

Rights and Responsibilities



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

What makes FND unique is that the majority of our Board of Directors, and Management Staff and all of our Program Staff are parents or family members of persons with disabilities, or has a disability themselves.

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.

The Principles of IDEIA

- **Free Appropriate Public Education (FAPE)**
- **Appropriate Evaluation**
- **IEP**
- **Parent & Student Participation**
- **Least Restrictive Environment**
- **Procedural Safeguards**

These six principals are included within the Individuals with Disabilities Education Improvement Act. The Act itself defines each principal, and provides strict guidelines for states to follow in implementing the provisions of the law. In this workshop, we will provide an overview of the evaluation process and describe the steps from identification to eligibility.

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 IDEA 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.

The law provides very specific guidelines for the provision of:

- *a free appropriate public education
- *student evaluation
- *prior notice
- *parental consent and involvement
- *access to records
- *individualized education program/plan development and implementation
- *student placement
- *mediation and due process procedures.

Parents have the right to receive a copy of a document which fully explains the procedural safeguards which are available to them.

Free Appropriate Public Education

“Special education and related services... provided at public expense, under public supervision and direction and without charge... in conformity with the Individualized Education Program...”

Reveals “Free Appropriate Public Education” IDEA states that special education (which Florida refers to as “specially designed instruction”) and related services must be designed to:

- meet the unique needs of the child
- prepare the child for employment and independent living

IDEIA also introduces the principle of what is now known as “zero reject,” which means that all children with disabilities – regardless of the severity of their disability – are entitled to FAPE.

Evaluation



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. IDEA also provides the right to an Independent Educational Evaluation. If a parent disagrees with an evaluation - A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. 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 not at public expense.

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.

Identification – when the district suspects a child may have a disability

Evaluation – when the district wants to provide an evaluation

Before any decision is made regarding placement.

Before any decision is made about a change in services.

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.

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 also 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:

Test a child to determine eligibility for placement in an exceptional student education program. Place a child in a program for the first time. 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 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:

- 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.
- without unnecessary delay

continued
Records

- **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.
 - 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. Have a representative inspect and review the records.

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.

The district can only release information with your consent.

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

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:

Notification: to be notified of the meeting in advance so that they may make arrangements to participate.

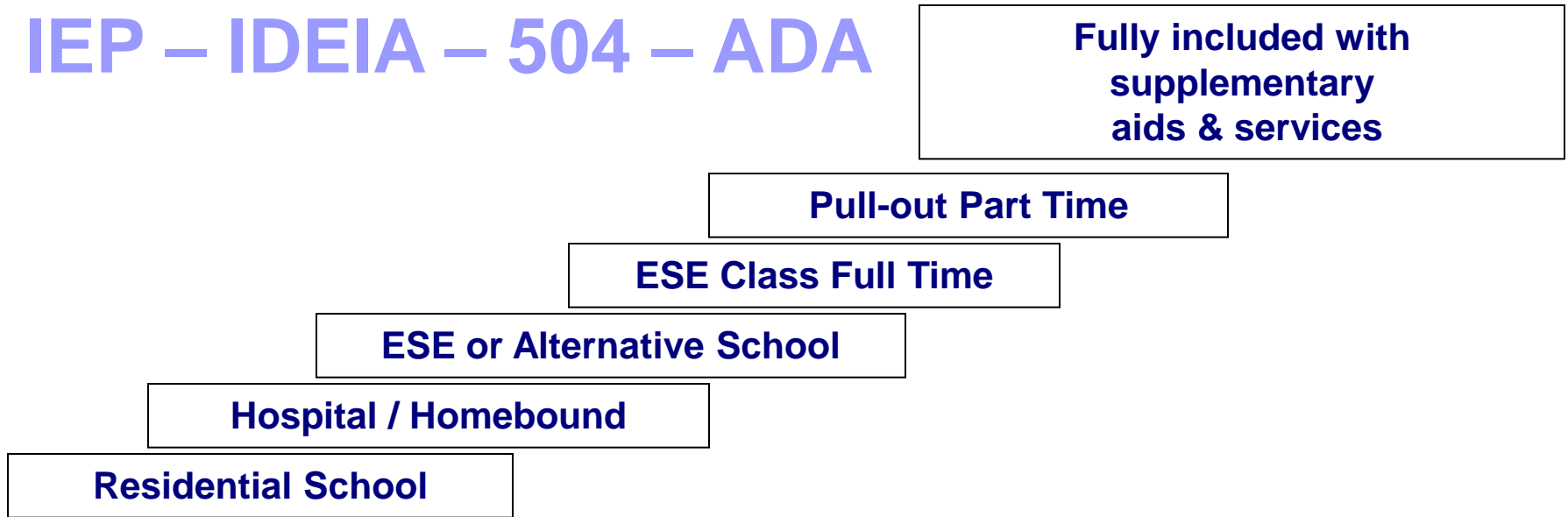
Scheduling: to have the meeting scheduled at a mutually agreed upon time

Methods of participation: If neither parent can attend, the IEP Team shall use other methods to ensure participation – such as conference calling.

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).

Placement Steps

IEP – IDEIA – 504 – ADA



IDEIA provides the right to a free appropriate public education, in the least restrictive environment. The goal is to provide the child with an appropriate education that is also free. This graphic illustrates that there is a range of available placements.

Since every child is different, it will be the IEP team that determines which placement will be most effective for the child. Notice that the first stop is the least restrictive of all the options and the last stop is the most restrictive.

Steps to Conflict Resolution



Notice that the left side of the steps is blue – this side represents resolution under section 504. The yellow side represents resolution under IDEIA.

Whenever there is conflict, a parent can consult the 504 manual for a 504 issue – or for an IDEIA issue, they can consult their district’s Special Programs & Procedure Manual and the Florida State Rules. Resolution may be reached on any step – the goal is to reach resolution near the bottom. If a parent is going up the stairs and not reaching resolution, maybe they are climbing the wrong side of the steps.

The bus ride is longer for a child with a disability than it is for his nondisabled peers. Which side of the steps should the parent be climbing? *Answer:* Section 504. IDEIA does not address access, only educational benefit. 504 addresses access “as adequately as nondisabled peers.”

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**

Mediation is voluntary for both parties

The mediator has to be qualified and impartial. The mediator has to have been trained in effective mediation techniques.

Mediation may be requested at any time by either party.

Shall be scheduled in a timely manner and shall be held at a convenient location to both parties.

Is confidential so that discussions that occur during mediation may not be used as evidence in a due process hearing or civil proceeding.

Shall not be used to deny or delay the right to a due process hearing, or to deny other rights afforded to parents.

State Complaint

If a parent believes that the school district has violated any of the requirements on the Individuals with Disabilities Education Improvement 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 the due process there has to be a situation that results in the loss of FAPE.

Expedited hearing

Never over a procedural violation

Only if you've exhausted other administrative options

Must result in a loss of FAPE

Written request = letter to superintendent

Should have legal representation before requesting due process hearing

Would have to be a denial of FAPE. Being physically harmed.

Loss of FAPE – failure to evaluate an area necessary for a child to benefit from specially designed instruction.

Due Process

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

- 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

**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.

Attorney's 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.

continued

Attorney's Fees

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- **Not awarded for IEP participation**
- **Not awarded for mediation**
- **Court may reduce fees**

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.

Private School Placement

If a child is placed by the parent in a private school, without the school approval, the parent pays!

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

It is important to understand that the if voucher is used, Procedural Safeguards will end.

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.

Discipline

- **Under 10 Days, No Right to Education**
- **Manifestation Determination**
- **On 11th day, school must provide services or change of placement**
- **Expedited Hearing**
- **Functional Behavior Assessment**
- **Positive Behavior Plan**

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.

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.

continued

Discipline

- **Under 10 Days, No Right to Education**
- **Manifestation Determination**
- **On 11th day, school must provide services or change of placement**
- **Expedited Hearing**
- **Functional Behavior Assessment**
- **Positive Behavior Plan**

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.

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

Plan for a functional behavioral assessment and develop a behavioral intervention plan, or modify an existing plan.

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 IDEIA (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.

Changes to IDEIA

- **Attorney Fees**
- **Stay Put**
- **Disability Manifestation**
- **Conflict Resolution**
- **Discipline**

We have highlighted those areas of this workshop that are anticipated to have some change, as they have been identified in the 2004 Individuals with Disabilities Act Education Improvement Act (IDEIA).

It is important to be aware that changes are upcoming. FND will continue to monitor the changes as they occur. If you have any questions, call our 800 number or check our website.

Tips

- **Learn the Rules**
- **Learn the Procedures**
- **Participate**
- **Ask Questions**
- **Document**

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>

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