

# Advocating for Your Child with A Learning Difference

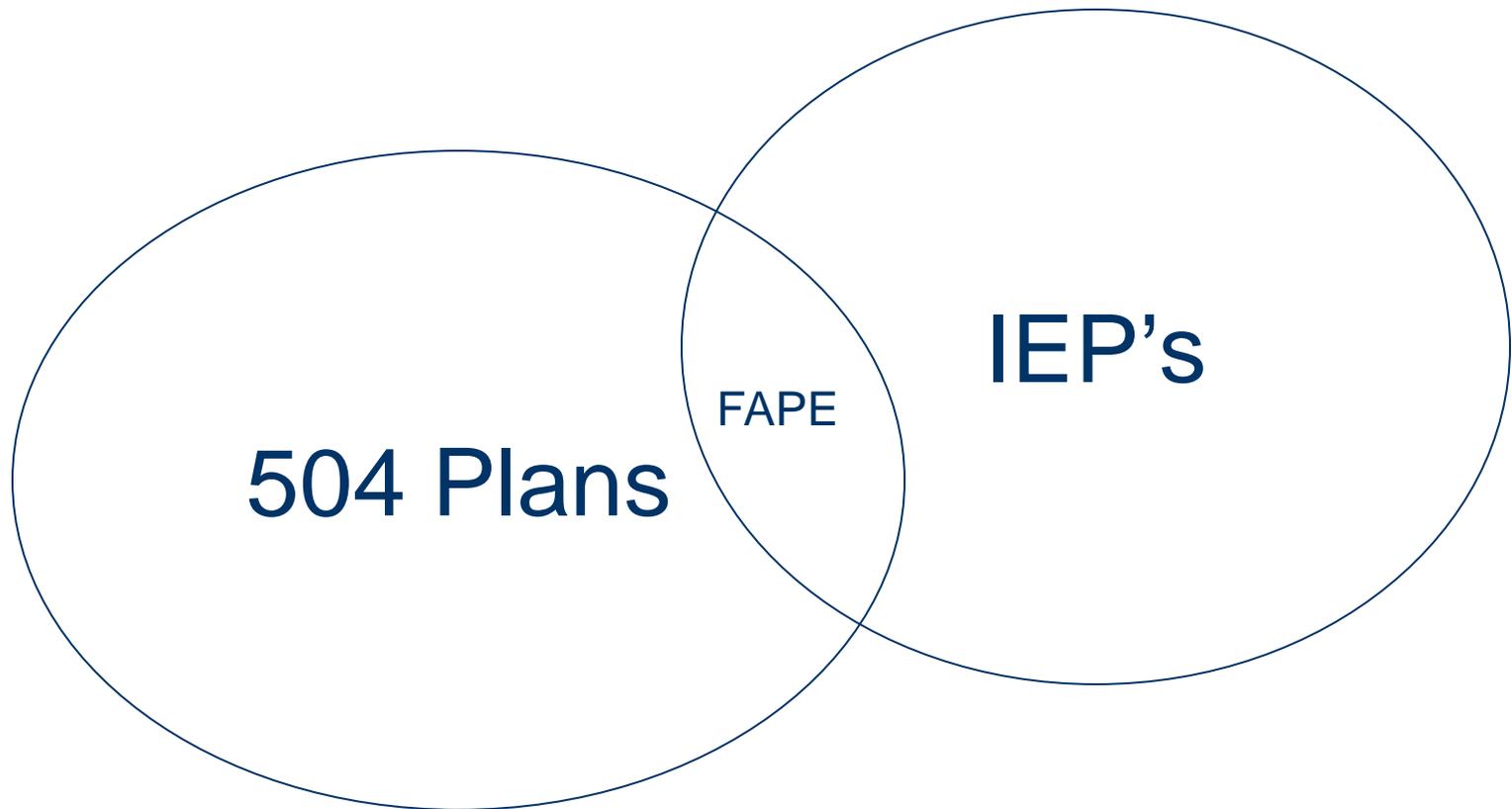
IEP's, 504's and RTI

Rachael Barron  
Non Attorney Advocate  
Zimring Law Firm

# Definitions and Differences

- Special Education –
  - Eligibility and IEP's (Individual Education Plans)
- 504 – Section 504 of the Rehabilitation Act of the Americans with Disabilities (ADA)
  - Eligibility and 504 plans
- RTI – Response to Intervention
- Meetings and Participants
- Participation and Preparation

# Free and Appropriate Public Education FAPE



# FAPE

- Free appropriate public education or FAPE means special education and related services that –
  - (a) Are provided at public expense, under public supervision and direction, and without charge;
  - (b) Meet the standards of the SEA, including the requirements of this part;
  - (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and,
  - (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sections 300.320 through 300.324.

34 C.F.R. Section 300.17 (2006)

# FAPE & ELIGIBILITY

(c) Children advancing from grade to grade.

(1) Each state must ensure that FAPE is available to any individual child with a disability who needs special education and related services, **even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.**

34 C.F.R. Section 300.101(c) (2006)

# Special Education – Eligibility

What Qualifies a Student for Special Education?

- The Eligibility Process

# Process

## Information to Consider Eligibility

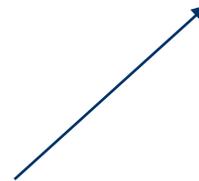
- Evaluations
- RTI/SST
- Data
- Work Samples



Categories of Eligibility



Eligibility Meeting & Report



Special Education Services



IEP Meeting,  
IEP document

# Evaluations – Why and How to use them effectively

- Identify a learning difference/disability – (Diagnosis)
- Identify a students learning profile (strengths and weaknesses and how to teach)
- Interprets the scores and explains any discrepancies
- Creates a baseline of academic achievement
- Recommend specific, research based interventions appropriate to address learning disability
- Recommend appropriate accommodations for your child

# Categories of Eligibility

- Other Health Impaired (OHI)
- Specific Learning Disability (SLD)
- Speech and Language Impairment

# Eligibility – Categories

- Other Health Impaired – Limited Strength vitality or alertness including heightened alertness to environmental stimuli, that results in limited alertness in the educational environment that,
  - Is due to chronic or acute health problems such as asthma, **attention deficit disorder, or attention deficit hyperactivity disorder**, diabetes, epilepsy or heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette Syndrome **and**
  - **Adversely affects a child's educational performance.**  
[34 CFS SS300.9(c)(9)].

# Other Health Impaired - Continued

- In some cases, heightened awareness to environmental stimulus results in ***difficulties starting, staying on and completing tasks; making transitions between tasks; interacting with others; following directions; providing work consistently; and organizing multi-step tasks.***

# Specific Learning Disability

- Specific Learning Disability is defined as ***a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations.*** The term includes such conditions as perceptual disabilities, brain injury, ***minimal brain dysfunction, dyslexia*** and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing or motor disabilities, intellectual disabilities, emotional or behavior disorders, environmental, cultural or economic disadvantage. [34 C.F.R. ss300.8 (c)(10)]

# Specific Learning Disability – cont'd

- The child with a specific learning disability has **one or more serious academic deficiencies and does not achieve adequately according to age to meet State approved grade-level standards. These achievement deficiencies must be directly related to pervasive processing deficit and to the child's response to scientific, research-based interventions.** The nature of the deficit(s), is such that classroom **performance is not correctable without specialized techniques** that are fundamentally different from those provided by general education teachers, basic reading/tutorial approaches, or other compensatory programs. This is clearly **documented by the child's response to intervention** as demonstrated by a review of progress monitoring available in general education and student support team (SST) intervention plans as supported by work

# Individual Education Plan (IEP)

- Refers to process, document, and meeting
  - IEP Process – Parent participates in writing a “agreement” or IEP that clearly defines and specifically outlines a student’s test results, strengths, weakness, goals student should achieve, targeting areas of weakness, specific types of services and supports to be given to student to achieve those goals, and a means to monitor progress.
  - Agreement is enforceable and must be implemented
  - Interim IEP – can secure services in the interim until school completes their evaluations to determine if they would have different opinion.

# 300.26 - Special education

- (a) General. (1) ***As used in this part, the term special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education.***

(2) The term includes each of the following, if it meets the requirements of paragraph (a)(1) of this section: (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (ii) Travel training; and (iii) Vocational education.
- (b) Individual terms defined. The terms in this definition are defined as follows: (1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
- (3) ***Specially-designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.***

(Authority: 20 U.S.C. 1401(25))

Read more: <http://cfr.vlex.com/vid/300-special-education-19761307#ixzz1AeHc0Ydb>

# IEP - Document

- IEP Document – agreement jointly developed by the team to include
  - Present levels of Academic Achievement and Functional Performance – evaluation results, achievement results in school,
  - Consideration of Special Factors (assistive technology eg: auditory books)
  - Measurable Annual Goals
  - Student Supports – Accommodations – Instructional and Testing purposes
  - Special Ed Support and Services – inside General Education, inside Special Education (where, when, how long by whom and what type)
  - Extended School Year
  - Parent Participation in Process
  - Parental Concerns

# IEP - Meeting

- IEP Team Meeting –
  - There are specific rights and responsibilities parents have in meetings, including participation, notice - including all attendees and right to excusals, requests for evaluations or independent evaluations, stating concerns and objections, right to record the meeting, right to hold the meeting, review and explanation of parents rights and/or procedural safeguards.
  - IEP and services must be in place within 30 days of eligibility.
  - Evaluations by school system and meeting to consider must occur within 60 days of consent – sign consent at meetings, date **and obtain copy**

# IEP Team Meeting Notice

(b) Information provided to parents.

(1) The notice required under paragraph (1)(1) of this section must –

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and,

...

34 C.F.R. Section 300.321(b) (2006)

# Definition of Consent

Consent means that –

- (a) The parent has been **fully informed of all information relevant to the activity for which consent is sought**, in his or her native language, or through another mode of communication . . . .
  
- (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

34 C.F.R. Section 300.9(a) and (c)(1)(2008)

# Process

Information to Consider Eligibility

- Evaluations
- RTI/SST
- Data
- Work Samples



Categories of Eligibility



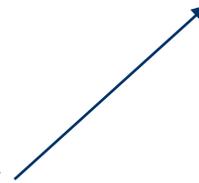
Eligibility Meeting & Report



Special Education Services

IEP ↓ Meeting, IEP document

504 Eligibility → 504 Meeting and Plan



## 504 – Rehabilitation Act of 1973 under the Americans with Disabilities Act aka Section 504

- Addresses the rights of individuals with disabilities and was implemented to eliminate discrimination and to enable access to any program receiving federal assistance.
  - For our purposes within education – preschool, elementary, middle, secondary, vocational and postsecondary programs.
  - Includes accessibility to programs and services, building accessibility and equitable access to educational instruction and activities.
  - ADA states: “...no qualified individual with a disability shall, because of a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of services, programs or activities of a public entity or be subjected to discrimination by any public entity.” [28CFR 35.149]

## 504 – Rehabilitation Act of 1973 under the Americans with Disabilities Act aka Section 504

- Eligibility - A person is considered eligible under the ADA if the identified disability **substantially limits one or more of an individuals' major life activities**. As the Georgia State Department of Education puts it:
- “The 504 regulations should be reviewed to document the **presence of a qualifying disability, the effect on a major life activity, and the impact on the student's education**. All three areas must be documented.” (emphasis added)

## 504 – Rehabilitation Act of 1973 under the Americans with Disabilities Act aka Section 504

- For our purposes, that would mean being a successful student and could apply to academic classes, participation in clubs and extra-curricular activities.
- Determining placement and services under a 504 (these procedures should be documented):
  - Data gathered from a variety of sources, Aptitude and Achievement Tests, Teacher Recommendations, Social or Cultural Background, Adaptive Behavior,
  - Evaluations – Private or by the school
  - Placement and service decisions made by a group of people, including those knowledgeable about the student.

## 504 – Rehabilitation Act of 1973 under the Americans with Disabilities Act aka Section 504

- SST Team/504 Teams – Serve this function
  - SST meeting and 504 meeting can be one and the same,
  - Placement in regular education environment unless it is proven that the student cannot be educated satisfactorily in a regular environment with reasonable accommodations.
  - Ensure that students with disabilities under Section 504 can participate in non-academic and extracurricular activities ie: meals, recess periods and other services and activities with non-disabled peers.
  - Development and Implementation of Accommodations

# 504 – Rehabilitation Act of 1973 under the Americans with Disabilities Act aka Section 504

- The 504 Plan – What to include?
  - Clearly outlines the impairment or disability, the affects of such impairment (medical, educational, or otherwise).
  - Clearly document what accommodations and modifications that will be needed for these students to have an opportunity to perform at the same level as their peers;
  - Communicate to teachers a what strategies and practices will be used to ensure that a student’s learning needs are met;
  - Detail any specialized learning materials or equipment needed for child’s instruction of physical needs.
  - Explain any class work or homework modifications the child will receive;
  - List any additional support services the child may need to benefit from education;
  - Explain any grading or assessment changes the student will receive;

504 is about access...

# Response to Intervention (RTI)

- RTI – Response to Intervention/SST what does this mean?
  - RTI is generally understood to **be an evidence-based approach to providing early intervention to struggling learners in general education and special education settings.** It can include:
    - Regular progress monitoring;
    - The **implementation of scientifically based research and interventions;**
    - Differentiated instruction.

# Who are these people in my meetings?

Public Schools – Organizational Chart - Who are all these people in my meeting? Who is in charge?

## SST/504/RTI Teams –

- Teacher(s)
- Psychologist
- Social Worker (at beginning of process)
- SST/504 Administrator
- Administrator (Assistant Principal/Principal)
- District level support person (SST/504 specialty)
- School Nurse/Health Aide

# Process

## Evaluation (and RTI)

### Eligibility

IEP

504 Plan

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• Results of evaluation – actual scores</li><li>• Strengths</li><li>• Weaknesses</li><li>• Special Factors</li></ul> | <ul style="list-style-type: none"><li>• Accommodations</li><li>• Measurable Goals</li><li>• Quantifiable Services &amp; Interventions</li><li>• Progress Monitoring (How, When, Who)</li></ul> |
|--|--|

ONGOING PROGRESS MONITORING

# Meeting Management

- Prepare –
  - come to the meeting with your own ideas and information written in advance
  - Develop questions to be asked of the team (who, what, where, when, why, how, how much, why not)
  - Request their evaluations, documents and drafts in advance for time to review, develop questions
- Do not attend alone – bring a friend
- Record the meeting
- Take all copies of all documents with you when you leave.

# Who are these people in my meetings?

## IEP/Eligibility Teams –

- Teacher
- Psychologist
- Social Worker
- STT/504 Administrator
- Administrator (Assistant Principal/Principal)
- District level Special Education Coordinator
- District level Special Education liason or may now be called Lead Special Ed teacher
- Special Education Teacher (case manager or one of your child's teachers)
- School Nurse/Health Aide

# Who are these people in my meetings?

## Differences in Middle School and Elementary School attendees

- Multiple core academic instructors vs. multiple teachers involving specials.
- How will all staff be apprised of your child's needs and implement the plan?
- How should we progress monitor?

# How do I participate in this process?

- Communication with your school team –
  - Be knowledgeable, open and up front about your child's needs;
  - Ask to have processes defined and team members identified for you, in writing if needed (this is project management 101);
  - Request meetings prior to school beginning so that you and your child can be prepared;
  - Come to meetings prepared and with specifics.

# How do I participate in this process?

- Meeting Preparation –
  - Work with your specialists (tutors, psychologist, etc.) to define exactly what your child needs prior to meeting with the school. Often you can have the most leverage at your first meeting;
  - Have requirements written and ready to be distributed in a meeting regarding instruction and accommodations;
  - Have a draft Section 504 or Individual Education Plan written to be distributed to the team;
  - Prepare a teacher information packet;
  - Have the updated documents, report and/or letters from your professionals prepared and ready to be distributed in meeting from psychologist, OT, SLP etc.;
  - ***Ask for all documents (including drafts) from school in advance*** so that you can prepare and have access to the same records as the school team members.

# How do I participate in this process?

- Document Organization – Notebook
  - IEP/504/SST plans, meeting notes
  - Progress Monitoring Documents \*\*\*
  - Evaluations
    - Psychological
    - Speech, OT, etc.
  - Notices and Consents
  - Communication with School District
  - Work samples

# How do I participate in this process?

- What if you are told...?
  - “no...”
  - “we need to get to know your child first...”
  - “we don’t do things that way here”
  - “we’ll see if he/she needs it”
  - “we’ll do that anyway, no need for a document.”

# How do I participate in this process?

- What if you are told...?
  - “no...”
  - “we need to get to know your child first...”
  - “we don’t do things that way here”
  - “we’ll see if he/she needs it”
  - “we’ll do that anyway, no need for a document.”
- Answer –
  - Why or why not? Who, what, where when, and how much???

# Advocating for Your Child with A Learning Difference

IEP's, 504's and RTI

Rachael Barron  
Non Attorney Advocate  
Zimring Law Firm