



Assisting Students with Special Education Needs

Daniel Underwood
Children's Legal Alliance
Legal Services of Eastern Missouri
www.lsem.org

Services

Services are free.
All communications are confidential.
Interpreters provided.

Sve nase usluge su besplatne.
Razgovori se drže u tajnosti.
Prevodnici su obezbeđeni.

Los servicios son gratuitos.
Todas las comunicaciones son confidenciales.
Intérpretes disponibles.

Access to Health Coverage

Connecting Kids to Coverage and the Marketplace Assistance Program helps uninsured children, families and adults enroll in health insurance plans.

Advocates for Family Health

Helps pregnant women and families with children with Medicaid managed care.

Children's Legal Alliance

Provides advocacy for children with special education needs and homeless children.

Community Economic Development

Provides legal assistance and education for low-income entrepreneurs and community non-profits.

Consumer Law

Represents clients with creditor/debtor problems and victims of deceptive or predatory lending.

Elder Law

Represents clients 60 years or older.

Education Justice

Provides information about students' rights and advocates for students facing unfair discipline.

Family Court Program

Representing parents in dependency cases for the reunification of families with cases in St. Louis County Family Court.

Lasting Solutions Family Law

Helps survivors of domestic violence and their families achieve safety and stability.

Housing Law

Landlord/tenant issues, foreclosure and other housing problems.

Immigration Law

Assists immigrants with residency and citizenship and also serves victims of Human Trafficking.

Legal Advocacy for Adults with Mental Illness

Assists adults with serious mental illness in a variety of legal matters.

Medical-Legal Partnership

Works with public healthcare clinics to identify and address legal issues impacting patients' health.

Public Benefits

Helps with applications and appeals for public benefit programs, including Medicaid, TANF, Food Stamps, Social Security and Medicare.

Veterans

Serves veterans and their family members in a variety of legal matters.

Volunteer Lawyers Program

Provides pro bono opportunities for attorneys and law firms to help clients.

Youth and Family Advocacy

Serves homeless and vulnerable youth and families in St. Louis County.

Hours of operation

Monday through Friday from 8:30 a.m. to 5:00 p.m.

unless otherwise noted or during holidays.
[Online application www.lsem.org](http://www.lsem.org) Get Help Now".
If you feel you are in immediate danger call 911. For other urgent situations, call 211 for the United Way Hotline.

Call if you need help.

314.534.4200

800.444.0514

www.lsem.org

Legal Services of Eastern Missouri
Action. Justice. Hope.





Our Mission

Legal Services of Eastern Missouri advances justice through legal representation, education and supportive services. We partner with the community to improve lives, promote fairness and create opportunities for those in need.

Who we serve

We provide free civil legal assistance, advice and information for low-income people and the elderly in 21 eastern Missouri counties. Clients must meet financial eligibility based on household incomes or meet other qualifications for consultation or representation. Information and training services are open to the public, communications are confidential and interpreters are available for the hearing impaired and non-English speakers. Accessibility accommodations are available as needed.

What we do

Legal Services' staff includes attorneys, paralegals, advocates, social workers and support staff.

We remove the legal barriers to help low-income families overcome poverty and violence, maintain or obtain independence, and to achieve self-sufficiency. Services include:

- Representation in courts and administrative hearings;
- Providing legal advice or referral information;
- Assisting with community-based economic development;
- Giving legal education through community workshops and other materials;
- Offering professional training for attorneys, advocates and others.

Legal Services of Eastern Missouri has been an independent, non-profit organization since 1956.



Main Office

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Free legal help in 21 counties

314.534.4200
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Federal Laws Relating to Education of Children with Disabilities

- **Individuals with Disabilities Education Act of 2004 (IDEA)**
Individualized Educational Program, entitles a child to a free appropriate public education (FAPE)
- **Section 504 of the Rehabilitation Act of 1973**
Prohibits discrimination (access to the same programs and services non-disabled children receive)
- **Title II of the Americans with Disabilities Act**
Any service, program or activity conducted by a public entity must be readily accessible to and usable by individuals with disabilities

IDEA: It's the law!



- Covers children from birth to age 21 with a qualifying disability
- Requires schools to provide a free appropriate public education (“FAPE”) in the least restrictive environment (“LRE”)

Who Qualifies for IDEA Services

1. Must have a specific disability:

- Autism
- Deaf/Blind
- Emotional Disturbance
- Hearing Impaired
- Intellectual Disability
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairments
- Traumatic Brain Injury
- Visual Impairments
- Young Child with a Developmental Disability

2. Disability must impact the child in such a way that Special Education and Related Services are needed.

Child failing to make academic progress, poor grades, poor task focus/completion, behavioral issues preventing student from staying in classroom, significant history of suspensions

For specific criteria, see:

<https://dese.mo.gov/special-education/compliance/standards-indicators>

Free Appropriate Public Education (FAPE)—IDEA

Special Education

- Specifically Designed Instruction
- Provided at no cost to the Parent
- Designed to meet the unique needs of the student

Related Services

Any service required to enable a student to benefit from special education services:

- Transportation
- Speech/Language
- Interpreting
- Psychological services
- PT and OT
- Recreation (including special)
- Social Work services
- School nurse
- Counseling

Free Appropriate Public Education (FAPE)—IDEA

- ALL eligible children and youth between the ages of 3 and 21 are entitled to FAPE.
- Services should be provided in the “**least restrictive environment**” so that *special education students are educated with non-disabled students*. Placement should change only when it is shown that other, less intrusive services, have not worked.

IDEA Placement Continuum (K-12)

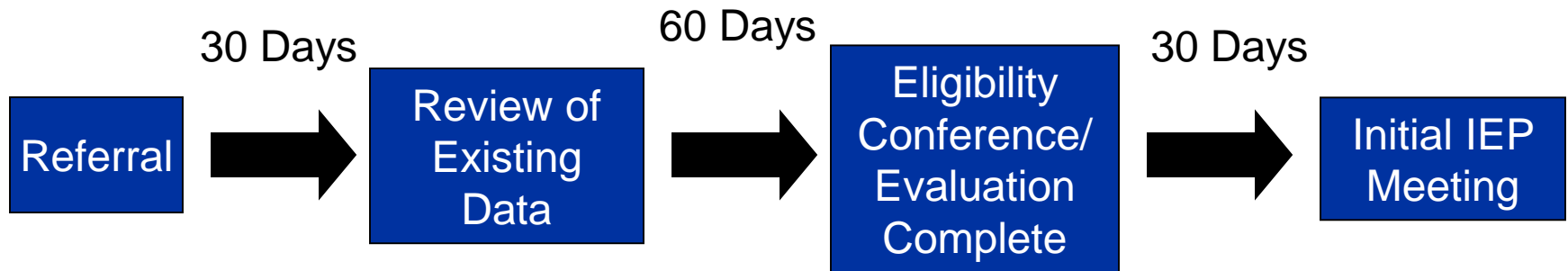
Less restrictive
placements

- At least 80% of day in regular education
- 79% to 40% of day in regular education
- Less than 40% of day in regular education

More restrictive
placements

- Separate Public School
- Separate Private School
- Homebound instruction

Timeline for IEP Process



- IEP revised at least once a year
- Re-evaluation conducted every three years

IEP Referral Process

- School districts have a *child find* obligation to find and evaluate all children with suspected disabilities
- Parent can also make verbal or written request for evaluation. Help parents write a letter requesting evaluation (see sample).
- Common violation: Districts may try to put child through internal student intervention team (“SIT” process) before referral, delaying process several months. If parent requests testing, the school must reply within 30 days in writing that it will test or explain why it will not test.

Communicate in writing

- Parents/EDMs (Educational Decision Makers) can initiate request for special education testing of the child
- Any request for special education testing should be made **in writing**
- Parent/EDM should keep a signed copy of the testing request—letter/email to people at school responsible for testing
- Any request for an IEP meeting should be made in writing
- Direct any letter/email to appropriate school personnel
- School **must** respond to EDM/parental request **in writing**:
 - Notice of Meeting
 - Notice of Action refusing to test the child (District needs to state why they will not test—are they providing some other service in lieu of testing?)

Date: _____

To: _____
(Principal/Superintendent/Special Education Director)

School District: _____

RE: _____
(Child's name, Birthday)

Dear _____:

I am the (parent / guardian) of _____.

This child attends _____ school and is in the _____ grade.

This child is not functioning well in school because I have noticed: (Check all that apply)

- The child is failing one or more classes
- The child struggles with reading
- The child struggles with math
- The child is having behavior problems
- The child has health problems that cause problems at school
- Other _____

I am requesting that the school perform a special education evaluation on this child. I have a right to make this request under the Individuals with Disabilities Act (IDEA).

I look forward to your response within 30 days, as required by law. I can be contacted at the address and phone number below.

Sincerely,

Parent/Guardian

Parent/Guardian contact information:

Name: _____

Address: _____

Phone: _____

Children in Foster Care

- **Who makes educational decisions for foster children?**
 - If the child is in a foster home, the foster parent can make educational decisions about the child (unless someone else appointed by the court).
 - If the child stays in a residential facility, the CD case manager can make educational decisions
 - If the child has special education needs, then an educational surrogate needs to be appointed by the State or by the Court for the child.

Individualized Education Program (IEP)

- Outlines Special Education and Related Services for the student
- Created by a team including school personnel (regular education and special education), the parent and, if appropriate, the child
- Parent/EDM must be given notice and opportunity to attend
- Minor changes can be made to the IEP without a meeting so long as parent consents to change
- Placement in “Least Restrictive Environment”
- If it isn’t in the IEP, the District isn’t obligated to provide it. District obligated to provide what is contained in the four corners of the IEP

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IEP meeting: Role of Parent/Advocate

- Ask questions—5 W's, How, Explain, Describe
- Interrupt the reading of the draft IEP
- Ask for data—test scores, work samples, IEP goal progress—if data does not show improvement, ask for increased/different services
- Provide any information about the student that can help the team better understand the student's needs

IEP meeting: Role of Parent/Advocate

- Services should be based on child need, not availability of school staff—focus is the child
- If confused, ask the District to explain why it picked one method or proposal over another to serve the child
- Ask that educational jargon be put into regular English
- When advocating for services, frame issue around what will help the child make progress toward goals

Tone of the IEP Meeting

Parents

- Parents can become emotional about their child's education
- Parents may become upset
- Parents may lash out at District personnel

School

- District personnel are often defensive and dismissive of parents
- District personnel may “circle the wagons” to defend themselves and what they want to do

A hostile or defensive meeting will result in a poorly written IEP that fails to meet the child's needs.

Areas of Focus in IEP

- Present Level of Educational Performance: Make it as complete and accurate as possible—a picture of the “whole” child
 - Parental Concerns
- Goals: S.M.A.R.T. Goals (next slide)
- Minutes/Related Services: What level of special education instruction should be provided? What “related services” should be provided?
- Modifications and accommodations

Write S.M.A.R.T. Goals

- **Specific** Describe behavior/skill to be taught, define the skill/behavior in an observable and measurable way
- **Measurable** Allow you and the team to assess progress to know when a goal is met and a skill is mastered
- **Action Words** “The child will use a computer to sign” or “The child will take turns”
- **Realistic and Relevant** Goals that address the unique needs of the child based upon their disability, not based upon district curriculum/state tests
- **Time-limited** “The child will _____ on 3 of 5 data days” or some other time limitation that enables you and other IEP team members to monitor progress at regular intervals.

From Emotions to Advocacy, Pete and Pam Wright

Functional Behavioral Assessments and Behavior Intervention Plans

- A child with an IEP who exhibits behavioral problems in school may be in need of testing to determine the cause of their behaviors—
Functional Behavioral Assessment (FBA)
- Goal of FBA is to develop a Behavior Intervention Plan to address negative behaviors which impact the child in school
 - Should focus on the biggest problem behavior
 - Should be positive behavioral interventions
 - Should be something that can work across all environments—**CONSISTENCY!**

When the IEP Team Does Not Agree

- Counter the District proposal with what the parent wants
- Allow the district to try its approach, BUT
 - Ask what indicators will tell us that the district's approach is working
 - Ask what indicators will tell us that the district's approach is NOT working,
 - Ask how often will we check if the District's approach is working?
 - Propose returning in X weeks to review progress with the District's proposed approach
- Document the disagreement (get a Notice of Action from the District) to preserve the issue for possible administrative complaint
- Parent does have 10 days to think about the IEP before it is implemented—opportunity for parent to file administrative complaint
- Parents should not give up on a service/related service that they feel is critical to their child's success in school

After the IEP Meeting

- Make sure everything agreed to during IEP meeting is in the IEP. If it isn't in the IEP, assume it didn't happen
- Follow up to make sure the IEP is implemented
- Writing the IEP is only a small part of the battle; ensuring its implementation is the real fight.

Changing schools with an IEP

- For children transferring in-state with an IEP it is the responsibility of the new school district to obtain the child's records and information
- Students with IEPs are to be provided comparable services without delay
- Information from the sending school will suffice when the new school is unable to obtain information from the parent/case manager, etc.

School Discipline for Students with IEPs

- School may suspend any student for up to 10 days with no special protections for IEP students.
- For suspensions greater than 10 days, a “manifestation determination” must be held (includes short term suspensions for similar behavior adding up to 10 days)
- If conduct is a manifestation of child’s disability, student returns to school, then functional behavioral assessment is conducted and new behavior plan written/updated, if needed
- If conduct is not found related, may remain suspended, but child still receives IEP services at home or in alternate setting
- If an evaluation has been requested, but no IEP in place, these rules still apply

Special Circumstances

45 day suspension

- Regardless of whether a behavior was a manifestation of a child's disability, school personnel may suspend a child with a disability up to 45 days for:
 - Possession of a weapon at school
 - Use, possession, or distribution of drugs at school
 - Inflicting serious bodily injury on another person while at school

Section 504—who is protected?

Children (and adults) are protected by Section 504 if they:

- Have a physical or mental impairment that significantly limits one or more major life activities (like learning, concentrating, breathing, etc.);
- Have a record of such an impairment; or
- Are regarded as having such an impairment.

Impairment which is episodic or in remission is a disability if it would substantially limit a major life activity.

Determination of 504 eligibility is made without regard to mitigating measures (medication, equipment, etc.)

What's contained in a Section 504 plan?

- Services and accommodations a student will receive from a school district— everything that the child will need from the school district because of the child's disability
- Medication Management Plan
- Medical Action Plan

Supports for Parents

- **State Protection and Advocacy (P&A)** Federally mandated system which protects rights of persons with disabilities
- **Council of Parent Attorneys and Advocates (COPAA)** Advocacy network of advocates for children in special education system
- **Wrightslaw.com** online advocacy resources for parents
- **Parent support organizations** MO-FEAT, MPACT, Sharing our Strength
- **DESE** www.dese.mo.gov

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