

LBSL Conference 2018

The Moser Center for Leukodystrophies

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We are all born with great potential.
Shouldn't we all have the chance to achieve it?



Mission of Project HEAL

- Project HEAL (Health, Education, Advocacy, and Law) attorneys provide advocacy and legal services to low- and moderate-income families and children with intellectual and developmental disabilities who receive services at Kennedy Krieger Institute
- Our goal is to resolve civil legal issues affecting health and family stability



Maryland Center for Developmental Disabilities
at Kennedy Krieger Institute

Types of Legal Services

Representation (attorney-client relationship)

- Special education matters (~95% of cases)
- Discipline appeals
- Social Security Income appeals
- Simple family law matters

Limited Representation (parents & families)

- Brief advice
- Document review
- Information & resources
- Pro bono referrals (to one of our law firm partners)

Case Consultation (health care professionals & trainees)

- Brief advice
- Document review
- Information & resources
- Referral for intake



Project HEAL Referrals

- Kennedy Krieger faculty, staff, and trainees can make referrals directly to Project HEAL via email, telephone, or an internal referral form.
- Families may self-refer to Project HEAL.
- In all representation matters –
 - All clients must be active Kennedy Krieger patients
 - Ripe legal issues that require the intervention of an attorney
 - Paying a sliding scale fee (for up to 10 hours of legal services)



Common Legal Issues

- School system denies a child with a qualifying disability an IEP.
- School system fails to provide accommodations, modifications, programmatic supports, supplementary aides or services that a child is legally entitled to.
- School system failed to consider or implement recommendations by Kennedy Krieger Institute.
- IEP fails to meet the unique needs of the child with a disability
- School program or placement is not meeting the unique needs of the child with a disability



Special Education Rights & Responsibilities

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The Relevant Laws

- Individuals with Disabilities Education Act (IDEA), *20 U.S.C. Sec. 1400 et seq.*
 - *Elementary & secondary education*
- Section 504 of the Rehabilitation Act, *34 C.F.R. Part 104*
 - *Elementary, secondary education, and post-secondary education*
- Code of Maryland Regulations, *COMAR 13A. 05. 01*
 - *Elementary & secondary education*
- Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).
 - *Elementary, secondary education, and post-secondary education*



Who is Eligible?

- **The Individuals with Disabilities Education Act provides children (birth through 21) with disabilities access to a free appropriate public education through an:**
 - Individualized Family Service Plan (IFSP)
 - Birth through age two
 - Individualized Education Program (IEP)
 - Three to 21 years of age



The Evaluation Process

- **Referral for an IFSP or IEP**
 - The referral determines whether a student needs an evaluation for special education and related services.
 - Children are usually first referred by their parents, teachers, or pediatrician.
 - The referral should be made in writing.
 - The referral should be dated.
 - The parent should keep a copy of the referral.



Who Decides if a Child with a Disability Needs Help?

- A team will help decide if a child needs help. Members may include:
 - Parent(s)
 - General education teacher
 - Special education teacher
 - Service providers
 - School administrator
 - The student, if appropriate
 - District level specialist



The Evaluation Process, cont'd ...

- **Evaluation**

- Includes

- ✓ Meeting with a team
 - ✓ Review of existing data
 - ✓ Determining if formal assessments are needed
 - ✓ Completion of assessments within 60 days of consent
 - ✓ A follow-up meeting with the team to review the assessments and discuss whether the child is eligible for special education and related services



The Evaluation Process

- **Assessments**
 - A parent must be provided written consent to assessment(s)
 - Must be in the areas of suspected disability
 - Must be performed and explained by a professional
 - No cost to parent
 - If a parent disagrees with the assessment results, they can request an independent evaluation (another evaluation by someone outside the school system)
 - The school pays for it, or
 - If the school system refuses, they must put the reason in writing and file for a due process hearing



Who is Eligible for an IEP?

- A student does not automatically qualify for an IEP just because he has a disability.
 - Whether the child, because of the disability, needs special education and related services to make meaningful educational progress.
 - The child's disability must adversely impact his educational performance such that he/she is in need of special education and related services designed to meet his/her unique needs.



Federal Eligibility Categories

- Autism
- Deaf-blindness
- Developmental delay
- Emotional disability
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairments
- Other health impairments (includes, but not limited to: ADHD, Tourette Syndrome, HIV, epilepsy, and sickle cell anemia)
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment



Tips for the Evaluation Process

- Keep a copy of the letter requesting an evaluation and the consent for evaluation form that you signed.
- Keep a calendar or timeline for the evaluation process.
 - Should be complete within 60 calendar days of consent for assessments and 90 calendar days of receiving a written referral.
- Complete any parent rating scales requested by the school system to help your child become eligible for special education and related services.
- Keep a copy of all of the assessments in a binder.
- If you have outside evaluations, you may wish to share them with the team.
- Provide written consent to the initiation of services if YOU agree with the proposed IFSP or IEP.
- A qualified student with a disability may be evaluated at least once every three years.



What is Special Education?

- An eligible child with a disability has the right to a free appropriate public education (FAPE) provided in the least restrictive environment
- Special education is a specially designed instruction to meet a child's unique needs
 - Allows the student to access the general education curriculum
- Includes related services



What are Related Services?

- **Transportation services (to/from school)**
- **Speech-language services**
- **Occupational therapy**
- **Physical therapy**
- **Counseling**
- **Social work services**
- **Psychological services**
- **School health/nurse services (nursing plan)**



What is an IFSP?

A document or written plan that focuses on the child and family and the services that the family needs to help them enhance their child's development.

- IFSP services are provided in the child's natural environment:
 - Home
 - Head Start
 - Daycare
 - Preschool



What does an IFSP include?

- A child's present level of functioning and areas of need
- Family information (including parental concerns)
- Results or outcomes expected to be achieved by the child and family
- Specific early interventions services your child will receive
- When and where the services will be provided



What is an IEP?

A document that describes the special education and related services that the child is entitled to receive.

- The IEP team must meet to develop the IEP within 30 days of the evaluation meeting.
- 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 revise the IEP, if necessary.



What does an IEP include?

- Current levels of academic achievement & functional performance
- Annual goals and short-term objectives (in most states)
- Related services (type, frequency, duration)
- Supplementary aids, services, accommodations, modifications, and programmatic supports



Tips for IFSP or IEP Development

- Bring a partner, friend, or spouse to the IFSP or IEP meeting with you if you think it would be helpful.
 - Some families choose to hire a lay advocate or an attorney for representation.
- If you don't understand a recommendation, ask questions to the professional who is making the recommendation for your child's IFSP or IEP.
- Take notes during the meeting, so that you can reference them later.
- If you wish to audio record the meeting, ask to audio record it ahead of time.
- Be aware that providers use different descriptive categories for your child's performance on testing (e.g., Average, Below Average). Take note of *standardized age-based normative scores*.
- Request a break during the meeting, if you need it.
- Try to remain calm.



Parent Participation

- Parents have the right to be notified in writing at least 10 days in advance of the IEP meeting.
 - Can waive right to 10 day notice and proceed with the meeting
 - Can ask to reschedule (IEP team cannot meet anyway)
- If the parent receives 10 days notice but cannot attend on the date the meeting is scheduled, they can ask that the meeting be rescheduled so that they can attend.



Educational Placement

- The IEP team determines where the student will receive special education and related services.
- School systems must provide a variety of placement options
 - General education classroom in their neighborhood school
 - Access to a “resource” room for services
 - More than half of the day in a “resource” room
 - A public separate day school
- If the school system cannot find an appropriate public placement, then the school system must pay for the child to attend a private separate day school
 - (i.e., a non-public special education facility).



Educational Placement Options

From least restrictive to most restrictive:

1. General education classroom in a neighborhood school
2. Access to a “resource” room
3. More than half the day in a “resource” room
4. A self-contained class in a comprehensive school
5. A self-contained class in a public separate day school
6. A self-contained class in a private separate day school (i.e., a non-public special education facility)
7. A residential facility
8. Home & hospital instruction
9. Combination of options (e.g., having students access a self-contained class and a general education class)



Extended School Year Services (ESY)

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Extended School Year (ESY) Services

- The IEP team *must* consider if a student's IEP has 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
- Team *must* also determine if student's ability to make progress during the year is in jeopardy if he/she does not receive ESY.



Tips for ESY Services

- If your child has an IEP, your child's IEP team should hold a meeting before the end of the school year to determine eligibility for ESY services.
- If the team does not schedule a meeting automatically, you should request an IEP team meeting in writing.
- Request a meeting so that you have enough time to appeal the decision before ESY services begin.
- The IEP team should review eligibility for ESY each year.



Transition Planning

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What is Transition Planning?

- A process that brings students and their families together with educators and other adult service providers to **help plan and prepare students to leave school and enter a post-secondary school environment**, such as adult day programs, employment, vocational school, and college.



Transition Planning and the Law

- The IDEA states that all children with disabilities are entitled to “transition services,” also known as *transition planning*.
- Transition services are provided by the school to help students transition from high school to the adult world.



Transition Planning

Diploma Options



- High School Diploma
- Certificates of Completion
- General Education Diploma

Post-Secondary Options



- Adult Day Program
- Employment
- Vocational Program
- College



Transition Planning, cont'd ...

- The transition planning process helps prepare the student for their transition out of high school and into adulthood.
- Should have a plan **by age 14** (in Maryland).
- A transition plan is a document that maps out what a student needs to be successful after high school.



Transition Plans must ...

- Be results oriented
- Based on the individual
- Improve academic and functional skills
- Help transition out of high school



Goals for a Transition Plan

Academic Skills

- Reading
- Written language
- Math
- Problem Solving
- Comprehension
- Art or Music
- Foreign Language

Communication Skills

- Requesting
- Following/giving directions
- Communicating Information
- Understanding information

Social Skills

- Answering a phone and making calls
- Displaying appropriate workplace behavior
- Learning how to protect themselves from victimization

Occupational & Vocational Skills

- Using a time card
- Arriving to work on time
- Accepting instruction and corrections
- Using appropriate voice tone and volume



Transition Planning: Age 16

Schools

- Self-advocate in IEP meetings
- Create a Transition Plan
- Determine projected category of exit

Government Programs

- Apply to the Developmental Disabilities Administration
- Apply for social security benefits

Self-Advocacy

- Learn about your disability
- Consider life after school
- Begin financial planning



Transition Planning: Ages 17-21

Schools

- Explore post-secondary options
- Have adult service provider at meetings
- Schedule transition to adult services

Government Programs

- Acquire a State ID card
- Apply for government programs
- Consider need for legal custody

Self-Advocacy

- Visit and select an adult service provider
- Consider transportation options
- Think about living arrangement



Resolving Disputes

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How Do You Resolve Disagreements?

1. Request an IEP meeting to discuss your concerns
2. File a FREE complaint with the state department of education
 - Letter of findings issued in 60 days
3. File a request for mediation in writing
 - An informal meeting with an independent mediator
 - Both parties must agree to mediate
4. Participate in a resolution session
5. File a request for a due process hearing
 - Formal and expensive proceeding



Tips to Resolve Disagreements

- Explain your concern to the team and why you are concerned (give examples).
- Touch base with your child's service coordinator or IEP chairperson regularly, so they are not surprised by your concern.
- Always participate in your child's IFSP or IEP meeting.
- Contact your Partners for Success Program in City Schools or Parents Place of Maryland.
- Contact an attorney or advocate, if you think you need help navigating the system.



Workplace Disclosure

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Workplace Disclosure

- There are legal protections under the ADA, the ADA Amendments Act of 2008, and Section 504 of the Rehabilitation Act of 1973.
- Providing reasonable accommodations is required by federal law.
- There are problems with disclosure and confidentiality.
- Recommended journal article regarding this issue in high functioning individuals with autism spectrum disorder: <http://harvardcrcl.org/wp-content/uploads/2017/02/Hensel.pdf>



Resources

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Building Partnerships. Changing Lives.

National Resources

- Council of Parent Attorneys & Advocates, Inc. www.copaa.org
- IDEA.gov <https://idea.ed.gov/>
- National Council on Disability <https://www.ncd.gov/>
- National Disability Rights Network <http://www.ndrn.org/index.php>
- The National Center for Medical-Legal Partnership <http://medical-legalpartnership.org/>



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