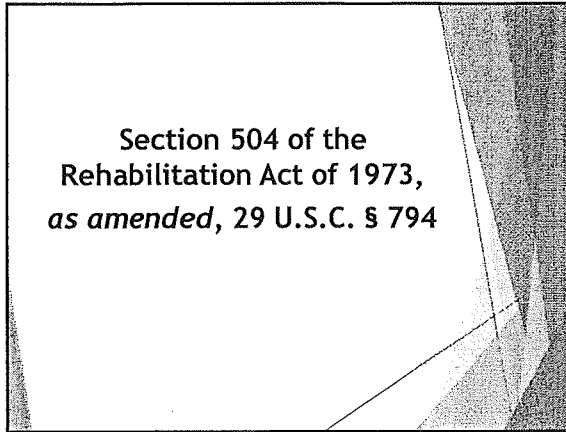
- ▶ May be available to a prevailing party who is
 - ▶ A parent
 - ▶ A school system against the attorney of a parent who files a complaint or continues with litigation that is frivolous, unreasonable, or without foundation
 - ▶ A school system against the attorney of a parent, or against the parents, if the complaint was presented for improper purposes (harassment, delay etc.)
[20 U.S.C. § 1415(i)(3)(B)(i)]

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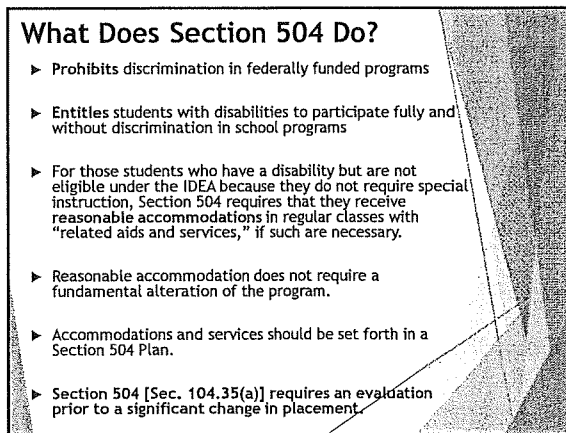
Examples of Possible Remedies

- ▶ Change in placement or services
- ▶ Compensatory education services
- ▶ Tuition reimbursement
- ▶ Systemic changes (through the complaint process or court, not from hearing officer)

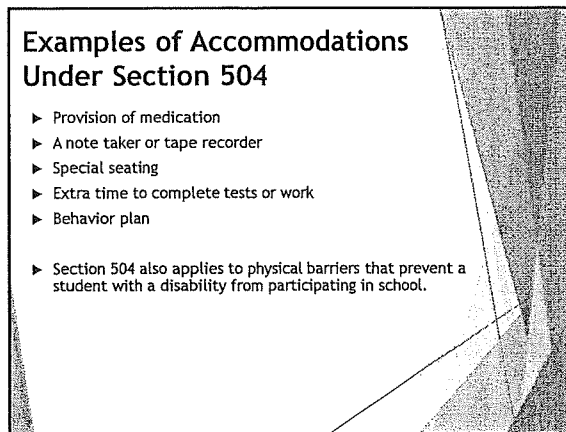
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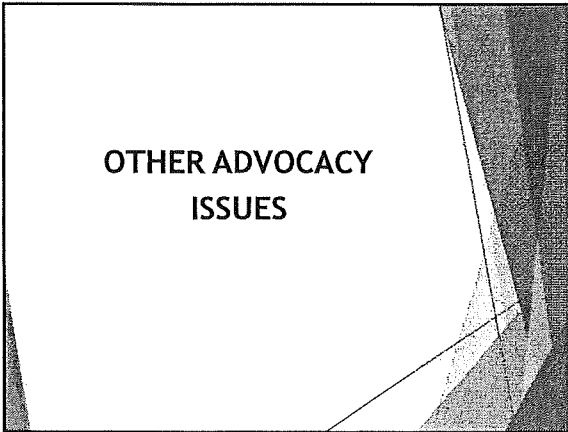
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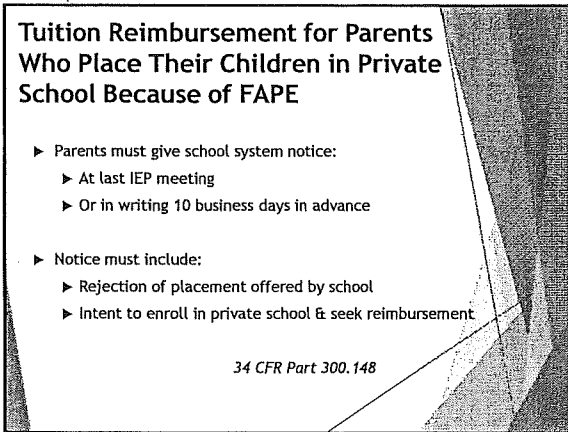
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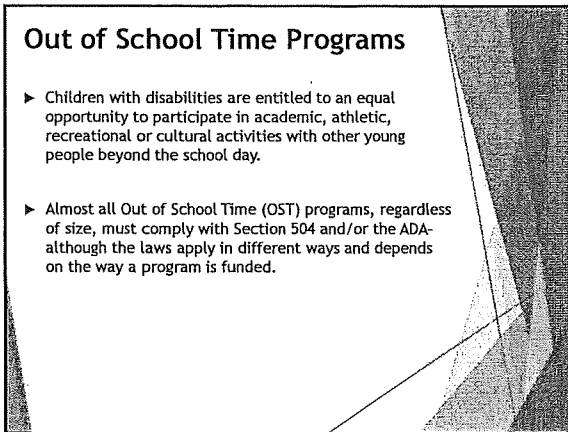
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Out of School Time- IDEA

- ▶ Participation in an extracurricular or non-academic program might be appropriate to be included in a student's IEP or 504 Plan.

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What Education Records Do You Need to Get Started?

- ▶ Copies of Individualized Education Plans (IEPs)
- ▶ Psychological and Educational Evaluations
- ▶ Report cards
- ▶ School discipline records
- ▶ Attendance Records

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Obtaining School Records

- ▶ Get copies of school records from the parent/guardian
- ▶ Use an education release signed by the parent/guardian to obtain school records
- ▶ Can subpoena school records if representing a child in juvenile court

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Parents are entitled to copies of IEPs and other documents that will be reviewed at the IEP meeting 5 days in advance of the meeting.

Annotated Code of Maryland, Education Article, 58-405

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Pro Bono Attorney Reimbursement Fund

- ▶ The Pro Bono Resource Center of MD has a limited amount of funds for pro bono attorney expenses including non-routine cash expenditures such as mileage, extensive copying, faxes, registered mail, and reasonable expert witness fees depending on the availability of funds.
- ▶ For forms and more information, contact PBRC directly: (410)837.9379/(800)396.1274, or www.probonomd.org/litigation-fund-policy

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Malpractice Coverage


- ▶ DRM's malpractice coverage extends to pro bono attorneys handling a matter referred by DRM if the attorney does not otherwise have malpractice insurance.

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Online Resources

- ▶ www.disabilityrightsmd.org
- ▶ www.wrightslaw.org
- ▶ www.manef.org (nonpublic school directory)
- ▶ www.idea.ed.gov (IDEA info)
- ▶ <http://www2.ed.gov/about/offices/list/ocr/504faq.html> (Section 504 info)

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