



# A Charter School's Guide to Navigating Due Process Hearings

Due Process Complaints are on the rise. Employ best practices to avoid them.

Andres Jimenez, Egis Insurance & Risk Advisors

Onier Llopiz, Llopiz Wizel Law Firm



# About Us

- Founded 2008
- Personalized Approach
  - In-depth Analysis and Ongoing Communication
  - Training and Education
- Trust Administrator, Florida Insurance Alliance
  - Property and Casualty Insurance
  - Risk Management Services
  - Member Advocacy
- Florida Charter Schools & Public Entities
  - Over 1200 Public Entities
  - 280 Public Charter Schools
    - Leading Charter School Insurance Services Provider

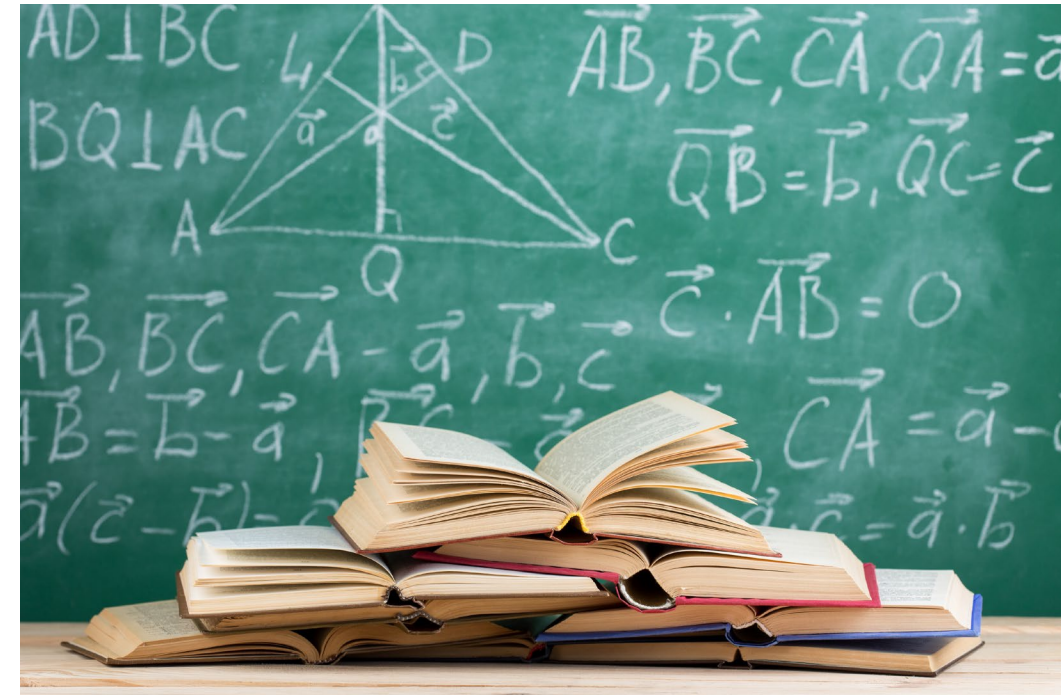


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L L O P I Z   W I Z E L  
L A W   F I R M

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## IDEA

- Original act was passed in 1975, and current version (in form of IDEA) was passed into law in 2004
- Governs how children with certain disabilities are educated





# Individuals with Disabilities Education Act (IDEA)



- Main Goals:
  - Equality of opportunity;
  - Full participation;
  - independent living; and
  - economic self-sufficiency.
- Free and Appropriate Education (**FAPE**)
  - Free and appropriate for that child;
  - Emphasis on services that prepare the child for independent living, employment, or further education.
- Child Find
  - Schools required to try to find students with disabilities; then refer students to special education services.



# Individuals with Disabilities Education Act (IDEA)



## IDEA Eligibility

- Must suffer from a disability;
- Disability must be detrimental to the child's educational performance;
- Includes students with Assistive Technology Devices;
- IDEA contemplates a comprehensive evaluation, not an initial evaluation or just an FBA (Functional Behavioral Assessment);
- Categories of student disabilities: autism, deaf-blindness, visual impairment, hearing impairment, deafness, emotionally-disturbed, intellectual disability, developmental delay, orthopedic impairment, traumatic brain injury, specific learning disability, speech language impairment, and other-health impairment.

# Individualized Education Program (IEP)



- A legal document to be enforced;
- Done at public expense;
- Can be done using video-conferencing nowadays;
- Developed by the Local Education Agency;
- IEP Team must include: a parent, and no less than one special ed and one regular ed teacher; test interpreter, and school representative.







## Parental Involvement & Best Practices

- Parents are part of eligibility decisions for special education and should be the **MOST** important source of information for the student;
- Parents should attend and participate in IEP meetings;
- Parents can challenge decisions made by school;
- Parents have access to student records;
- Written parental consent is a requirement prior to performing an evaluation;
- Translators required when needed;
- Parental notification in writing **PRIOR** to any changes to IEP;



# Transitional Service Planning & Least Restrictive Environment (LRE)



## Transitional Service Planning

- As early as 14, can start Transitional Service Planning (life/vocational training), but **MUST** include it in the IEP in effect when the child turns 16.

## Least Restrictive Environment (LRE)

- Disability is normal to human existence;
- Want students with disabilities alongside those without as much as possible;
- Separate students **ONLY** if necessary.





# FERPA

Family Educational  
Rights & Privacy Act

- Prohibits the release of such educational records by the School Board without the consent of the student, except to "school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests."

# School Board v. Martinez-Oller, 167 So.3d 451 (Fla. 3d DCA 2015).



- A boy, Joel, and a girl, Ericka, start to have a verbal altercation while in class and at some point Joel calls Ericka the B word. Ericka picks up an EIGHT-pound textbook and pitches it at Joel's face, where it fractures his eye socket. It was an instantaneous act, and the court found no liability because the teacher didn't even have an opportunity to intervene.
- The Plaintiff claimed that 18 months earlier, Ericka had pulled on a student's shirt tail and failed to observe proper bus decorum.
- The Court found that the school principal would have had to disseminate Ericka's disciplinary reports to all her classroom teachers and some employees who might attain some degree of supervisory authority over Ericka --- on the chance she might again misbehave at some point in the future. "This rationale is antithetical to the raison d'être for the federal and state student privacy laws, which exist to protect a student's right to privacy from the unauthorized access of third parties, and concomitantly serves to deter the interjection of extraneous factors into a teacher's evaluation and treatment of students in the classroom."
- In other words, the privacy laws are there in part to protect the student from a teacher pre-judging the student based upon past behavior.
- Disclaimer – this does not mean there is no duty to apprise teachers in the event there is a serious safety issue posed to other students or staff members.





# Best Practices



# Best Practices When Disciplining Students With Disabilities (Manifestation Determination)



- **Example #1: Student without a disability threatens to harm another student.**
  - we investigate and immediately suspend or expel the student



# Best Practices When Disciplining Students With Disabilities (Manifestation Determination)



- **Example #2: Student with a disability threatens to hurt another student;**
  - School Must Make a Manifestation Determination;
  - Is a student's misbehavior a result of their disability;
  - Use it before serious discipline as in suspension or expulsion;
  - Must be reviewed by IEP Team within 10 days of the incident;
  - Questions: why did it happen? Was the behavior related to the disability or placement? If yes, then stay put;
  - MUST notify parents on the same day in writing if the discipline involves a change of placement; removals that are up to more than 10 days constitute a change of placement for the student.



## IEEs

- Usually private;
- When publicly paid, it's called an Independent Educational Evaluation at Public Expense;
- Evaluator is selected from an approved list of professionals who work for the school district;
- IDEA gives you the right to request that the school pay for an IEE if you disagree with the school's evaluation (i.e. didn't find evidence of a disability, wrong diagnosis, etc.);
- If the school doesn't believe an IEE is warranted, then it may request a due process hearing; the school must show its evaluation was done correctly;
- Although the requirement is that the IEE be performed within a reasonable time following the request, 30 days which has been found reasonable, so the suggestion is to not delay it beyond 30 days;



- Under IDEA, Parents are not just participants, they are **key parties** because they spend the most time with the students; make sure the parents have significant involvement;
- Make sure Parents are **active participants** in IEP decisions;
- Have **Excellent Documentation**. You should have comprehensive notes of the IEP meeting discussions and include them in the Additional Notes section;
- Complete Evaluations – do not do it piecemeal; identify all the testing you will employ instead of, for instance, just performing a Functional Behavioral Assessment (FBA) and going off of that;
- When performing a comprehensive assessment, **involve the parents and make them feel part of the process**; minimize the risk of the parents challenging the results of the comprehensive assessment;
- **Know when to get an attorney involved**. The more severe the consequences, the more likely there will be a conflict. For example, expulsions and termination of services are likely to result in conflict. So it may not be a bad idea to have a lawyer involved before taking severe action.



# Dealing With Conflict







**If parents disagree with a decision by the IEP Team, they have options:**

1. Voluntary Mediation; free for parents; Florida Department of Education allows them to submit a Request for mediation form; both sides have to agree; it is NOT required before requesting a due process hearing;
2. Complaint with the Florida Department of Education;
3. Due Process Hearing Request.



## Due Process Hearings:

- **Due Process Hearing Request.** Parents of children with disabilities or a school district can request a due process hearing involving educational placement, provision of FAPE, or an evaluation.
- **Resolution Meeting.** Within 15 days of receipt of the Due Process Hearing Request, the school district **MUST** convene a resolution meeting with the parents and the relevant members of the IEP Team. No school attorneys allowed unless the parents have an attorney present. Can be waived by both sides.



## Due Process Hearings:

- Mini trials and full discovery typically permitted.
- Conducted before Florida's Division of Administrative Hearings (DOAH)
- They are De Novo Proceedings – not appellate reviews of agency action.
- Taking of depositions permitted;
- Written Discovery is permitted;
- Motions are permitted, but must state whether the motion is opposed or not.
- Many motions are ruled upon without a hearing.
- There is subpoena power.
- Final Hearing Usually Scheduled 60-90 Days After the Petition is Filed; so it goes quickly; if you need to request depositions or send out discovery, do it immediately and do not wait or it will be too late.
- The rules of evidence are used, but are not technically applicable.
- Hearsay is admissible, but isn't sufficient on its own to support a finding.

## Qualified Representatives (Advocates)



- The Administrative Procedure Act was designed to foster easy access to administrative determinations in contested proceedings.
- Petitioners can be represented by Qualified Representatives instead of attorneys.
- Requires a written request to use a Qualified Representative.
- Administrative Law Judge (ALJ) makes a determination that the party is capable of representing the party as a qualified representation.
- Must have knowledge of the Florida Rules of Civil Procedure and rules of evidence.



Q&A



# Contact us:



L L O P I Z W I Z E L  
L A W F I R M

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