

ADOPTION & SCHOOL: Educational Rights



Linda Sweet Marks, Esq.

- ❖ I successfully practiced law for over 25 years : initially as a successful corporate finance law attorney having worked in a large multinational law firm as well as in two fortune 500 in house legal departments and then educational law at Legal Services and currently in my own private firm representing families in an array of education matters including special education, discipline, early intervention services, bullying, truancy and school residency disputes. Further, I have worked as a mediator and arbitrator of civil cases in a state superior court.
- ❖ I have been admitted to the bars of New York, New Jersey, Massachusetts, Washington D.C. and Maryland.
- ❖ I have been a Court Appointed Special Advocate (CASA) representing neglected and abused children and served on the Child Placement Review Panel of Mercer County, New Jersey overseeing the care and placement of children living in foster care.
- ❖ I currently am of counsel for the Education Law Center, a nationally well-respected nonprofit advocating for the needs of public school students in New Jersey, have my own private advocacy firm and am a member of the New Jersey Special Education Practitioners Group, the Council of Parent Attorneys and Advocates and the New Jersey Coalition for Special Education Funding Reform.

STUDIES REGARDING ADOPTED STUDENTS IN SCHOOL

- When adoptive parents send their children to school, they want what all parents want.
- They want their children to be happy, successful, to make friends and to enjoy learning.
- Majority of adoptive parents reported their children enjoyed going to school and 48% of adopted students were doing above average in school.
- But when compared to students living with biological parents, there were substantially more adopted children who performed poorly on indicators of academic progress and school adjustment.
 - Twice as likely to have their parents contacted due to schoolwork problems.
 - Four times more likely to have repeated a grade.
 - And three times more likely to have been suspended or expelled from school.
- Goal is to empower parents (should they need it) with information that will help your child thrive in school.

K KNOWLEDGE

E EMPOWERS

Y YOU

Data from U.S. Department of Education

- 54% majority of adoptive parents reported that a health or education professional had told them that their child had a condition that affected their ability to learn, get along with other children or engage in physical activities.
- The most common conditions diagnosed were
 - Attention Deficit Hyperactivity Disorder (36% vs 11%)
 - Specific Learning Disability (23% vs 6%)
 - Speech Impairment (16% vs 7%)
 - Developmental Delay (15% vs 4%)
 - Emotional Disturbance (12% vs 1%)
- While educational issues are not exclusive to the adopted community, it is vital that adoptive parents be aware of the available free public educational services available to help should they need it.

Early Intervention Services

This federal program is administered on a state level, so available services may vary. ([The Center for Parent Information and Resources](#) is a great place to start looking for information on your state.)

Adoption-medicine specialist Deborah Borchers, M.D., advises parents whose children are “at risk” for developmental delays to look into EI. In particular, any parent who adopted his or her child from an institutional setting will want to do so.

“Research has shown that a routine office visit to a physician will identify less than 30 percent of the children who have developmental problems,” she adds.

The sooner you can spot these difficulties, the better. Finding help early on can minimize more complex problems (thus lessening future difficulties) and ensure that the child who’s simply delayed will “catch up” as quickly and completely as possible.

For some, this help will be needed for a short period of time. For others, it will be necessary for many years.

Good News: Early Intervention Services are FREE!

- Birth -3 years old.
- Seek help early.
- 1st three years of life important formative years.
- By age 3, the brain is almost 80% of its adult size.
- Problems with language, learning, motor skills, and attention often go undiagnosed until children reach school age and begin to struggle academically. The trick is to pick up on them much earlier.
- Suspect infant/toddler experiencing development delays.
- Evaluation provided at no cost to parents.
- Individualized Family Service Plan (IFSP) is developed.
- Services provided at home, community agency or child care setting.
- Transition Planning from EIS to preschool program.

Early Intervention Services

ASSESSMENT:

- Physical (Gross motor, fine motor, vision and hearing)
- Cognition
- Communication
- Social or Emotional
- Adaptive

Eligibility: At least 2.0 standard deviations in one developmental areas or 1.5 standard deviations below the mean in two or more of the developmental areas.

<https://www.nj.gov/health/fhs/eis/>

1-888-653-4463

Supports and Services Short of Special Education

- **Intervention and Referral Services** – services for students having learning, behavior, health or other difficulties. N.J.A.C. 6A:16.
- Primary way in which general education teachers or specialists can assist a student who is at risk for school problems within the general education.
- The purposes of the I&RS are: to identify students in need and then plan and provide appropriate interventions for those students within the general education setting.
- The I&RS team is used by schools to intervene with student problems, prior to Child Study Team (CST) evaluation.
- Intervention may include the use of the Response to Intervention (RTI) model. In general, RTI is based upon three components:
 - The use of multiple tiers of increasingly intense interventions;
 - A problem-solving approach to identifying and evaluating instructional strategies; and
 - An integrated data collection and assessment system to monitor student progress and guide decision-making. Student monitoring continues throughout this process by the identified individuals in the action plan and adjustments are made to the plan as needed.

I&RS PROCESS

Steps in the I&RS process are:

1. Request for Assistance
2. Information Collection
3. Parent/Guardian Notification and Participation
4. Problem Solving
5. Development of I&RS Action Plan
6. Support, Monitoring, and Continuation of Process
7. Problem Resolved or Referral to Child Study Team

If the I&RS process exhausts all of the available school-based general education interventions with minimal success, the student may be referred to the Child Study Team for a comprehensive evaluation in order to gather additional information and to determine if the student is eligible for special education and related services. The recommendation for a Child Study Team evaluation can come directly from the I&RS team or from a parent/guardian at any time during the process.

SCHOOLS ARE REQUIRED TO HELP FOR FREE:

- During public elementary and secondary school, educational services are provided through an IEP or through a 504 Plan.
- Does not reflect how very academically capable these students are but the manner in which they need to be taught.

Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA)



A federal civil rights law to stop discrimination against people with disabilities.



Prohibits public elementary and secondary schools from discriminating on the basis of disability.



These laws define a person with a disability as a person who **has a physical or mental impairment** which **substantially limits one or more major life activities**, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. (A student with a disability may be entitled to protection under Section 504 and the ADA even if the student is not eligible for special education under the Individuals with Disabilities Education Act (IDEA).)

SECTION 504 PLANS

- Goal is to “LEVEL THE PLAYING FIELD.”
- Provides EQUAL ACCESS to the public education (and services) available to non-disabled peers.
- Academic education, team sports, school plays, etc.

School districts are required to provide students with disabilities appropriate educational services designed to meet the individual needs of students as adequately as the needs of students without disabilities are met.

504 Plans

Plan is provided at no cost to the student.

A child can have any disability, which can include learning or attention issues.

Appropriate educational services may consist of a wide range of services such as classroom modifications, supplementary aides and services or therapeutic services.

Free and appropriate education (FAPE)

Letter to Guidance

Department/Principal/Teacher

Request evaluation or present documentation.

Plan generally includes specific accommodations, supports or services for the child.

Person responsible for ensuring plan is implemented – Guidance Counselor.

Generally the 504 plan is reviewed annually and a reevaluation every three years if needed.

Examples of accommodations in 504 Plans

- preferential seating
- extended time on tests and assignments
- reduced homework or classwork
- verbal, visual, or technology aids
- modified textbooks or audio-video materials
- behavior management support
- adjusted class schedules or grading
- verbal testing
- excused lateness, absence, or missed classwork

Special Education

- Federal Law
 - Individuals with Disabilities Education Improvement Act (IDEA)
 - Federal Regulations 34 CFR Part 300 et seq.
- State Law
 - N.J.S.A. 18A:46-1 et seq.
 - N.J.A.C. 6A:14 et seq.
- Case Law
 - Federal
 - State
 - NJ Administrative Law Division

SPECIAL EDUCATION

- More than 45 years.
- 14% of population.
- Costs states, local and federal governments \$90 Billion a year.

Special Education Makes a Difference!

- Economists did a recent study of elementary and middle school children with SLDs in New York City 2021.
- Primarily focused on dyslexia and reading and math SLDs such as dyscalculia, dysgraphia and dyspraxia.
- Providing students with special education services makes a difference to their academic outcomes.
- Academic outcomes improve for SLDs following classification into special education and impacts are largest for those entering special education in earlier grades, in either 4th or 5th grades.
- 2002 Texas study nearly identical results.
- 2019 Smaller Kentucky study found almost double the benefits for special education.

DIFFERENCE: 504 Plan vs IEP

SECTION 504 PLAN

Anti-Discrimination Law

“HOW”

Guidance Department

IEP

Education Law

“What”

Child Study Team

Children between 3 and 21

1. One or more disabilities (defined by regulation) 14 categories plus speech and language services;
2. Which *adversely* effect their educational performance; and
3. In need of special education and related services.

The IDEA's Mandate:



A Free Appropriate Public
Education (FAPE)



In the Least Restrictive
Environment (LRE)

FAPE

- Supreme Court – “IDEA requires an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”
- Appropriate is NOT best.
- Appropriate is defined as whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child.

- A child is repeatedly disciplined.
- The Parent is often called to pick up the child early from school.
- A child is not doing well in school (i.e. failing, cannot do homework, repeated one or more grades.)
- The District has tried Intervention and Referral Services and it is not working (within 3-6 months.)
- IR&S does not have to be initially exhausted. A District cannot insist on such services prior to evaluating for special education.
- The District recommends child take medication.
- CST states that a child's disruptive behaviors are a medical issue or that the child is not classifiable because there aren't any academic problems.

Red Flags that Child Needs to be evaluated for Special Education

Identifying Children in Need of Special Education

- Child Find

- School Districts MUST have policies, procedures and programs in place to locate, identify and evaluate ALL students with disabilities who are in need of special education and related services. (N.J.A.C. 6A:14-1.2(b)(3),(4), 6A:14-3.3)

- Referral to Child Study Team

- Parent, Teacher, Guardian, Foster Parent, Appointed Surrogate Parent
- **DATED WRITTEN** request to Child Study Team (CST) with a copy to Director of Special Education

- 20 calendar days after written request
 - Meeting to determine whether to evaluate for special education
 - Child Study Team (School Psychologist, Social Worker, LDTC), Parent and General Education Teacher.
- Must have Parental consent for evaluation.
- A full CST evaluation must have at least 2 evaluations.
- 90 calendar days from parental consent to conduct evaluations, determine eligibility and implement Individualized Education Program (IEP).
- Independent Educational Evaluations.

Categories for classification under IDEA

- Auditory Impaired
- Autistic – 11%
- Cognitively Impaired -6%
- Communication Impaired
- **Emotional Regulation Impairment**(i.e. depression, ODD, conduct disorder, school refusal, attachment disorder, and developmental trauma disorder)-5%
- Multiply Disabled – 2%
- Deaf/Blindness
- Orthopedically Impaired
- **Other Health Impaired** -16%
- Preschool Child with a Disability
- Social Maladjustment
- **Specific Learning Disability (i.e. Dyslexia) – 30%**
- Traumatic Brain Injury
- Visually Impaired
- Eligible for Speech-Language Services Only -19%



TYPES OF EVALUATIONS

- Educational
- Psychological
- Social History
- Physical and/or Occupational Therapy
- Speech-Language
- Psychiatric
- Functional Behavioral Assessment
- Medical

IEP ELIGIBILITY MEETING

- Student determined eligible if has one or more of the disabilities and such disability *adversely* affects the student's educational performance and the student *is in need of* special education and related services.
- Parent consent required for ONLY initial IEP and implementation of services.
- District can seek due process to compel evaluation of child but not classification for special education.
- District CANNOT require parents to medicate a child as a condition of being evaluated, attending school or receiving special educational services.

INDIVIDUALIZED EDUCATION PROGRAM

- An IEP is the roadmap of the child's education.
- The IEP contains:
 - Current academic and functional performance.
 - Measurable annual goals (academic and functional).
 - How progress will be measured.
 - Accommodations, modifications, specific programs, supplementary services and related services.
 - Assistive technology devices.
 - Explanation of extent child will participate/ not participate in general education classes, extracurricular and non-academic activities.

Accommodations

- Modifications change *what* a child is taught or expected to do in school. Accommodations change *how* a child learns or accesses the curriculum.
- Listen to audio recordings instead of reading text
- Learn content from audiobooks, movies, videos, and digital media instead of reading print versions
- Work with fewer items per page or line
- Work with text in a larger print size
- Have a “designated reader” — someone who reads test questions aloud to students
- Hear instructions spoken aloud
- Record a lesson, instead of taking notes
- Get class notes from another student
- See an outline of a lesson

Accommodations

- Use a spelling dictionary or digital spellchecker
- Use a word processor to type notes or give answers in class
- Use a calculator or table of “math facts”
- Work or take a test in a different setting, such as a quiet room with few distractions
- Sit where they learn best (for example, near the teacher)
- Use special lighting or acoustics
- Take more time to complete a task or a test
- Have extra time to process spoken information and directions
- Take more time to complete a project
- Take a test in several timed sessions or over several days

Modifications

- **Modifications** are changes to *what* your child is taught or expected to do in school.
- Modifications aren't the same as accommodations, which are changes to *how* your child learns.
- Only students with an IEP or a 504 plan can have modifications.

Common modifications

Assignment modifications

- Complete different homework problems than peers
- Answer different test questions
- Create alternate projects or assignments

Curriculum modifications

- Learn different material (such as continuing to work on multiplication while classmates move on to fractions)
- Get graded or assessed using a different standard than other students
- Be excused from particular projects

LEAST RESTRICTIVE ENVIRONMENT

- Children receiving special education have the right to be educated in the LRE.
- NOT one size fits all.
 - To the extent appropriate, child is to be educated in the general education classroom with supplementary aids and services (aides).
 - In-Class Support classes
 - Pull out resource rooms
 - District self contained classrooms.
 - Out of District placements
 - Self-Contained program in another school district
 - Approved private school for special education
 - County Special Services School
 - Home Instruction
 - Instruction in Hospitals or Institutions

RELATED SERVICES

- Related services are any services that will help a child benefit from his/her educational program.
 - Transportation
 - Speech/Occupational/Physical therapy
 - Counseling
 - Social Work services
 - Tutoring

Behavioral Supports

school district's responsibilities to conduct evaluations and provide services and supports related to your child's behavior

- In evaluating your child (whether initially to determine eligibility for special education services or at later times when new evaluations are necessary), your school district must assess all areas of the suspected disability, **including your child's social and emotional status**, and identify all special education and related service needs even if not commonly linked to the disability category under which your child is classified.
- Both Federal and New Jersey law require that the IEP team consider the use of “positive behavioral interventions and supports” and other strategies to address student behavior that impedes learning. The methods being used in this regard should be documented in a Behavioral Intervention Plan.
- In the same way that an IEP Team would consider a child's language and communication needs, and include appropriate assistive technology devices or services in the child's IEP ... so too must the IEP Team consider and, ... include or revise behavioral supports in the IEP of a child ... exhibiting behavior that impedes his or her learning or that of others.
- Some examples of behavioral services and supports are violence prevention programs, anger management groups, counseling for mental health issues, life skills training, social skills instruction, instruction regarding school expectations, and meetings with a behavioral coach.

IEP Meetings

- At least annually.
- Parent can always request an IEP meeting.
- Parent's can make written requests to initiate or change placement, services or provisions of FAPE.



Important Dates

14 years old – IEP considers transition planning : job training, post secondary education, independent or supported living, and adult services with outside agencies.

16 years old – Transition Planning/Goals and Objectives – Based on each child's needs taking into account strengths, preferences and interests.

18 years old – Rights transfer to child unless parent has obtained legal guardianship or child signs letter transferring rights to parent.

RED FLAGS IEP IS NOT WORKING

- A classified child is repeatedly disciplined.
- Parent asked to pick up child from school early.
- A child is having a lot of behavioral/emotional issues in school, which are not resulting in suspensions but are impeding the child's education.
- The District refuses to evaluate because an evaluation was performed less than 3 years ago.

Parental Rights in Special Education (PRISE)

- Document drafted by NJ DOE providing information concerning procedural protections and administrative rules and procedures.
- Stay Put rights- should the district attempt to change your child's program or placement to one which you do not believe is appropriate, your child may be able to "stay-put" in the current program or placement while the new program or placement is being challenged –
 - Must request mediation or a due process hearing through the New Jersey Department of Education, Office of Special Education Policy and Dispute Resolution (SPDR), within 15 days of the district's written notice of its intent to change your child's program or placement

DIFFERENCES BETWEEN IEP/504 PLAN

IDEA – THE “WHAT”

- Federal Law of Entitlement
- Every Child entitled to a FAPE in the LRE.
- Specialized instruction program (IEP) with modification of actual program or curriculum.
- Disability listing (Autism, ED, SLD, Deaf, OHI)
- Legal entitlement to IEEs.
- Progress reporting required.
- Federal funding.

REHABILITATION ACT/ ADA – THE “HOW”

- Federal Civil Rights Law: This is a federal civil rights law to stop discrimination against people with disabilities.
- Accommodation for accessing standard program or curriculum materials.
- Districts cannot discriminate against a student with a disability if it denies physical or other access to a program or service (such as sports teams or theatre programs.)
- Disabilities such as epilepsy, muscular dystrophy, diabetes, severe allergies or asthma who do not need special education services.

The Commissioner of Education has appointed a Special Education Ombudsman whose role is to serve as a resource to provide information and support to parents, students and educators regarding special education rights and services. You may wish to contact the Special Education Ombudsman as follows:

Phone: (609) 376-9060

Fax: (609) 984-8422

Email: specedombsman@doe.state.nj.us

SOME CHILDREN *ARE* ORCHIDS NOT DANDILIONS

- Many adopted children do perform well in school, learning up to their potentials and getting along well with other pupils.
- Even among those who have difficulties, a majority enjoy going to school and receive counseling and special education services to help them.
- Little question that adopted children are better off being adopted.
- Goal is to empower parents and make sure you have the information in case you need it.

ADVOCACY REFERRALS

- Advocates for Children of New Jersey (ACNJ) at (973) 643-3876.
- Legal Services of New Jersey (LSNJ), whose Education Representation Project serves low income parents throughout the state. To request assistance, call (888) 576-5529 or visit www.lsnj.org
- Statewide Parent Advocacy Network (SPAN) for advice on acting as your own advocate. The telephone number for SPAN is (800) 654-7726 or (973) 642-8100.
- Education Law Center at (973) 624-1815.
- Family Support Organization of child's District of Residence County.
- Disability Rights of New Jersey at (800) 922-7233.

WEBSITES:

www.acnj.org

www.spanadvocacy.org

www.wrightslaw.com

www.cadreworks.org

www.copaa.net

www.understood.com

These websites include resources and information about a wide array of education topics and advocacy strategies and tactics, which may be useful to parents and students. You may also wish to visit the New Jersey Department of Education's website at www.state.nj.us/education, which includes helpful information about special education programs and parent rights in New Jersey, or www.yellowpagesforkids.com, which identifies additional resources within New Jersey.

Additional websites where support, resources, and planning tools are available for the parents of students with disabilities include: Exception Ally at <https://exception-ally.com/>

Disclaimer: The information in this presentation is provided for general informational purposes only. No information contained in this post should be construed as legal advice, nor is it intended to be a substitute for legal counsel on any subject matter. No one should act or refrain from acting on the basis of any information included in, or accessible through, this presentation without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue.

Linda Sweet Marks, Esq.

Tel. (609)497-2732

www.educationaladvocacyresources.com

educationaladvocacyresources@verizon.net

linda@sweetmarkslaw.com

