

EXCEPTIONAL FAMILY MEMBER PROGRAM Legal Support

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EXCEPTIONAL FAMILY MEMBER PROGRAM

- ◆ Purpose – ensure continuum of care for eligible MC family members
- ◆ Mission – improve MC readiness and the quality of life of families that support a member with a disability
- ◆ Enrollment – mandatory (medical and/or educational)
- ◆ Installation EFMP Resources
 - ◆ Program Manager
 - ◆ Family Case Workers
 - ◆ Training, Education and Outreach Specialist
 - ◆ Attorney

EFMP STATISTICS

- ◆ USMC EFMP Enrollment
 - ◆ 4,000 members in 2001
 - ◆ 9,000 members in 2010
 - ◆ 9,964 members as of April 2011
- ◆ USMC Camp Lejeune Enrollment
 - ◆ 1,675 individuals from 1,339 families as of September 2012
 - ◆ Approximately 70% children

EFMP LEGAL SUPPORT

- ◆ Background – need for counsel
 - 2007 Functional Analysis of EFMP
- ◆ Present Status
 - HQMC ERMP Counsel, Chris Carlson
 - EFM Attorneys
 - Camp Lejeune, NC – Vickie O'Brien
 - Camp Pendleton, CA – Karen Taylor

EFMP LEGAL SUPPORT

- ◆ Advise EFMP families on IDEA, state education and related disability laws
- ◆ Advocate and litigate procedural and substantive education and related disability law issues before schools, administrative forums, and courts
- ◆ Provide periodic presentations on special education and related disability law issues to EFMP staff and families
- ◆ Coordinate access to pro bono legal representation as necessary

(See Chapter 4, Marine Corps Order 1754.4B)

EFMP LEGAL SUPPORT

- ◆ Special Notes:
 - ◆ Attorneys are not part of EFMP!
 - ◆ Housed where legal assistance is provided
 - Office space and basic supplies provided by local installation.
 - All other funding comes from HQMC
 - Supervision from HQMC and from local Director of Legal Assistance of MCI EAST
 - ◆ Provide support to Exceptional Family Members and to the Program as needed
 - ◆ Do NOT advise EFMP on any matter- that is the job of MCCS counsel
 - ◆ Provide counsel and representation to individual Exceptional Family Members only

THE LAW – THREE FEDERAL ACTS

- ◆ IDEA – Individuals with Disabilities Education Improvement Act - last reauthorized 2004
- ◆ Section 504 of the Rehabilitation Act of 1973
 - ◆ Broader than IDEA
 - ◆ Applies to any person who
 - (1) has a physical or mental impairment that substantially limits one or more major life activities,
 - (2) has a record of such an impairment, or
 - (3) is regarded as having such an impairment.
- ◆ ADA – The Americans with Disabilities Act, enacted in 1990
- ◆ Section 504 and ADA are civil rights statutes designed to promote equal access to and participation in programs and services.

SECTION 504 - PURPOSE

Section 504 of the Rehabilitation Act of 1973 was designed to “level the playing field,” to ensure full participation by individuals with disabilities.

Section 504 prohibits discrimination on the basis of disability in programs that receive financial assistance from any federal department or agency, including the U.S. Department of Education.

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Individuals with Disabilities Education Improvement Act of 2004

IDEA is intended to ensure that 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 employment and independent living.

See 20 U.S.C. Section 1400(d).

ELIGIBILITY CATEGORIES

1. Autism (AU)
2. Deaf-Blindness (DB)
3. Deafness (DF)
4. Developmental Delay (ages 3-7) (DD)
5. Serious Emotional Disability (ED)
6. Hearing Impairment (HI)
7. Intellectual Disability (ID)
8. Multiple Disabilities (MU)
9. Orthopedic Impairment (OI)
10. Other Health Impairment (OHI)
11. Specific Learning Disability (SLD)
12. Speech or Language Impairment (SI or SLI)
13. Traumatic Brain Injury (TBI)
14. Visual Impairment Including Blindness (VI)

...and who, by reason thereof, needs special education and related services.

BRIEF HISTORY OF IDEA

- ◆ Despite compulsory education laws that had been in place nationwide since 1918 many children with disabilities were routinely excluded from public schools and many remained at home or were institutionalized.
- ◆ The Supreme Court ruled that separate education is not equal education. See *Brown v. Board of Education*, 347 U.S. 483 (1954).
- ◆ In 1975, Congress passed the Education for All Handicapped Children Act which was landmark legislation.
- ◆ The law was renamed the Individuals with Disabilities Education Act (IDEA) in 1990. It resulted in the delivery of services to over six and a half million students and 200,000 pre-schoolers previously denied access to an appropriate education.

SECTION 504 VS. IDEA

- Section 504 is an antidiscrimination law and does not provide any type of funding.
- IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds.



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SECTION 504 VS. IDEA

- All children eligible for special education services under IDEA are also eligible under Section 504; you do not need IEP and 504 plan.
- A child eligible under Section 504 is not necessarily eligible under IDEA.



SECTION 504 VS. IDEA

- Section 504 rights continue into college or the workplace.
- Once a child graduates from high school with a regular diploma or reaches the age of 22, the child's entitlement to rights under IDEA end.

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SPECIAL EDUCATION LAW

Special education cases can “generate as much emotional intensity as a bitterly contested divorce, and are further complicated by a battle between expert witnesses, as in a medical malpractice case.”

Pete Wright, Esq. (From Emotions to Advocacy and Wrightslaw: Special Education Law.)

SPECIAL EDUCATION LAW

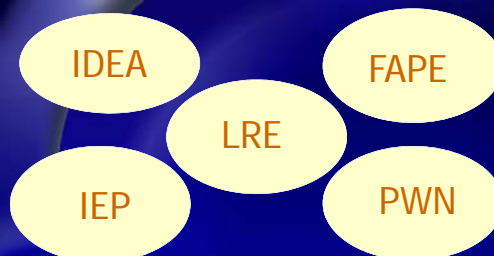
Hostile, adversarial and unbalanced environment:

- ◆ Parents want what is best for child; schools want least expensive and law sets standard of “appropriate.”
- ◆ Parents have little knowledge of law and system; school personnel have extensive training and experience.
- ◆ Parents have few resources.

SPECIAL EDUCATION LAW

My client is a student eligible for SpEd as AU in her IEP. The SD offered her FAPE in a different SD which they stated was the LRE.

SPECIAL EDUCATION LAW



ACRONYMS DEFINED

- ◆ IDEA – Individuals with Disabilities Education Act
- ◆ FAPE – Free Appropriate Public Education
- ◆ IEP – Individualized Education Program
- ◆ LRE – Least Restrictive Environment
- ◆ PWN – Prior Written Notice

FREE APPROPRIATE PUBLIC EDUCATION

The obligation to provide an appropriate education “generates no additional requirement that the services so provided be sufficient to maximize each child’s potential...”

FAPE must confer “some educational benefits” and should be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”

Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982)

LEAST RESTRICTIVE ENVIRONMENT

“To the maximum extent appropriate, children with disabilities...are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs **only** when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

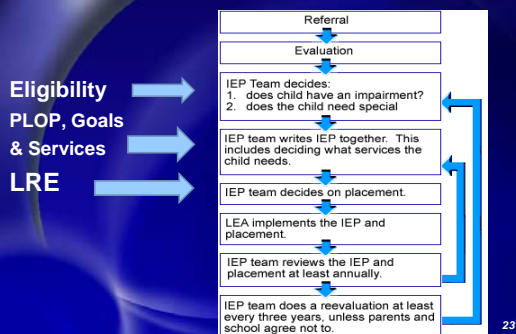
See 20 U.S.C. Section 1412 (a)(5).

INDIVIDUALIZED EDUCATION PROGRAM

- ◆ The IEP sets forth the school district’s offer of FAPE.
- ◆ The IEP contains:
 1. Present levels of academic achievement and functional performance,
 2. Annual goals and description of progress,
 3. Special education and related services to be provided,
 4. Explanation of the extent child will not participate with nondisabled children...

See 20 U.S.C. Section 1414 (d)(1)(A)(i).

SPECIAL EDUCATION PROCESS



MAJOR DUE PROCESS ISSUES

1. Assessment
2. Eligibility
3. FAPE offer
 1. Procedural Violations
 2. Substantive Violations
4. Least Restrictive Environment
5. Methodology and/or Related Services
6. Parental Consent
7. Parent Participation
8. Private Placement
9. Transition
10. Discipline

TOOLS OTHER THAN DUE PROCESS

- ◆ Mediation
 - Available in NC regardless of whether you have filed for Due Process
- ◆ Facilitated IEP team meetings
- ◆ Filing a State Complaint
 - Must allege that the school has violated IDEA, NC state law or NC Policies Governing Services for Children with Disabilities
 - Complaint is investigated by NC Dept. of Public Instruction
 - Can't appeal
- ◆ Complaints to Office of Civil Rights (OCR)

THE LAW – WHERE TO FIND IT

North Carolina Department of Public Instruction
(<http://www.ncpublicschools.org/>)

U.S. Department of Education (<http://idea.ed.gov/>)

Wrightslaw - Law Library (www.wrightslaw.com)

- ◆ Articles
- ◆ Case law
- ◆ IDEA 2004
- ◆ No Child Left Behind
- ◆ McKinney-Vento Homeless
- ◆ FERPA
- ◆ Section 504



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WHAT ELSE DO I DO?

- ◆ Guardianships/Incompetency Petitions- consultation and representation in the State of NC.
 - ◆ Provide Affidavit for physician
 - ◆ Draft petition
 - ◆ File and Serve Documents
 - ◆ Represent family at hearing
 - ◆ Prepare all documents for the Estate File
 - Family leaves court with everything they need.
- ◆ SSI/Medicaid questions
 - ◆ Requests for Reconsideration
 - ◆ Waivers for Overpayments
 - ◆ Explain reasons for denials

WHAT ELSE.....

- ◆ Special Needs Trust drafting
 - ◆ Third party only
- ◆ Accommodations and Accessibility under the ADA
 - ◆ The US Department of Justice has an entire web page dedicated to the ADA. (Excellent resource)
 - (<http://www.ada.gov/>)

QUESTIONS

“My thesis is that the truly successful lawyer finds a good heart more useful than sharp fangs.”

Matthew A. Hodel,
American Lawyer