

Survival Skills Kit: For Every Conflict, There is a Solution



- **Family Driven**
- **Non-Profit 501(c)3**

Family Driven: What makes FND unique is that the majority of our Board of Directors, all of our Management Staff and all of our Program Staff are parents or family members of persons with disabilities.

When family members call FND, they not only receive the expertise and knowledge of a professional, but also the compassion and empathy of someone who has walked (and continues to walk) in their shoes.

We do NOT:

Act As Attorneys

We DO:

- ♥ Provide Support
- ♥ Provide Information
- ♥ Help Identify Options

Act as Attorneys: We don't represent families, and we don't give legal advice.

Support: FND has been the statewide Parent to Parent since 1985, and the value of families getting support by networking with other families is built into everything we do. We often get calls from parents or other family members who just need to talk – and we're there to listen.

Information: Altogether, FND logs over 15,000 calls a year, most of them from parents, family members, or professionals who are looking for information. We have a large database of resources in Florida, and a library filled with disability-related information. Regardless of the question, our staff will go the extra mile to find an answer.

Identify Options: Our philosophy at FND is that it is not our role to tell families what to do. It is our role, however, to inform families of what their options are – and encourage them to make their own decisions about what is right for their family.

Lack of Communication Results In....

Unclear Understanding of:

- The law and process
- Roles of team members
- Paperwork and Procedures

Sometimes parents and educators find themselves in conflict with each other over issues related to the education of a child with a disability.

There are many possible causes of this type of conflict.

Sometimes parents are unsure of their roles and the roles of the other team members at the table and may be confused by the procedures and paperwork.

Often, simple misunderstandings and disagreements can be solved by overcoming communication barriers.

Barriers to Communication

- 1. Negative History**
- 2. Language**
- 3. Emotional Responses**
- 4. Jargon and Alphabet Soup**
- 5. Fear or Intimidation**

Negative history or the participants' past experiences can have a direct effect on communication. Often, because the team is trying to identify what the child needs, there is much discussion about what the child cannot do.

Hearing these negative statements can be difficult for the child's parents.

Both the education and disability worlds are filled with acronyms and words that may be unfamiliar. It's common for parents to feel overwhelmed by the sheer number of professionals sitting at the table with them.

You can not assume that everyone has full understanding of the language both linguistically and in levels of vocabulary.

Collaborative Communication

encourages both parents and professionals to. . .

- **express honest feelings**
- **promote mutual respect**
- **allow both discussion and disagreement**
- **respect cultural differences**
- **remain child-focused**

When people are not giving open and honest input, others are left to draw their own conclusions – which may be far from the truth, and can result in unnecessary conflict. Mutual respect occurs when everyone at the table acknowledges that each and every person has critical information to share.

When individuals feel respected and valued, discussion and even disagreement become possible without unresolved conflict.

When parents and educators communicate collaboratively, they can develop a partnership that is focused on what is best for the child.

Conflict

IDEIA/504

- **Two different laws.**
- **Two different procedures**

There are two laws and procedural safeguards for settling disagreements. Depending upon the issue, the procedures are different.

Free Appropriate Public Education

Section 504 defines FAPE as:

“regular or special education and related aids and services that ... are designed”

“to meet individual educational needs of handicapped persons **as adequately as the needs of non-handicapped persons are met.”**

For example: If a child without a disability has access to an after school program, then a child with a disability will have the same access.

If a child without a disability has access to class field trips, then a child with a disability will have the same access.

Simply put, if a child without a disability has access to an educational day, then child with a disability can not be denied the same access with the use of supports to an equal educational day.

Section 504 is a broader civil rights based law that extends beyond the classroom and includes all school access.

Free Appropriate Public Education

IDEIA defines FAPE as:

“special education and related services ...

“provided at public expense, under public supervision and direction and without charge ... in conformity with the individualized education program ...”

IDEA focuses on special education (which Florida refers to as “specially designed instruction”) with related services that meets the unique needs of the child and prepares the child for employment and independent living.

FAPE under IDEA is based on the benefit of specially designed instruction as outlined in the IEP to achieve the goals and objectives.

** IEP can incorporate 504 requirements*

Which Law?

- **IDEIA S P & State Rules**
- or
- **504 Procedural Manual**

The very first step, regardless of which law the issue might fall under, is to be certain that the issue is valid.

To seek clarification as to which law address the conflict, parents may consult the 504 Procedural Manual and the local Special Programs & Procedures for Exceptional Students (SP&P) manual or the Florida State Rules that address IDEA.

Both 504 and IDEA have Procedural Safeguards, or specific rules that govern complaints or grievances. It is important, before moving to a formal process, to be certain that a violation did occur and that you are choosing the correct law to address the issues.

504 Procedural Safeguards

Evaluation Informed of Proposed Actions Records Native Language Reevaluations

Under Section 504, Procedural Safeguards include:

- The right to have an evaluation that draws on information from a variety of sources
- The right to be informed of any proposed actions related to evaluation, eligibility, and plan for services
- An opportunity for the parent or guardian to examine all relevant records
- The right to receive all information in the parent's/guardian's native language and primary mode of communication
- The right to periodic reevaluations and an evaluation before any significant change in program/service modifications (if the child is receiving special education or related services)

504 Procedural Safeguards

Grievance

Impartial hearing

Counsel

Appeal

(Continued)

- The right to file a grievance with the school district over an alleged violation of Section 504 regulations
- The right to an impartial hearing if there is disagreement with the school district's proposed action
- The right to be represented by counsel in the impartial hearing process
- The right to appeal the impartial hearing officer's decision

* These procedures are outlined in the 504 procedural manual maintained by the school district

Conflict Resolution Under 504

- Meet with the teacher /Principal
- 504 team meeting
- Request meeting with the district 504
- Regional complaint
- Federal appeal

Whenever possible, it is best to resolve conflict informally.

Often an issue, misunderstanding, or disagreement can be resolved during an informal meeting between the parents and the teacher.

The principal of the school is responsible for the staff and procedures followed within his or her school. If resolution is not reached during an informal meeting with the teacher, reconvene the 504 team to include the principal.

If resolution is not met, request a meeting with the district 504 compliance rep. to address your concerns.

If resolution is not met, the next step may be to request a district level 504 hearing—*the procedures to request a hearing are outlined in your districts 504 manual*

(continued)

Conflict Resolution Under 504

- **Meet with the teacher /Principal**
- **504 team meeting**
- **Request meeting with the district 504**
- **Regional complaint**
- **Federal appeal**

Beyond the right to a hearing guaranteed in 504's Procedural Safeguards, a complaint may also be filed with the Office for Civil Rights itself (usually the regional office) which, in addition to technical assistance activities, conducts compliance reviews and complaint investigations. The scope of Section 504 complaints is very broad. It may be filed by any individual or organization and it may address individual student, class, or systemic issues. The complaint must be filed within 180 days of the alleged discriminatory action, although the Regional Director has the authority to waive the time limit in some circumstances.

The OCR will conduct an investigation of the complaint through data collection and written responses to questions, and may conduct an on site review. An informal process known as Early Complaint Resolution (ECR) is available in individual, but not class, complaints. The OCR will issue a Letter of Finding, either with a "no violation" conclusion or identifying violations and specifying corrective actions. Failure to implement the requested corrective actions may lead to an administrative hearing, with the possibility that Federal education funds may be terminated.

IDEIA Procedural Safeguards

**Free Appropriate Public Education
Evaluation
Prior Notice
Parental Consent and Involvement
Records
Individualized Education Program/Plan
Mediation and Due Process Procedures**

Procedural Safeguards are the provisions in IDEIA which are designed to protect the **rights** of parents and their child with a disability, as well as to give families and schools a mechanism for resolving disputes.

Evaluation IS a team effort

IDEA provides the right to an appropriate evaluation. An evaluation must be multidisciplinary. Evaluation is the foundation of the Individualized Education Program/Plan, and specialized instruction and aids cannot start without the completion of the evaluation.

If a parent disagrees with an evaluation IDEA also provides the parent with the right to an independent educational evaluation at no cost to parents. The parent does not have to disclose the reason(s) why they disagree.

Once a parent requests an IEE, the school district must – without unnecessary delay - either initiate a hearing to show that it's evaluation is appropriate or provide the IEE at public expense. If a hearing determines that the school/district's evaluation was appropriate, the parent still has the right to an IEE, but must pay for it.

Prior Written Notice

- **Identification**
- **Evaluation**
- **Placement for services**
- **Changes in services**
- **Action proposed or refused**
- **Native language**

Prior written notice enables parents to exercise their right to be informed of all discussion, testing, initiations of, and/or the ending of any educational service. There are specific times when parents must be informed by prior notice.

- 1: Identification – when the district suspects a child may have a disability
- 2: Evaluation – when the district wants to provide an evaluation
- 3: Before any decision is made regarding placement.
- 4: Before any decision is made about a change in services.
- 5: If a parent requests a service, and the district refuses to provide the service, the district must provide written notice with an explanation of why the service is being refused. If the district proposes an action, the parent must be notified in writing of what is being proposed.
- 6: All written notice must be provided in a method of language that the parent understands.

Prior Notice must include

- **Explanation of action**
- **Options considered**
- **Relevant factors**
- **Description of evaluation/tests**
- **Explanation of rights**
- **Sources to contact**

A description and explanation of the action proposed or refused by the school. Example: The school district is proposing a change in placement. The district needs to provide an explanation of why a change of placement is being proposed and describe the evaluation procedure, tests, or reports that were used to make a decision to change placement. The district has to provide notice of what options were considered and why the other options were not selected.

Parents must be provided a description of all evaluations, tests and reports the school district will use as the basis for making any decisions about their children.

Parents must be provided with an explanation of their rights, in the language they understand.

Parents must be provided with sources to contact to get assistance in helping them understand their rights under IDEA.

Parental Consent and Involvement

- Evaluation
- Placement
- Re-evaluation

A parent's written consent is necessary before the school district can:

- 1: Test a child to determine eligibility for placement in an exceptional student education program.
- 2: Place a child in a program for the first time.
- 3: Re-evaluate a child.

Parent consent is NOT required prior to a school district reviewing existing data as part of an evaluation or re-evaluation.

If a parent does not respond to a school district request for consent to a re-evaluation, the district may go ahead and conduct the evaluation **IF** it can show that it made reasonable efforts to obtain the consent.

Parent consent must be "informed consent". This means that a parent must fully understand what he or she is giving consent to.

Records

- **Documentation used to determine eligibility**
- **A list of types of educational records**
- **Inspect and review**
- **Explanation of records**
- **Receive copies**
- **Representative Review**

Parents have the right to:

- Receive a copy of the evaluation report and an explanation of other documentation used to determine their child's eligibility.
- Receive, upon request, a list of types of educational records kept on their child, and informed of how they can gain access to them.
- Inspect and review all of their child's records.

The school must comply with the request:

- without unnecessary delay
- before an IEP meeting, due process hearing, or any hearing related to the child's placement in an interim alternative educational setting, and
- within 30 days.

Records (continued)

- **Documentation used to determine eligibility**
 - **A list of types of educational records**
 - **Inspect and review**
 - **Explanation of records**
 - **Receive copies**
 - **Representative Review**
-
- Have someone from the school district explain or interpret any item in the records.
 - Receive copies of the records. The school district may charge a fee for copies, if a charge does not prevent you from reviewing the records.
 - Have a representative inspect and review the records.
-
- Parents do NOT have the right to inspect copies of: a teacher's personal notes that are shared only with a substitute teacher.
 - Other types of documentation parents are allowed to review are anecdotal notes and emails.

Records FERPA

The School District is responsible for protecting the confidentiality of your child's records.

- **Releasing information**
- **Confidentiality of other children**
- **Who has reviewed**

The school district must protect a child's educational records.

1: The district can only release information with your consent.

2: The district can withhold documentation that is in a child's record ONLY if that record contains information on more than one child.

3: The district must keep a record/list of anyone who has had access to a child's records.

Individual Education Program

“....ensure that one or both parents of a child with a disability are afforded the opportunity to participate....”

- Notification
- Scheduling
- Methods of participation
- Native Language

Parents have the right to:

- 1: Notification: to be notified of the meeting in advance so that they may make arrangements to participate.
- 2: Scheduling: to have the meeting scheduled at a mutually agreed upon time
- 3: Methods of participation: If neither parent can attend, the IEP Team shall use other methods to ensure participation – such as conference calling.
- 4: Native Language: The school district must ensure that the parent understands the proceedings at the meeting, including making arrangements for an interpreter (sign language or other language).

Mediation

May be used to resolve disagreements relating to the identification, evaluation, educational placement or the provision of a free appropriate public education to your child, or whenever a due process hearing is requested.

Mediation is an informal way to resolve disagreements between the parent and the district. The Department of Education makes mediation available at no cost to you or the school district.

Mediation

Mutual agreement

Qualified impartial person

May be requested at any time

Timely manner

Confidential

Deny or delay

- 1: Mediation is voluntary for both parties
- 2: The mediator has to be qualified and impartial. The mediator has to have been trained in effective mediation techniques.
- 3: Mediation may be requested at any time by either party.
- 4: Shall be scheduled in a timely manner and shall be held at a convenient location to both parties.
- 5: Is confidential so that discussions that occur during mediation may not be used as evidence in a due process hearing or civil proceeding.
- 6: Shall not be used to deny or delay the right to a due process hearing, or to deny other rights afforded to parents including a state complaint.

State Complaint

If a parent believes that the school district has violated any of the requirements of the Individuals with Disabilities Education Act, he or she may file a formal written complaint.

There are two ways to file a state complaint:

1. A written complaint with the superintendent (Local Education Complaint)
2. A written complaint with the Florida Department of Education (State Agency Complaint)

A written complaint must include:

- A statement of how a requirement of IDEA has not been met
- Explanation of the facts on which the statement is based
- A final decision must be made within 60 days of the time the complaint is received by the Department of Education.

Due Process

Should be considered only when all else has failed or a child is in danger.

Never on procedural violations

To prevail in due process there has to be a situation that results in a loss of FAPE

Example: failure to evaluate an area necessary for a child to benefit from specially designed instruction.

Written request = letter to superintendent

Should have legal representation before requesting due process hearing

Would have to be a denial of FAPE.

Due Process Hearing

- to be represented by counsel
- to present evidence
- to have child attend
- to examine and compel witnesses
- to determine open or closed hearing
- to have copies of final orders
- to be informed of free or low cost legal support

**45 days to complete the Due
Process hearing and arrive at a final
order**

Both parties have 30 days to appeal the final order

After the final decision, both parties have 30 days to appeal. During the 30 days, the final order is binding.

Stay Put

**Your child may remain in his or her present
education
placement during due
process hearing
and/or appeal**

During the time that any administrative or judicial proceedings are taking place, a child is to remain in his or her present educational placement unless the parents and school district agree otherwise. If an Administrative Law Judge agrees with the parents that a change of placement is appropriate, the new placement must be provided during the appeal process.

Attorneys' Fees

Only a US District or Circuit Court may award fees

Not awarded for IEP participation

Not awarded for mediation

Court may reduce fees

Only a district court of the United States or a state circuit court may award reasonable attorney's fees as part of the cost to the parent of a child with a disability. A parent who prevails in a due process must seek attorney's fees in a further proceeding in a federal district court or state circuit court.

The court may refuse a request for fees for services if the district has made a written offer of settlement within appropriate timelines, the parent has refused the settlement, and the court decided a settlement not more favorable to the parent. The attorney fees must be paid if parent was "substantially justified" in rejecting the offer. Attorney fees are not awarded for IEP planning meetings (unless ordered by judicial action or result of a due process hearing). Fees are not paid for mediation work prior to a due process

Court may reduce fees:

If the parent unreasonably prolonged the time it took to resolve the dispute,

Attorney's hourly rate or time spent was excessive, or

There was a failure to provide the district with information as required under procedural safeguards.

Attorney's fees cannot be reduced if the State or school district unreasonably delayed resolution or violated the requirement to disclose information.

Options for Private School Placement.

Parents Places – Parent Pays
School Places – School Pays
Court Orders – School Pays

The school district is not required to pay for the cost of the education, including special education and related services, for a child with a disability at a private school or facility if the district has made a free appropriate public education available to the child and the parents elect to place the child in a private school or facility.

If a child is placed by the parent in a private school, without school approval, the parent pays unless they are using a voucher. It is important to understand that the Procedural Safeguards will end with the use of a voucher program.

If a school can not provide FAPE, they can place the child in a private school setting at the cost of the school.

If a school fails to provide FAPE, the court may require a school to pay!

Discipline

- **Under 10 days no right to education**
- **Manifestation determination**
- **On 11th day school must provide education**
- **11th day services or change of placement**
- **Expedited Hearing**
- **Functional Behavior Assessment**
- **Positive behavior plan**

1: Short Term Removals: To the extent that children without disabilities would be disciplined, school district personnel may remove a child with disabilities for up to ten consecutive or cumulative school days in a school year when the child has violated the district's Code of Student Conduct.

2: When a child has been removed for more than 10 days in a school year, a manifestation determination must be scheduled to determine if the child's disability impaired his/her ability to understand the impact and consequences of the behavior. If the IEP is inappropriately written to meet the child's needs or if the placement is inappropriate – the behaviors are automatically considered to be a manifestation of the child's disability.

Discipline (continued)

- **Under 10 days no right to education**
- **Manifestation determination**
- **On 11th day school must provide education**
- **11th day services or change of placement**
- **Expedited Hearing**
- **Functional Behavior Assessment**
- **Positive behavior plan**

3: Whenever a child is removed for more than 10 days in a school year, the school district must provide services to the extent necessary to enable the child to progress in the general curriculum and appropriately advance toward achieving the goals on the IEP. The IEP Team determines if the behavior was related to the child's disability.

4: If parents disagree with the IEP Team decision, they have the right to request an expedited due process hearing.

5: Plan for a functional behavioral assessment and develop a behavioral intervention plan, or modify an existing plan to address why the infraction occurred.

Interim Alternative Educational Settings

If a student with a disability:

- **Carries a weapon**
- **Possesses, uses, sells or solicits illegal drugs**

Up to 45 calendar days without the parent's written consent

An interim educational setting is a different location where educational services are provided for a specific time period due to disciplinary reasons. The IAES must be determined by the IEP Team and must be selected so as to enable the child with a disability to continue to progress toward IEP goals.

The school district may place a child in an IAES for up to 45 calendar days without the parents consent. When the decision to place your child in a IAES has been made, the school district must notify the parent of this decision that day and provide you with a copy of the notice of your rights under IDEA (procedural safeguards).

If parents disagree with the decision and request an expedited hearing, the child will remain in the IAES placement unless the parents and the school agree otherwise or until the 45 days have passed.

Steps to Conflict Resolution

504: Procedural Manual:

Teacher / Principal
 504 Team
 District 504 Compliance Rep
 504 Hearing
 Regional Complaint
 Federal Appeal

IDEIA: SP&P & State Rules:

Teacher / Principal
 IEP Team
 District ESE Personnel
 Mediation/Resolution Meeting
 State Complaint
 Due Process

Here is a graphic representation of both sides of the steps: 504 and IDEA.
 If parents are going up the stairs and not reaching resolution, it's possible that they are climbing the wrong side of the steps.

Introducing: FND University

- **Absolutely free!**
- **Available 24 hours**
- **Interactive online distance learning system**
- **Trainings at your home at your convenience**
- **Transcript of all courses**
- **Certificates of completion**

Website: <http://fnduniversity.org>

For more information please contact:

Family Network on Disabilities

2196 Main St., Suite K

Dunedin, FL 34698

(727) 523-1130

(800) 825-5736

fnd@fndusa.org

www.fndusa.org

Please complete our evaluation

[Click here to continue](#)



The contents of this presentation were developed under a grant from the US Department of Education, #H328M110010 and #H328M110026. However, those contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement by the Federal Government. Project Officer, Lisa Gorove.

