

Military Legal Assistance with Special Education Law

►22 OCTOBER 2026

►MS. LINDSEY WEST

►LEGAL ASSISTANCE ATTORNEY, FORT STEWART

►LINDSEY.A.WEST6.CIV@ARMY.MIL

1

SPED Program Takeaways

1

Understand
basics and
foundation of
the program

2

Identify history
and why the
program was
started

3

Improve
advocacy for
military
families

2

Special education basics

RECALL:

IDEA Individuals with Disabilities Education Act

FAPE Free and Appropriate Public Education
Special education and related services that--

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title. 20 U.S.C. § 1412(a).

IEP Individualized Education Program

Written document created in a team meeting consisting of parents and the District. Outlines a student's educational program and must include specific components.

3

**Coming in as
a Civilian
Attorney – I
did not
know....**



What is DoDEA?

The Department of Defense Education Activity (DoDEA) which runs 160 schools, both domestic and overseas, attended by appx 66,000 students.

4

DIFFERENT SYSTEMS

- ▶ Military Families can enroll their children in a State's public school system or in the DoDEA System
- ▶ Implementation of Special Education Law under the IDEA can look very different in the Federal DoDEA System versus the State Public School System
- ▶ Military Practitioners are now trained to be prepared for and to understand both systems

5

Key DoDEA Differences in the Special Education Process

- ▶ **Regulatory Framework:**
- ▶ DoDEA operates under the Department of Defense, which has its own set of regulations and policies that govern special education services. These regulations are detailed in 32 CFR Part 57 and are part of the Code of Federal Regulations (CFR).

6

Key DoDEA Differences in the Special Education Process

► **Note:** Same Law (IDEA) with Federal Regulations

1. Families must enroll in the military's **Exceptional Family Member Program** (EFMP). It's a program for service members who have a family member with a disability. (But not if your child's IEP is provided in a public school.) One purpose of enrolling is to make sure that the military considers your child's needs when making assignments.
2. DoDEA uses the same IEP form in all its schools. In public schools, forms vary from state to state.
3. The Family Education Right to Privacy Act (FERPA) doesn't apply to DoDEA school records. It only applies to schools that get funding from the Department of Education. FERPA protects the privacy of student records. It also gives parents the right to inspect and review them. (See Case Study for Implications of this in Practice)
4. The civil rights law, Section 504, isn't valid in foreign countries. A 504 Plan provides some services and accommodations for kids who need support but who don't need special education services. DoDEA has an Accommodations Plan instead. The plan is comparable to a 504 plan.

7

Key DoDEA Differences in the Special Education Process

► **Transfers between Schools**

- If a child is moving to a DoDEA school from a public school, the DoDEA has 30 days to either reevaluate the child or adopt the current IEP. In the meantime, it must provide those comparable services.
- The situation is similar if the child transfers from one DoDEA school to another. The new school has 30 days to either adopt the current IEP or to create a new one. It must provide comparable services in the meantime.

8

Key DoDEA Differences in the Special Education Process

Special Education Programs Available to DODEA Students

DODEA offers four special education programs to K–12 students (not all programs are offered at every DODEA school). Each of these programs have distinct staff positions associated with them. These programs include

1. a program for students with mild to moderate learning impairments (LIMM),
2. a program for students with moderate to severe learning impairments (LIMS),
3. a program for students with severe to profound learning impairments (LISP), and
4. a program for students with emotional impairments (EI).

Source: GAO review of Department of Defense Education Activity (DODEA) documentation. | GAO-25-107053

9



DoDEA Struggles with IDEA Compliance

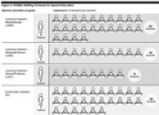
- Special Education: Improved Allocation of Resource Could Help DOD Education Activity Better Meet Students' Needs. GAO Report 17 April 2025

10

DODEA not compliant with the IDEA

Special Education: GAO Report 17 April 2025
Military families can find it hard to get special education services for their children with disabilities—especially in overseas locations.

- ❑ Lack of SPED teachers. Calculation (headcount vs minutes), Nationwide Sped Staffing Shortages, High Turnover Rate, Slow Federal Hiring
- ❑ Lack of Related Service Providers. "A regional DODEA official also told us that EDs would not be able to offer occupational therapy or physical therapy services in one country for the first semester of the 2024-2025 school year due to a lack of staff, even though some students' IEPs may require these services."
- ❑ Insufficient training, Crisis Management/ Uniform Policy First, at 12 of 14 schools, paraeducators (staff providing extra help to students) reported receiving little to no onboarding training for special education. For example, paraeducators across all three DODEA regions told GAO they had not received DODEA-required crisis training, despite working with students with behaviors needing crisis response.



11

RECOMMENDATIONS FROM GAO REPORT

1. Revise its special education staffing formulas to incorporate students' service minute requirements specified in IEPs among the factors it considers.
2. Ensure that any special education paraeducators who work with students who may need behavioral supports receive crisis training.
3. Provide supplemental instructional materials to special education teachers agencywide to help them adapt the general education curriculum for students with IEPs.
4. Make more specialized reading interventions accessible across all DODEA locations to students with specific learning disabilities, including dyslexia, that impact their ability to read.
5. Communicate DoDEA time frame for its new procedural guidance on special education and what resources staff should use to interpret the DOD policy while that guidance is being developed.



12

SPECIAL EDICATION ASSISTANCE

DODEA CASE STUDY

► **Facts:** 5-year-old kindergartener with a disability excelling in pre-school and now regressing.

► Behaviors that were extinguished in pre-school were worsening and new maladaptive behaviors were presenting. The current IEP required about 2.5 hours of specialized instruction per day.



13

SPECIAL EDICATION ASSISTANCE

DODEA CASE STUDY

► **HOW DID THE CASE COME TO ME??**

- Advocacy group referred the parents (a Soldier and his spouse) to the Ft. Stewart Legal Assistance Office after the initial Due Process Mediation was unsuccessful
- This means that procedurally, Mom filed the Due Process Complaint on her own and the School would not offer a proper resolution when the Parents were *Pro Se*
- My Office had never engaged in Due Process Litigation before so we reached out to Legal Assistance Policy Division and Ms. Jennifer Young, Special Education Attorney for the Army, who agreed to be the lead attorney on the case



14

SPECIAL EDICATION ASSISTANCE

DODEA CASE STUDY

► **WHAT HAPPENED??**

Met with the client in the legal assistance office after client had already filed her Due Process Complaint and attended one mediation session.

Clients biggest complaints:

- Believed the teachers providing special education minutes to her child per the IEP were unqualified.
- Believed school was withholding information and documentation regarding her child related to his IEP
- Believed that her child was not getting all special education hours required by the IEP

Initial Actions:

Reviewed client's Complaint and the child's IEP that was the subject of the dispute.

School would not provide the Child's education file to the parents or to the Legal Assistance Office. After multiple demands, School Administrators eventually provided some of the file to the Parents in piece-mail fashion.

15

SPECIAL EDUCATION ASSISTANCE

DODEA CASE STUDY

► WHAT HAPPENED ?? (Cont)

Made recommendations and redlines for the IEP, which client used at a second pre-hearing mediation. The School was still unwilling to settle.

After the second unsuccessful mediation, we filed a new Due Process Complaint on December 10, 2024 on the client's behalf.

16

SPECIAL EDUCATION ASSISTANCE

DODEA CASE STUDY



The December 10, 2024 Complaint

12/10/2024 Complaint alleged that DoDEA :

- Failed to implement Student's May 10, 2024, IEP by not providing Student with his required special education minutes.
- Prevented meaningful parental participation by failing to disclose that Student's special education was provided by individuals that did not hold the licensure, alternative licensure or required qualifications to provide special education.
- Failed to properly consider positive behavioral interventions and update Student's IEP when DoDEA had notice that Student's behavior was impeding his learning and the learning of others, and
- Failed to provide the necessary specificity regarding Student's required services preventing meaningful parental participation and denying Student educational benefit.

17

Special Education Assistance

DODEA CASE STUDY

- Failed to provide Student with his required special education minutes.
- Prevented meaningful parental participation by failing to disclose that Student's special education was provided by individuals that did not hold the licensure, alternative licensure or required qualifications to provide special education.
- Failed to properly consider positive behavioral interventions and update Student's IEP when DoDEA had notice that Student's behavior was impeding his learning and the learning of others, and
- Failed to provide the necessary specificity regarding Student's required services preventing meaningful parental participation and denying Student educational benefit.

❑ Lack of SPED teachers.

Calculation (Headcount vs minutes).

Nationwide Sped Staffing Shortages.

High Turnover Rate, Slow Federal Hiring

❑ Lack of Related Service Providers.

❑ Insufficient training, Crisis Management Uniform Policy

Recall from GAO Report:

Source: GAO analysis of Department of Defense Education Activity (DODEA) administrative data. | GAO-20-10700

18

SPECIAL EDUCATION ASSISTANCE

DODEA CASE STUDY

► Why was this case important to pursue?

- The Complaint was important to pursue as DoDEA was utilizing a practice of providing unqualified staff to provide instruction to children with disabilities, which ultimately denied children their necessary special education minutes during the school day.

19

Due Process

Public Schools -vs- DoDEA Schools

Public Schools

- 20 U.S.C. § 1415
- Right to hearing
- Judicial review available

DoDEA Schools

- 32 C.F.R. § 57.10
- Federal hearing system
- Limited precedent

20

Burden of Proof

- Schaffer v. Weast (2005)
- Burden on party seeking relief
- Applies across systems

Court-Burden of Proof

Schaffer v. Weast (2005)

- The Court directly addressed the issue of who bears the responsibility of providing the "burden of proof" in administrative due process hearings.
- The burden of proof should be placed upon which ever party is seeking relief, be it the parent or school district, since both are permitted to do so.

21

Remedies

- ▶ Compensatory education
- ▶ Tuition reimbursement, *Forest Grove v. T.A.* (2009)
- ▶ Applies Across Systems

Private School

In 2004, a hearing officer determined that T.A. was disabled, and that because Forest Grove School District had failed to offer him free appropriate public education, the district had to reimburse T.A.'s parents for the cost of the private school.

22

PCS Challenges

- ▶ Service interruptions
- ▶ IEP transfer delays
- ▶ Documentation gaps

23

Special Education Legal Assistance

Army Families with exceptional needs may face unique legal situations. You do not have to navigate these challenges alone.

Army Legal Assistance Attorneys are trained in special education law and available to assist families. Army Attorneys can help families with both DoDCA and Public School concerns.

Talk to your local army legal assistance provider to see what a free and appropriate public education means in your unique situation.

To find your closest legal assistance office go to: <https://www.army.mil/education>

24
