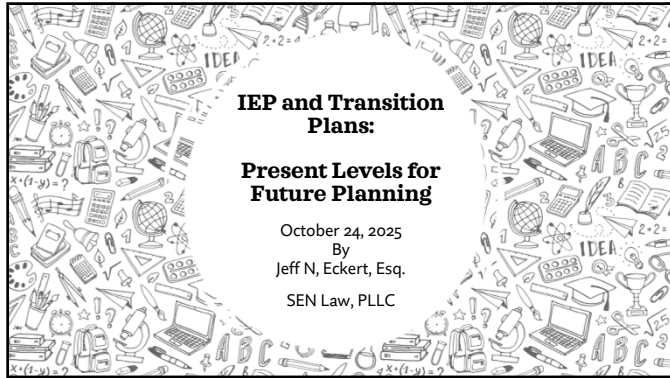




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Session Description

This session will discuss the history and purpose of IEPs and Transition Plans under the Individuals with Education Act (IDEA). Through IEPs and Transition Plans, specially designed instruction is utilized to meet students with disabilities' unique needs and prepare them for further education, employment, and independent living. See 20 U.S.C. § 1400(d)(1)(A).

Each IEP and Transition Plan contains present levels of academic achievement and functional performance which highlight the student's current disability related needs but can be used in planning for meeting future needs.

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The History of the Individuals with Disabilities Education Act (IDEA)

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) WAS THE CULMINATION OF A SERIES OF CASES BROUGHT IN THE 1970'S BY DISABILITY RIGHTS FAMILIES AND ADVOCATES TO MOVE AWAY FROM THE SEGREGATION OF STUDENTS WITH PHYSICAL, INTELLECTUAL, AND EMOTIONAL DISABILITIES IN INSTITUTIONALIZED SETTINGS.

- Two significant cases extended the Brown v. Board of Education decision by using the due process clause of the 14th Amendment to provide parents of children with disabilities specific rights to challenge and strike down state law that denied their child from the right to a public education. 347 U.S. 483 (1954). See P.A.R.C. v. Pennsylvania, 343 F. Supp. 279 (E.D. Pa. 1972); Mills v. Board of Education of the District of Columbia, 358 F. Supp. 866 (D.D.C. 1972).
- The federal courts' rulings led to a Congressional investigation, in 1972, which found that a significant percentage of students with disabilities were not having their educational needs adequately met or were excluded from school entirely.
- In 1975, President Ford signed the Education for All Handicapped Children Act, otherwise known as Public Law 94-142. This law required all states that accepted money from the federal government to provide equal access to education for children with disabilities.

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Individuals with Disabilities Education Act (IDEA)

THE IDEA WAS A LANDMARK LAW ENACTED IN 1990, ORIGINALLY KNOWN AS THE EDUCATION OF HANDICAPPED CHILDREN ACT OF 1975

- The federal statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system.
- Ensures that all children with an identified disability receive special education and related services.
- Ensures that the rights of children with disabilities and their families are protected under the law.
- Provides monitoring and accountability for the efforts of institutions providing services to students with disabilities.
- Provides assistance to states, localities, federal agencies, and educational service agencies in providing for the education of children with disabilities.

PART B AND PART C

- Part B of IDEA supports services for children ages 3-5 and 6-21—the preschool and school-age populations. Part C of IDEA supports services for infants and toddler

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Important IDEA Case Law

SIGNIFICANT DECISIONS UNDER THE IDEA

Free and Appropriate Education (Two-Part Test)

FAPE is denied only if:

1. i) the procedural flaw impeded the child's right to FAPE, ii) significantly infringed the parents' opportunity to participate in the decision-making process, or iii) caused an actual deprivation of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007).
 2. It must be determined if the IEP developed pursuant to the IDEA is reasonably calculated to enable the child to receive "educational benefits." Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. at 206, 207 (1982). NOTE: Replaced by Endrew F.
- In 2017, the U.S. Supreme Court revisited and raised the standard for a free and appropriate public education (FAPE) by rejecting an educational program that was calculated to provide "merely more than de minimis" educational benefit and held that determined that, "to meet its substantive obligation under the IDEA, a school must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas County School District Re-1, 137 S. Ct. 988.
 - The Court in Endrew F. also emphasized the requirement that "every child should have the chance to meet challenging objectives."

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Important IDEA Case Law (continued)

INDIVIDUAL EDUCATION PLAN (IEP):

- When reviewing an IEP, "[t]he 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials," and that "[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal."
- The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child."

IEP Three-Part Test:

1. The IEP must be analyzed in light of circumstances as they existed at the time of the IEP's formulation; in other words, an IEP is not to be judged in hindsight. M.B. v. Hamilton Se. Sch., 668 F.3d 851, 863 (7th Cir. 2011) (holding that an IEP can only be evaluated by examining what was objectively reasonable at the time of its creation); Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990) ("An IEP is a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated").
2. An assessment of an IEP must be limited to the terms of the document itself. Knable v. Bexley Cty. Sch. Dist., 238 F.3d 755, 768 (6th Cir. 2001); Sytsma v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1315-16 (8th Cir. 2008) (holding that an IEP must be evaluated as written).
3. Deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. See Endrew F., 13 S. Ct. at 1001.

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Eligibility for ESE Services and an IEP Rule 6A-6.0331, F.A.C.

ELIGIBILITY FOR ESE SERVICES AND AN IEP ARE DRIVEN BY MEDICAL AND EDUCATIONAL EVALUATIONS AND BASED ON STUDENT'S EDUCATIONAL NEEDS

- The school district shall be responsible for conducting all initial evaluations necessary to determine if the student is eligible for ESE and to determine the educational needs of the student.
- Parent consent must be obtained for an initial evaluation which must be completed within sixty (60) school days (cumulative) of receipt of parent's consent for the evaluation.

To be found eligible for exceptional student education (ESE) services:

- The child must meet the specific criteria under the recognized disability categories, and "who, by reason thereof, needs special education and related services."
- Typically, this requires a showing that the child's disability adversely affects the student's performance in the educational environment and the student needs special education as defined in paragraph 6A-6.03411(1)(kk), F.A.C. 34 C.F.R. 300.8(a)(1).

There are thirteen distinct categories of disability under IDEA including:

- 1) autism, 2) deaf-blindness, 3) deafness, 4) emotional disturbance, 5) hearing impairment, 6) intellectual disability, multiple disabilities, 8) orthopedic impairment, 9) other health impairment, 10) specific learning disability, 11) speech or language impairment, 12) traumatic brain injury, and 13) visual impairment.

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Eligibility for ESE Services and an IEP Rule F.A.C. 6A-6.0331, F.A.C.

In conducting an evaluation, the school district:

1. Must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining whether the student is eligible for ESE and the content of the student's IEP or EP, including information related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), or for a gifted student's needs beyond the general curriculum;
2. Must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and
3. Must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

In interpreting evaluation data for the purpose of determining if a student is an exceptional student and the educational needs of the student, each school district shall:

- Draw upon data and information from a variety of sources, such as aptitude and achievement tests, the student's response to interventions/instruction implemented, parent input, student input as appropriate, teacher recommendations, and information about the student's physical condition, social or cultural background, and adaptive behavior.

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Individual Education Plan (IEP) Rule 6A-6.03028, F.A.C.

JUSTICE BRENNAN DESCRIBED THE IEP AS "THE CENTERPIECE OF THE STATUTE'S EDUCATION DELIVERY SYSTEM FOR DISABLED CHILDREN."

- An IEP must be developed, reviewed, and revised for each eligible student or child with a disability annually.
- A written notice of the meeting must be provided to the parents.
- The IEP meeting must be scheduled at a mutually agreed on time and place.
- Parents may invite other individuals who have "knowledge or special expertise regarding the student," including related services personnel as appropriate.
- The District must give provide copy of the IEP at no cost to the parents.

THE ROLE OF PARENTS IN DEVELOPING IEPs INCLUDES:

1. Providing critical information regarding the strengths of their student;
2. Expressing their concerns for enhancing the education of their student so that their student can receive FAPE;
3. Participating in discussions about the student's need for special education and related services;
4. Participating in the determination of how the student will be involved and progress in the general curriculum, including participation in the statewide assessment program and in district-wide assessments;
5. Participating in the determination of what services the school district will provide to the student and in what setting; and,
6. Participating in the determination of the course of study leading towards a standard diploma the student will pursue.

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Individual Education Plan (IEP) Rule 6A-6.03028, F.A.C.

IEP TEAM PARTICIPANTS REQUIRED TO ATTEND:

1. The parents of the student;
2. Not less than one (1) regular education teacher of the student, if the student is or may be participating in the regular education environment.
3. Not less than one (1) special education teacher of the student, or where appropriate, not less than one special education provider of the student;
4. A representative of the school district who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the school district.
5. An individual who can interpret the instructional implications of evaluation results who may be a member of the IEP Team.
6. The student, if appropriate, and in all cases where a purpose of the meeting will be the identification of the student's transition services needs or consideration of postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

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Individual Education Plan (IEP) Rule 6A-6.03028, F.A.C.

IEP TIMELINES:

1. An IEP must be developed within thirty (30) calendar days following the determination of a student's eligibility for special education and related services and be in effect prior to the provision of these services.
2. Meetings shall be held to develop, review and revise the IEP. A meeting shall be held at least annually to review each IEP and, as appropriate, revise its provisions in accordance with all aspects of this rule.
3. An IEP, which has been reviewed, and if appropriate, revised periodically, but not less than annually, must be in effect at the beginning of each school year for each eligible student with a disability within its jurisdiction.

CONSIDERATIONS IN IEP DEVELOPMENT, REVIEW, AND REVISION:

- The results of the initial or most recent evaluation or reevaluation of the student;
- As appropriate, the results of the student's performance on any general statewide or districtwide assessment;
- The academic, developmental, and functional needs of the student;
- In the case of a student whose behavior impedes the student's learning or the learning of others, strategies, including the use of positive behavioral interventions, supports, and other strategies to address that behavior;
- In the case of a student with limited English proficiency, the language needs of the student as those needs relate to the student's IEP;
- The communication needs of the student.
- Whether the student requires assistive technology devices and services.

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Individual Education Plan (IEP) Rule 6A-6.03028, F.A.C.

CONTENT OF THE IEP

The IEP for a student must include:

1. A statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general curriculum;
2. A statement of measurable annual goals, academic and functional goals, designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general curriculum;
3. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student and a statement of the classroom accommodations, modifications or supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals;
4. A statement of any individual appropriate accommodations in the administration of statewide standardized assessments or district assessments of student achievement that are necessary in order to measure the academic achievement and functional performance of the student on the assessments.
5. The projected date for the beginning of the special education, services, accommodations and modifications and the anticipated frequency, location and duration of those services;
6. A statement of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals.

Practice Tip: The present levels of academic achievement and functional performance should be as objective and measurable as possible.

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Continuum of Placement and Least Restrictive Environment (LRE)

LRE AND PLACEMENT DETERMINATIONS

Placement determinations shall be made in accordance with the LRE provisions of the IDEA:

1. To the maximum extent appropriate, students with disabilities, including those in public or private institutions or other facilities, are educated with students who are not disabled;
2. Special classes, separate schooling or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; AND
3. A continuum of alternative placements must be available to meet the needs of students with disabilities for special education and related services, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions and a school district must make provision for supplementary services to be provided in conjunction with regular class placement.

Practice Tip: The child's LRE placement can be used to support more intensive levels of services, support, and transition planning.

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What is special education and related services?

SPECIALLY DESIGNED INSTRUCTION MEANS ADAPTING, AS APPROPRIATE TO THE NEEDS OF AN ELIGIBLE EXCEPTIONAL STUDENT, THE CONTENT, METHODOLOGY, OR DELIVERY OF INSTRUCTION TO ADDRESS THE UNIQUE NEEDS OF THE STUDENT THAT RESULT FROM THE STUDENT'S DISABILITY AND TO ENSURE ACCESS TO THE GENERAL CURRICULUM TO MEET THE EDUCATIONAL STANDARDS WITHIN THE JURISDICTION OF THE SCHOOL DISTRICT.

- Special education includes:
 - a. Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and,
 - b. Instruction in physical education.
 - c. Speech-language pathology services;
 - d. Travel training; and,
 - e. Career and technical education.
- Related services are defined in the regulations as transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, includes:
 - speech-language pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes only; school health services; social work services in schools; parent counseling and training.

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Procedural Safeguards for Students with Disabilities

SCHOOL AND DISTRICTS ARE REQUIRED TO PROVIDE A NOTICE TO PARENTS OF THE PROCEDURAL SAFEGUARDS AT LEAST ONE TIME A SCHOOL YEAR AND IN OTHER SPECIFIC CIRCUMSTANCES.

- Child Find
- Prior Written Notice
- Access to Records
- Parental Consent
- Independent Educational Evaluation – at public expense
- Mediation
- State Complaint Procedures
- Due Process Hearing Request and Procedures
- Appeals
- Procedures when Disciplining Students with Disabilities
- Unilateral Placement by Parents of Students in Private Schools at Public Expense
- Requirements for Students Enrolled by Parents in Private Schools

Practice Tip: Students suspected of having a disability may trigger a state or district's child find obligations and protections from discipline that apply to students with disabilities, e.g., 10-day rule, manifestation hearing.

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Transition Planning

FLORIDA FOLLOWS THE IDEA UNDER FLORIDA STATUTES § 1003.5716:

- • To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, during the student's seventh grade year or when the student attains the age of 12, whichever occurs first, an IEP team shall begin the process of, and develop an IEP for, identifying the need for transition services before the student with a disability enters high school or attains the age of 14 years, whichever occurs first, in order for his or her postsecondary goals and career goals to be identified.

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Transition Planning (continued)

THE PLAN MUST BE OPERATIONAL AND IN PLACE TO BEGIN IMPLEMENTATION ON THE FIRST DAY OF THE STUDENT'S FIRST YEAR IN HIGH SCHOOL.

This process must include, but is not limited to:

- • Consideration of the student's need for instruction in the area of self-determination and self-advocacy to assist the student's active and effective participation in an IEP meeting;
- • (b) Preparation for the student to graduate from high school with a standard high school diploma pursuant to § 1003.4282 with a Scholar designation unless the parent chooses an Industry Scholar designation;
- • Provision of the information to the student and his or her parent of the school district's high school-level transition services, career and technical education, and collegiate programs available to students with disabilities and how to access such programs. Information shall also be provided on school-based transition programs and programs and services available through Florida's Center for Students with Unique Abilities, the Florida Centers for Independent Living, the Division of Vocational Rehabilitation, the Agency for Persons with Disabilities, and the Division of Blind Services. Referral forms, links, and technical support contacts for these services must be provided to students and parents at IEP meetings;

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Transition Requirements

BOTH THE IDEA AND STATE LAW HAVE THE SAME GENERAL TRANSITION REQUIREMENTS:

- • If there are changes to postsecondary or career goals included in an IEP, the parent must approve the changes.
- • If a parent does not attend the meeting, the IEP will be sent home and will include contact information in case the parent does not approve.
- • If the parent does not approve they should discuss their concern(s) with the rest of the IEP team, including the student.
- Parents may choose an independent reviewer to help decide if the change is appropriate.

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Transition IEPs (TIEPs)

EACH STUDENT'S IEP IS UNIQUE AND IS BASED ON THE STUDENT'S INDIVIDUAL NEEDS. AS STUDENTS APPROACH AGE 12, OR DURING THEIR 7TH GRADE SCHOOL YEAR, WHICHEVER OCCURS FIRST, NEW TRANSITION-RELATED REQUIREMENTS ARE ADDED TO THE IEP.

- The Transition IEP process begins:
 - At age 12 or during 7th grade (whichever comes first)
 - Age-appropriate transition assessments indicating the student's strengths, preferences and interests are documented.
 - Document the need for self-determination and self-advocacy instruction.
 - Discuss measurable postsecondary goals based on age-appropriate transition assessment in the following areas:
 1. Education and/or training
 2. Employment/Career
 3. Independent Living (when appropriate)

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Transition Planning Components

TRANSITION PLANS BEGINNING AT AGE 14 OR TO BE IN EFFECT WHEN THE STUDENT ENTERS HIGH SCHOOL MUST INCLUDE THE FOLLOWING AND BE UPDATED ANNUALLY:

- • A statement of intent to pursue a standard high school diploma and pursue a scholar and/or industry scholar designation (scholar or industry scholar designations are encouraged, but not required).
- A description of how the student will fully meet the graduation requirements.
- Document discussion of the process for a student with a disability who meets the requirements for a standard high school diploma to defer the receipt of such diploma.
- • The outcomes and additional benefits expected by the parent and the IEP team at the time of the student's graduation.

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Transition Planning Components (continued)

TRANSITION PLANS MUST ALSO INCLUDE THE FOLLOWING:

- • A statement of appropriate measurable long-term postsecondary education and career goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills and the transition services, including preemployment transition services and courses of study needed to assist the student in reaching those goals.
- If a participating agency responsible for transition services, other than the school district, fails to provide the transition services described in the IEP, the school district shall reconvene the IEP team to identify
- • alternative strategies to meet the transition objectives for the student that are specified in the IEP. However, this does not relieve any participating agency of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

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Transition Planning (continued)

At least 1 year before the student reaches the age of majority, provision of information and instruction to the student and his or her parent on self-determination and the legal rights and responsibilities regarding the educational decisions that transfer to the student upon attaining the age of 18. The information must include the ways in which the student may provide informed consent to allow his or her parent to continue to participate in educational decisions, including:

1. Informed consent to grant permission to access confidential records protected under the Family
2. Educational Rights and Privacy Act (FERPA) as provided in s. 1002.22.
3. Powers of attorney as provided in chapter 709.
4. Guardian advocacy as provided in s. 393.12.
5. Guardianship as provided in chapter 744.
6. Supported decision making agreements as provided in s. 709.2209.

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Transition Planning Components (continued)

IEP TO BE EFFECT AT AGE 15 AND 16:

- Must include all of the requirements from age 12/7th grade to review, update and if needed, revise IEP components.
- Review measurable postsecondary goals and update as needed.
- Reminder: age-appropriate transition assessment is an ongoing process. The data obtained through formal and informal assessments will be used to inform the transition components of the IEP.

IEPS TO BE EFFECT AT AGE 17 AND 18:

- Age 17 - Informing the student of the rights that will transfer, at least one year prior to the student's 18th birthday (must be documented).
- Age 17 - Provide instruction and information to the parent and student regarding the ways in which a student may provide informed consent to allow the parent to continue to participate in the student's educational decisions.
- Age 18 - Written notice of the transfer of rights to the student and parent when the student reaches his/her 18th birthday (must be documented)..

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SUMMARY OF PERFORMANCE

THE SUMMARY OF PERFORMANCE (SOP) DOCUMENTS A "CHILD'S ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE," INCLUDING "RECOMMENDATIONS ON HOW TO ASSIST THE CHILD IN MEETING THE CHILD'S POSTSECONDARY GOALS."

- The SOP is provided to a child whose eligibility for special education services has terminated "due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law" (Individuals with Disabilities Education Act of 2004 [IDEA], §614(c)(5)(B)).
- The SOP is useful to provide to postsecondary schools and programs to enable a student with a disability to obtain eligibility for Section 504 accommodations or modifications.
- Families and students must understand the implication of the SOP as it exits the student with a disability from ESE services, typically at the end of their graduation year.

Unless...

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DEFERRAL OF RECEIPT OF THE STANDARD DIPLOMA

ALL STUDENTS ENROLLED IN FLORIDA PUBLIC SCHOOLS WORK TOWARDS EARNING A STANDARD DIPLOMA. HOWEVER, CERTAIN STUDENTS WITH DISABILITIES MAY NEED TO EXTEND ENROLLMENT IN A SCHOOL DISTRICT PAST THE TIME THEY MEET GRADUATION REQUIREMENTS IN ORDER TO CONTINUE TO RECEIVE SUPPORTS AND SERVICES UNDER FREE AND APPROPRIATE PUBLIC EDUCATION (FAPE).

- ▶ • A student with a disability who has an individual education plan that prescribes special education, transition planning, transition services, or related services through 21 years of age may continue to receive the specified instruction and services.
- ▶ • Deferring receipt of a standard diploma is a process facilitated by an individual education plan (IEP) team that permits eligible students with disabilities an opportunity to continue FAPE (up through age 21 as determined by school districts) once students meet graduation requirements for a standard diploma.

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DEFERRAL OF RECEIPT OF THE STANDARD DIPLOMA (continued)

PER FLORIDA STATUTES § 1003.4282(8), THERE ARE TWO ESSENTIAL PARTS TO DEFERRAL ELIGIBILITY:

- ▶ 1. Has an individual education plan that prescribes special education, transition planning, transition services, or related services through age 21; and
- ▶ 2. Is enrolled in accelerated college credit instruction pursuant to s. 1007.27, industry certification courses that lead to college credit, an early college program, courses necessary to satisfy the Scholar designation requirements, or a structured work-study, internship, or pre-apprenticeship program.

▶ **Practice Tip:** The decision to defer receipt of the standard diploma must be made by the IEP team and signed by a parent by no later than May 15th of the student's graduation year. It is important to lay this groundwork earlier though. See [Florida Statutes § 1003.5716](#) and [Rule 6A-109963, F.A.C.](#)

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Special Needs Trusts

A SPECIAL NEEDS TRUST INCLUDES PROVISIONS DESIGNED TO PROTECT A CHILD OR AN ADULT WITH A DISABILITY'S PUBLIC BENEFITS WHICH ARE NEED-BASED (INCOME AND ASSET LIMITS)

- ▶ • Beneficiaries of SNT's typically evidence a physical or mental disability that necessitates protection and oversight of their finances and public benefits.
- ▶ • IEPs are typically requested by the Social Security Administration (SSA) and Medicaid to determine eligibility for disability-based benefits for disabled children.
- ▶ • IEP's provide documentation of the individual's functional and academic levels which can be used to substantiate that the individual meets the criteria for public benefits.
- ▶ • Trustees can use the IEP to better understand the limitations and abilities of the beneficiary of an SNT.

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Guardian Advocate

THE FLORIDA LEGISLATURE CREATED THE GUARDIAN ADVOCATE PROCESS AS AN EXPEDITED FORM OF GUARDIANSHIP FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.

- The Florida legislature enacted the guardian advocate statute as an expedited form of guardianship for persons who have a specified developmental disability and reach 18, the age of majority.
- In Florida, a circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities if the person lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate, or if the person has voluntarily petitioned for the appointment of a guardian advocate.
- A developmental disability is specifically defined as "a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."
- At the hearing, the probate court will "consider all reports relevant to the person's disability, including, but not limited to, the person's current individual family or individual support plan, the individual education plan, and other professional reports documenting the condition and needs of the person."
- IEP teams are now required to inform parents and guardians that when their child reaches the majority age of 18, they will not be able to access their adult child's health records or take an active role in their IEP meetings unless they take legal action.

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Supported vs. Substituted Decision Making

MANY STATES INCLUDING FLORIDA REQUIRE ADVOCATES TO CONSIDER LESS RESTRICTIVE ALTERNATIVES TO GUARDIANSHIP WHEN APPROPRIATE.

- Florida along with certain other states has moved to a supported decision-making model to support persons with developmental disabilities when feasible. [Florida Statutes § 709.2209](#).
- IEPs are a critical source of information for an advocate to assess the appropriate level of assistance, support, or oversight a person with a disability needs to maintain their independence to the maximum extent possible.
- In such cases, it will be necessary to ensure the person with a disability has the requisite capacity to authorize such decision-making instruments.
- Florida courts consider the least restrictive means available for safeguarding a person with a disability.

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ABLE Accounts

ABLE ACCOUNTS ARE TAX-ADVANTAGED SAVINGS ACCOUNTS FOR INDIVIDUALS WITH DISABILITIES.

- ABLE Accounts are tax-advantaged savings accounts for individuals with disabilities.
- ABLE accounts were created by the Stephen Beck Jr. Achieving a Better Life Experience Act of 2014 or ABLE Act.
- The ABLE Act limits eligibility to individuals with disabilities with an age of onset of disability before turning 26 years of age.
- If individuals meet this age requirement and are also receiving benefits under SSI and/or SSDI, they are automatically eligible to establish an ABLE account.
- If they are not a recipient of SSI and/or SSDI but still meet the age of onset disability requirement, they could still be eligible to open an ABLE account if they meet Social Security's definition and criteria regarding functional limitations and receive a letter of disability certification from a licensed physician or specialist.
- Accordingly, IEPs are another source of documentation that can be used to show the onset of the disability before the individual turned age 26.
- Florida participates in ABLE Accounts through ABLE United at: www.ableunited.com.

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Public Benefits

MOST PUBLIC BENEFITS PROGRAMS REQUIRE A SHOWING OF HOW THE DISABILITY IMPACTS MAJOR LIFE ACTIVITIES.

- Many public benefits programs rely on IEPs as a source of supporting documentation for benefits programs such as Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), Children's Medical Services (CMS) for Medicaid, Vocational Rehabilitation, and others.
- The Social Security Administration will typically request a copy of the IEP to determine if a child has "a physical or mental condition(s) that very seriously limits his or her activities."
- IEPs are often requested by postsecondary schools to verify eligibility for Section 504 or Americans with Disabilities Act (ADA) accommodations.
- Most IEPs are now created electronically which facilitates sharing the IEP with third parties.

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Contact Info:

Please feel free to contact me with any follow up questions or if you would like further information about the IEP development process.

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