

# SPECIAL EDUCATION ADVOCACY FOR CHILDREN WITH DISABILITIES IN FOSTER CARE (PART 2)

*Jennifer N. Rosen Valverde, Esq., MSW  
Clinical Professor of Law  
Rutgers, U. School of Law –Newark  
Special Education Clinic*

## Eligibility

### Meeting Participants:

- Parent
- Teacher knowledgeable about student's performance or District's programs
- Student, where appropriate
- At least one CST member who participated in evaluation
- Case manager
- Certified school personnel referring student or school principal/designee (for initial eligibility meeting only)

N.J.A.C. 6A:14-2.3(k)

## Eligibility cont.

Child is eligible for SPED if:

- Has one or more disabilities that meets at least one of 14 classification definitions;
- Disability adversely affects educational performance; AND
- Needs special education and related services

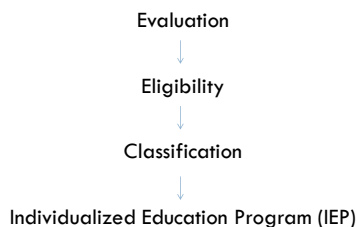
N.J.A.C. 6A:14-3.5

## Special Education Classifications

- |                               |                                      |
|-------------------------------|--------------------------------------|
| □ Auditorily Impaired         | □ Other health Impaired (OHI)        |
| □ Autistic (ASD)              | □ Preschool Disabled (PSD)           |
| □ Cognitively Impaired        | □ Social Maladjustment               |
| □ Communication Impaired (CI) | □ Specific Learning Disability (SLD) |
| □ Emotionally Disturbed (ED)  | □ Traumatic Brain Injury (TBI)       |
| □ Deaf/Blindness              | □ Visually Impaired                  |
| □ Multiply Disabled (MD)      |                                      |
| □ Orthopedically Impaired     |                                      |

N.J.A.C. 6A:14-3.5

## Special Education Process



## Who participates in IEP meeting?

- Parent
- At least one special education teacher and one general education teacher (if applicable)
- At least one CST member
- Case manager
- District representative
- Student (if 18 or as appropriate); and
- Any person parent or district wants to attend who has knowledge or special expertise regarding child

□ N.J.A.C. 6A:14-2.3

## Individualized Education Program

- Individual Education Plan (IEP)
    - Written plan
      - Contract between parent/student (over 18) and school district to provide all services and programs specified in the IEP
      - Developed collaboratively
      - Designed to meet a child's unique needs
      - Lasts for one year
      - Reviewed annually or more often if requested
- N.J.A.C. 6A:14-3.7

## How to Read an IEP

- Background information
- Current levels of academic achievement and functional performance
- Measurable annual goals and short-term objectives tailored to meet unique needs of child
  - Must be individually tailored
  - G&O ≠ Core Curriculum Content Standards
- Statement of accommodations, modifications, programs and services to be provided (includes rate, frequency, duration) N.J.A.C. 6A:14-3.7

## How to Read an IEP cont.

- If needed, IEP also shall include:
- Behavioral plan
  - Extended school day or school year
    - Individualized
    - Continue G&O in IEP
    - Need not be in classroom or school setting
  - Transition plan / Transition services
    - 14+ and 16+ requirements
  - Assistive technology
- N.J.A.C. 6A:14-3.7

## What are Related Services?

- Services that may be required to help a child with a disability to benefit from special education
- Determined by IEP team
  - Set forth in IEP
- 34 C.F.R. 300.34

## Types of Related Services

- |                                     |  |
|-------------------------------------|--|
| □ Transportation                    | □ Counseling services                                    |
| □ Speech and language services      | □ Mobility and orientation services                      |
| □ Audiology services                | □ Medical services for diagnostic or evaluation purposes |
| □ Psychological services            | □ Social skills  |
| □ Physical and occupational therapy | □ Personal aide  |
| □ Recreation services               |  |
- 34 C.F.R. 300.34

## Other Sources of Services

- At DYFS's initiative or by Court Order:
- Medical care
  - Mental health services
  - Behavioral health assistant
- N.J.A.C. 10:122D-2.5
- Transitional/Aging Out services
  - Tutoring
  - Mentor
  - Recreational activities / Summer camp

## Services from DYFS

DYFS has duty to provide services to children to ensure well-being and permanency

NOTE: DYFS services are not always defined – must show connection to child's well-being and individual needs

N.J.A.C. 10:122D-2.8

## Questions to Ask re Services

- Does the child need additional services?
  - From which system can they be accessed?
    - School district
    - DYFS
    - Insurance (Medicaid)
  - From which system should they be accessed?
    - Purpose of service
      - Education-related
      - Family-related
      - other

## Role of DYFS in Eligibility/IEP Process

What role can DYFS play?

- Provide information
  - Confidentiality
- Ask questions / seek clarity
- Voice for child and/or "parent(s)"
- Ensure proper procedures occur
- Educate child and/or "parent(s)"
- Advocate

## Tips on Preparing for an IEP Meeting

- Collect, organize and review child's school records
    - Obtain most recent records/evaluations BEFORE meeting
    - Create list of any questions/concerns regarding records/assessments
  - Ensure proper individuals will be in attendance
  - Know what information you can and cannot share
  - Talk to parent and child (if appropriate) regarding their wants and concerns
  - Know what you are asking for and basis for request
- NEVER BE AFRAID TO ASK QUESTIONS AND GET ANSWERS**

## IEPs – RED FLAGS

- Failure to schedule IEP meeting at time/date convenient for parent
- Improper make-up of IEP team
- IEP outdated (more than one year old)
- IEPs repeat (cut and paste) year after year
- Present levels section outdated or minimal information given
- Goals and objectives not appropriate for child and/or measurable
- Failure to state specific rate, frequency and duration of services

## IEPs – RED FLAGS cont.

IEP must be written for the CHILD and not for the disability

**\*NO COOKIE CUTTER IEPs\***

## Additional IEP Rights of Parents

- Right to tape record meeting as long as give advance written notice
- Right to meet via telephone or videoconference
- Right to be EQUAL member of IEP team
- Right to consider IEP prior to signing consent
- Right to have IEP reviewed and updated annually, or more often if needed
- Right to request IEP meeting at any time if have concerns about child's education

N.J.A.C. 6A:14-2.3, 3.7

## Final Words on IEPs - BEWARE

- Parent has right to refuse consent to IEP
  - If parent refuses consent to *initial* IEP – no SPED provided and no SPED protections available
  - Parent may refuse some services and agree to others
- If parent disagrees with annual review IEP, IEP GOES INTO EFFECT IN 15 DAYS UNLESS parent files for due process within 15 days
  - Invokes "stay-put"

## The Chicken or the Egg

### WHICH COMES FIRST FOR SPECIAL EDUCATION PURPOSES?

- IEP?
- Program/placement?

**IEP**

## Special Education Programs & LRE

- Programs may include:
  - an aide in the classroom
  - special services - e.g. speech and language
  - special classes – e.g. resource room
  - assistive devices – e.g. tape recorder
  - placement in specialized private/public day school
  - placement in residential program
- Environment must be the *least restrictive* in which a child's educational needs are appropriately met

20 U.S.C. 1412(a)(5); N.J.A.C. 6A:14-4.2

## Other Sources of Program/Placement

- DYFS placement can influence school placement and vice versa
- Residential DYFS placement can result in child going to school on premises even if not necessary or appropriate (N.J.A.C. 10:127-6.7(f))
  - Inappropriate school program/placement can result in DYFS involvement

## Questions to Ask re Programs/Placements

- What type of program/placement does child need?
  - For educational purposes?
  - For other purposes?
- If child placed in residential program or group home by DYFS, must the child attend the affiliated school?
- When should a child in out-of-home placement be required to change schools?

## Reevaluation

- Multidisciplinary reevaluation required for all classified students every three years
    - May be sooner if parent or teacher so requests
    - Must be at least one year since last evaluation unless district and parent otherwise agree
  - 60-day timeline
  - **BEWARE**
    - Request to waive reevaluation
    - Reevaluation without assessments
- N.J.A.C. 6A:14-3.8

## School District Transfers and IEPs

If child transferring between districts has IEP:

- New district CST must conduct immediate review of evaluation information and IEP and
- Without delay provide *comparable* program until previous IEP adopted or new IEP implemented

N.J.A.C. 6A:14-4.1

## School District Transfers & IEPs cont.

In-state transfer:

- If parent and district agree, prior IEP implemented
- If parent and district disagree, district must conduct all needed assessments and, within 30 days of enrollment, develop and implement new IEP

Out-of-state transfer:

- District has 30 days to assess, develop and implement new IEP

N.J.A.C. 6A:14-4.1

## Responsibilities - School District

To educate the child in comparable program (if no school records, duty to educate child only) while awaiting records, conducting assessments and making any changes to IEP

## Case Study of Nathan

Nathan is an 8 y.o. boy with severe learning , language and behavioral problems. He experienced extreme physical and sexual abuse at a very young age. His pre-adoptive mother is active in seeking assistance with his educational programming. However, the Judge is threatening to remove Nathan from her care and place him in a residential facility unless the school situation improves because he is routinely suspended with calls to crisis made.

## What can DYFS do?

- Advocate with school district to provide Nathan with proper IEP, services and private school for students with severe emotional and behavioral problems
- Advocate for pre-adoptive parent in family court by making statement to the judge re her educational advocacy efforts for Nathan and giving update on status of his programming
- Obtain additional necessary and beneficial services to stabilize child and placement
- Ensure school and home stability

## Case Study of Nathan cont.

Nathan today:

- Attends private school for students with severe emotional, behavioral and learning needs where he is now making progress
- Receives additional tutoring and mental health services through DYFS
- Adoption finalized
- School and home stability achieved

## Special Education Checklist

- Is the child attending school?
  - If yes where? Is s/he attending regularly?
  - If not, has the child been registered with all necessary documents for attendance?
- If the child has changed schools, have the school records been transferred to the new school?
- How is the child's school performance? Is s/he making progress?
- Are there concerns about the child's learning or about behaviors or other disabilities that affect the child's ability to learn?
- Has the child ever been referred for a special education evaluation?

## Special Education Checklist cont.

- Were evaluations conducted?
  - Are additional or independent evaluations needed?
  - If yes, from which system should they be accessed?
- Was the child found eligible (classified)?
  - If not, is the child eligible for Section 504 or I&RS services?
- Does the child have a current Individualized Education Plan (IEP)? [or Section 504 or I&RS Plan]
- Is the IEP appropriate? Is it being implemented?
- Does the child have a parent or surrogate parent to consent and make special education decisions?

## Relevant Laws

- Individuals with Disabilities Education Improvement Act, 20 U.S.C. 1400 et seq.
- 34 C.F.R. 300 et seq.
- N.J.A.C. 6A:14-1.1 et seq.

## Collaboration is Key!

