**Important Acronyms:**

FAPE- Free & Appropriate Education

RHA- Rehabilitation Act of 1973

EAHCA- Education for All Handicapped Children Act of 1975 (P.L. 94-142)

IDEA- Individuals with Disabilities Act of 1990

IDEIA- Individuals with Disabilities Education Improvement Act of 2004

ADA-Americans with Disabilities Act of 1990

IEP- Individualized Education Program

IAP-Individual Accommodation Plan

NCD- National Council on Disability

NCLB-No Child Left Behind

EL-English Learners

LEP-Limited English Proficient

RTI-Response to Intervention

SLD-Specific Learning Disability

SWD-Students with Disabilities

MTSS-Multi-Tiered System of Support

PDA-Personal Data Assistant

LEA-Local Education Agency

CIC-Clean Intermittent Catheterization

LRE-Least Restrictive Environment

PPT-Planning & Placement Team

IAES- Interim Alternative Educational Setting

AYP- Adequate Yearly Progress

**Chapter 5 - Individuals with Disabilities**

**History of Special Education in America**

The EAHCA was enacted in 1975.

The EAHCA, when it was written into law, helped over one million students who had been excluded entirely from the education system due to a disability.

**Individuals with Disabilities are protected by 3 Federal Statutes:**

1. The IDEA of 1990
2. The ADA of 1990
3. The Rehabilitation Act of 1975 section 504

These laws protect individuals with disabilities against discrimination.

**The laws provide 3 things for individuals with disabilities:**

1. Equal Access to Educational Opportunities
2. Facility Utilization
3. Employment Opportunities in Public School Setting

**Two Federal Court Cases in the 1970’s which caused special education to come to the forefront were:**

1. *The Pennsylvania Association for Retarded Children v. Commonwealth*
2. *Mills v. Board of Education*

Both court cases, along with political pressures across the nation, led Congress to adopt the Rehabilitation Act of 1975. Thus, paving the way for the EAHCA, which would later evolve into IDEA.

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**Children with Disabilities is a term defined by IDEA as those who meet the following conditions:**

Mental retardation, hearing impairments including deafness, speech or language impairment, visual impairment including blindness, learning disabilities, brain injury, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, specific learning disabilities, and other impairments who by reason of such conditions need special education and related services.

**Mandatory Requirements for IDEA:**

* Guarantees children with disabilities ages 3 to 21, or until graduation receive a FAPE consistent with their individual needs.
* Establishes substantive & procedural due process rights for students and their families.
* Requires LEAs to identify, locate, & evaluate all children with disabilities ages birth to 21 years who are in need of early intervention or special education services.

**When IDEA was amended in 2004 to IDEIA, there were a number of significant changes to the law. *The changes include*:**

* Guarantees children with disabilities ages 3-21 receive a FAPE that is consistent with their individual needs.
* Permits federal funding to assist states and local communities, which provide varying degrees of special education services to over 6 million students.
* \*OPTIONAL\* Allows LEAs to allocate up to 15% of their total IDEIA funding to offer services to students prior to being identified as having a disability.

To meet eligibility, a state must develop a plan to ensure a FAPE for all children with disabilities within its jurisdiction.

**Each state must:**

* Establish goals that address graduation & dropout rates, as well as other factors determined by the state.
* Formulate a policy that ensures certain due process rights for all children with disabilities.
  + **Plan must include:**
    - Goals
    - Timetable
    - Personnel
    - Facilities
    - Related Services
    - Fund Allocation

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IDEIA provides new formulas for allocating funds to state and local education agencies that include the number of children ages 3 – 5, and 6 - 21 years who receive special education and related services, and the average per pupil expenditure in the U.S. based on the current fiscal year.

**Each local district must submit an application to the state which will:**

* Demonstrate Compliance
* Available for Review

- Federal Funds are allocated first to children with disabilities who are not receiving any type of education, then to children with the most severe disabilities.

-Children with disabilities must be educated with non-disabled peers to the fullest extent possible.

-Does not require the student to demonstrate that he/she will benefit from special education as a result of qualifying for services.

-Does not require equality of results, merely requires that children with disabilities benefit from instruction.

-Due Process Rights

**National Council on Disability (NCD)**

-Initially established in 1978 as an advisory board within the United States Department of Education to guarantee equal opportunity for people with disabilities.

-NCD is an independent federal agency charged with advising the President, Congress, and other federal agencies regarding policies, programs, practices, and procedures that affect people with disabilities.

-NCD is comprised of a team of Presidential and Congressional appointees, an Executive Director appointed by the Chair, and a full-time professional staff.

-In the year 2000, the NCD released a report entitled “Back to School on Civil Rights”, which found that every state was out of compliance with IDEA to some degree.

**Two practices that can create challenges for children with disabilities are:**

1. Exclusion
2. Misclassification

Both practices generally result in legal challenges.

* Most importantly, school officials should cautiously verify that children with disabilities have been classified and placed properly.

**Teacher Qualifications for Students with Disabilities defined by NCLB:**

-Bachelor’s Degree

-Possess a Special Education Certificate/License to teach

**Prereferral Intervention:**

-The duty of the regular education teacher.

-Identifies students who may need special services in order to receive full benefits of an education.

-Must happen after continuous and multiple efforts have failed to meet the needs of the student.

-Teachers must have worked with a student over a reasonable amount of time by examining the student’s work to determine whether he/she needs special assistance beyond what is provided in the regular classroom.

-When the teacher appears convinced that the student needs special assistance, a special request should be made in the form of a referral.

-Each school district has policies and procedures regarding the referral process.

-**Data Requested on Referrals may include:**

-Name

-Age/Grade Level

-Gender

-Test Scores

-Local Test Data

-Strengths/Weaknesses in Subject Areas

-Reading Ability

-Behavior & Relationships with fellow students

-Pertinent family data

-Successful & Unsuccessful Teaching Methods/Strategies

-English Language Learners cannot be identified for Special Education services based solely on their inability to speak English proficiently.

-LEP’s must meet one or more of the disabilities required for special education services.

**Response to Intervention (RTI)**

-RTI is a combination of assessments and interventions used to provide early, effective assistance and support to children who are experiencing difficulty learning.

-RTI minimizes academic failure based on early intervention, regular progress reports, and intensive research-based instructional interventions for children who continue to experience difficulty.

-Initiated in the 2004 Reauthorization of the IDEIA.

-Not only for students with disabilities, but also for any student who may experience learning or behavioral difficulties.

**Multi-Tiered System of Support (MTSS)**



-**Tier 1:** Basic Core Instruction (ALL Students)

-**Tier 2:** Individualized instruction based on students who do not demonstrate acceptable levels of proficiency at Tier 1 (SMALL Group)

-**Tier 3:** Intense instructional interventions to improve students’ academic progress. It may or may not involve special needs students. (INDIVIDUALIZED)

**Objective of MTSS**: To weed out students who do not truly have a disability.

-Success is determined by dedicated faculty and staff, differentiated classroom instruction, and data-driven decisions.

-RTI can be completed without parental involvement, however if RTI is not successful and formal assessment is required, it must be initiated by a parent request, or grant consent to do so.

-Prior to formal evaluation, school districts must notify parents and receive consent to initiate formal assessment procedures.

-Formal evaluation includes a battery of appropriate tests to identify student’s strengths and weaknesses.

* **Districts have 60 days from the time of consent for an:**

1. Evaluation of Student Eligibility
2. Determination of Eligibility & Educational Needs of the Child

-If a parent is dissatisfied with the results, they may secure an outside testing agency to re-evaluate, at the district’s expense, unless the hearing officer agrees with the district’s assessment.

-Re-evaluation must occur minimally every three years.

**Alternative Assessment:**

-States have the option of testing up to 2% of their students using alternate assessments based on modified standards.

-Provisions affect roughly 30% of students.

* Significant due to meeting AYP under NCLB

**Individualized Educational Program Requirements**

* Short-Term objectives are only required for students who are taking alternative assessment standards.
* NCLB restricts alternative assessments to students with the most significant cognitive disabilities.
* Alternative Achievement Standards & Grade-Level Standards are aligned with State Standards.
* Secretary of Education may approve up to 15 states to allow a multi-year IEP (3 year maximum)

-Upon the completion of the evaluation of a student who qualifies for special education services, the IEP must be designed specifically for each student. The evaluation team will meet to discuss results of testing and a plan for the student’s success.

**-Evaluation Teams May Include:**

* Special Education District Representative
* Homeroom Teacher
* Parent
* Special Education Supervisor

**-All IEPs should include, at minimum, the following:**

1. A statement of the students' present level of abilities.
2. Annual Goals, as well as short-term instructional objectives.
3. Specific Educational Services to be provided & a determination of whether the student may participate in regular educational programs.
4. Transitional Services to be rendered if IEP is for a junior/senior in high school.
5. Description of services to be provided, and a timetable for providing these services.
6. Relevant criteria & procedures to be employed annually to assess instructional objectives.

* Courts **will not** **hesitate** to rule in cases regarding IEP conflicts involving due process denials.
  + *Florence County School District vs. Shannon Carter*
  + *Special Ed. Due Process Denials*

**Equal Access to Assistive Technology for SWD**

* **Technology-Related Assistance for Individuals with Disabilities Act Amendments (1994)**- provides financial assistance to support systems changes that assist in the development and implementation of technology-related support for individuals with disabilities.
  + Does NOT include a medical device that is surgically implanted or the replacement of that device.
  + Any service that directly assists a SWD in the **selection**, **acquisition**, or **use of** an assistive technology device.
    - **Services May Include**:
      * Purchasing/Leasing or providing acquisition of assistive technology by the child.
      * Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
      * Coordinating & using therapies, interventions, or services with assistive technology devices.
      * Training or technical assistance for the child or family, where appropriate.
      * Training or technical assistance for professionals, employers, and other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

**Personal Data Assistants for Disabled Students**

**Personal Data Assistant**- versatile, personal computers that may be used for notes and serve as communication devices.

-PDAs are covered under the Technology-Related Assistance for Individuals with Disabilities Act.

-Considered “Related Services” that allow students to participate in regular classrooms consistent with their IEP.

\*Trainings for any other persons who deal directly with students using PDAs must be accommodated.

**Trainings may include:**

1. An understanding of Section 504, ADA, and the IDEA/IDEIA
2. An understanding of their responsibilities in providing accommodations.
3. An understanding of the rights of the child with disabilities.
4. An understanding of how accommodations & modifications should be provided.

**Program Review & Changes**

-IEPs must be reviewed **annually** to ensure the educational needs of the child are being met.

-Any changes require parent notification.

-If parents are dissatisfied with the changes, a hearing may be scheduled to resolve the issue.

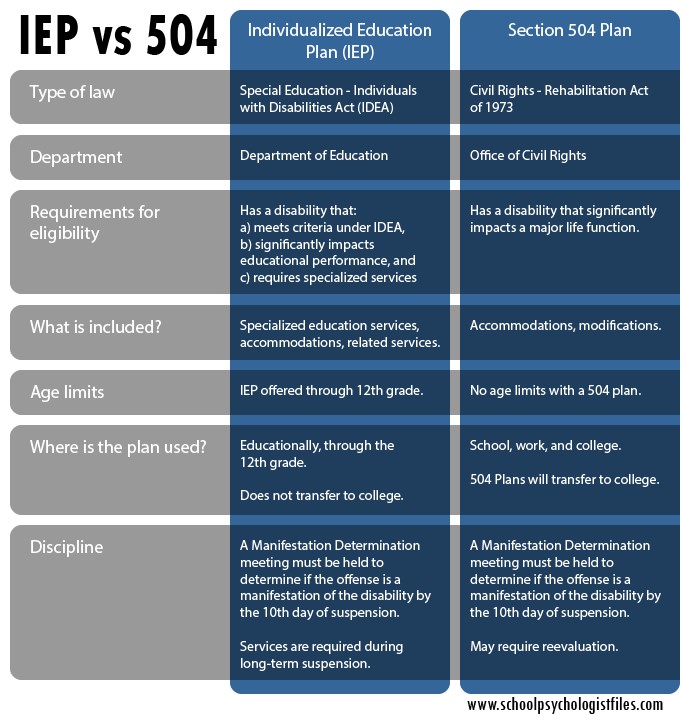
-If the process is unsuccessful, parents may appeal the decision to the state agency and the court system.

--This process serves as a checks and balances and due process rights are being satisfied, as required by the ADA.

-If changes to an IEP are necessary after the annual review meeting, the LEA may agree not to meet at an IEP meeting to make the changes, but instead may develop a written document to amend the current IEP.

**Burden of Proof**- There is an ongoing problem between parents of disabled children and school districts regarding where the burden of proof lies in IEP court cases.

* *Schaffer v. Weast* (2005) Supreme Court ruled that the burden of proof in a hearing challenging an IEP will now reside on the party seeking relief.
  + This decision has regulated the burden of proof in due process hearings.



**Section 504   
 RHA 1973**

* Students who qualify under section 504 are provided an Individual Accommodation Plan (IAP)
* IAP identifies the students disability (Physical or Mental impairment that substantially limits one or more major life activities), and the access to the school’s regular education program.

**Major Life Activities:**

-Caring for oneself

-Manual Tasks

-Sensory Activities

-Concentrating

-Communicating

* Assessments by a Student Support Team will determine if a student qualifies for a 504 plan
  + Student Support Teams Include:
    - Parent/Legal Guardian
    - Student’s Teacher(s)
    - Student (When Appropriate)
    - Administrative Representative

**The Student Support Team documents the following items in the IAP:**

1. Specific Teaching Strategies
2. Nature of the student’s disability
3. Student-Specific Individualized Interventions & Accommodations

**The ADA Amendments Act of 2008**

* September 25, 2008- Amendments to the ADA were made to clarify and reiterate who is covered by the law’s civil rights protections.
  + Encompasses more impairments that substantially affect daily major life activities.
    - Clarified coverage of impairments that are episodic or in remission.
      * Some examples of such impairments: epilepsy, PTSD,
* Amendments became effective January 1, 2009

**Case Study Group Exercise:**

**Directions:** Break up into small groups. Read your assigned scenario, and then the assigned reading from Chapter 5. Use text to analyze the case study and answer the corresponding questions. Report your findings to the cohort.

**Group 1** “Student Disability & Inclusion Decisions”

Tony

Ashton

Jessica

Dr. Larson

David Sterns is a first-year principal of a middle school in an upper-class community in the eastern United States. The district has an outstanding reputation for its academic program. Sterns admittedly is not as familiar with all issues involving disabled students as a more experienced administrator might be. The parents of a moderately menttally retareded student requested that their daughter be placed in the regular classroom on a full-time basis. Sterns was only willing to place her in regular education classes for nonacademic subjects and into special education classes for the academic courses. The parents are upset with his decision.

**Questions:**

1. Is Sterns justified in his decision? Why or why not?
2. Is the request by the parents a reasonable one? Why or why not?
3. What does special education law suggest with respect to inclusion?
4. What process should be initiated to respond to the parents’ request?
5. How would the law apply in this case?
6. What are the administrative implications of this case?

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**Group 2** “A Disabled Student & Related Services”

Brandy

Michelle

Molly

Nick

Brittany

Debbie Young is a seasoned high school principal. She served as a special education teacher and as an assistant principal in a progressive, affluent school district in the South. She is approached by the parents of a severely disabled tenth-grade student, Jonathan, requesting that a full-time nurse be provided under the label of “related services”. Jonathan has multiple disabilities requiring constant care by a specially trained nurse. He is prfoundly mentally disabled, has spastic quadriplegia, and has a seizure disorder. Young refuses the parents’ request due to extraordinary expense and a view that the school is not the most appropriate placement for Jonathan.

**Questions:**

1. Is Young’s decision defensible? Why or why not?
2. Is the parents’ request reasonable under the law? Why or why not?
3. Is the provision of a nurse a related service if it is necessary for Jonathan to receive an appropriate education? Why or why not?
4. How do you think a court would rule in this case? Provide a rationale for your response.
5. What are the administrative implications of this case?

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**Group 3** “SWD Reported to Law Enforcement”

Amanda

Codie

Dakota

Saretta

Sam

A student with disabilities in a small high school in a very close-knit community shared her prescribed medication with another student, which resulted in the assistant principal reporting her to the police, although the student showed no signs of having been harmed by the medication.

**Questions:**

1. How would you assess the assistant principal’s action?
2. Is his action justified? If so, why? If not, why not?
3. Were other options available to the assistant principal? If so, please identify and provide rationale for these options.
4. Does the child with disabilities have a valid legal claim against the assistant principal? If so, why? If not, why not?
5. How do you feel the courts would view school leaders sharing their investigation results with law enforcement agents?

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**Group 4** “Isolation & Restraint”

Amy

Cory

Crystal

Dustin

Angelica

One of your most effective teachers with sixteen years of experience has used unorthodox disciplinary practices to curtail misbehavior involving middle school students with disabilities. You were informed of her methods by another teacher. The teacher allegedly used isolation and restraint measures that could create safety risks for students.

**Questions:**

1. How would you respond to this development?
2. If these allegations are deemed to be valid, what action would you take?
3. Are disciplinary measures appropriate for the teacher? Why? Why not?
4. What might be the consequences for you and the teacher if you fail to act?