Legal Issues in Representing Students in IDEA Cases

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Diana K. Wyles, Esq.
Associate General Counsel
Prince George's County Public Schools

Megan Jones, Esq.
Managing Attorney
Disability Rights Maryland

Understanding and Working for the Pro Bono Client

- Define the scope of representation up front
- Be prepared to use less formal methods of communication (text). Many families in rural Maryland do not have reliable internet/cell signal in their homes.
- Partner with local supports (mobile crisis, Maryland Coalition of Families) to improve communication and follow-through.
- Provide zealous representation while empowering the parent/guardian to learn how to advocate for the student
- Do not over promise

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Who is a Parent Under IDEA

- **Natural Parent**
- **Adoptive Parent**
- **Informal Kinship Care** - a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the child due to a serious family hardship (Requires annual renewal)
- **Parent Surrogate** -an individual appointed to represent a child in special education matters when the child's biological or adoptive parents are unavailable or unable to act as their educational decision-makers (Only applicable until “parent” is available)
- **Guardianship** - a legal proceeding that give one person legal authority to make decisions for another person (May or may not be long term)

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Who is a Parent Under IDEA

- **Foster parent who has been granted limited guardianship for educational decision-making purposes by the court that has placed the child in foster care**
- **Legal Custody** - court order that determines who has rights to make decisions regarding health, education, and religion for a child
- **Physical Custody** - court order that determines where a child primarily resides

NOTE

- Custody orders are permanent until there is a subsequent court order modifying the terms of legal custody or until the child reaches the age of majority.
- DSS/social workers can not be the parent under IDEA. They are NOT the educational decision makers.

DRM Who Holds Educational Rights Document

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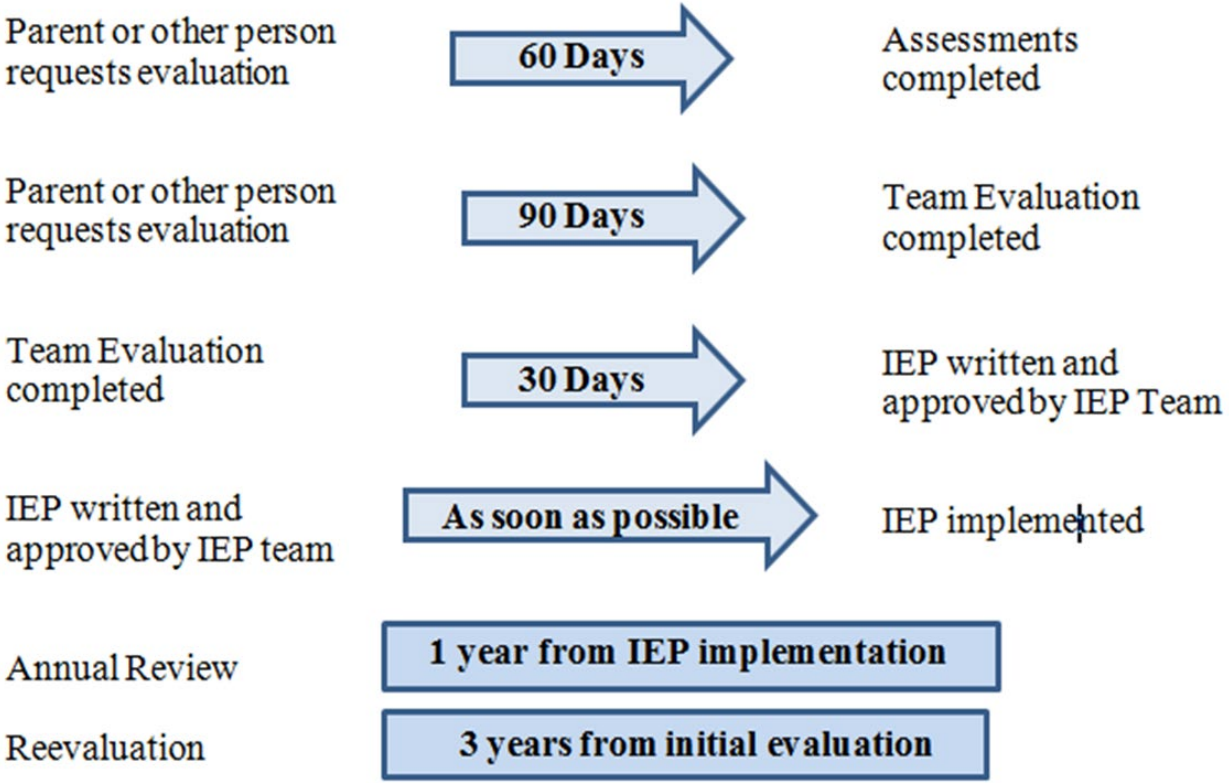
Intake Processes

- Obtaining records
  - What do you need given the scope of representation and the anticipated time commitment
  - Will the parent be able to obtain the documents more quickly through requesting them for you?
- FERPA Requirements
  - Release of Information

Extending IDEA with COMAR: Going Above and Beyond

- 5 day documents Md. Code Ann., Educ. §8-405(e)(1) and (f)(1)
- Transition age COMAR 13A.05.01.07 (D)(5)
- Consent for alternate learning outcomes and assessments Md. Code Ann., Educ. §8-405(g)(2)
- Consent for restraint and seclusion: COMAR 13A.05.01 and 13A.08.03.
- IEE request: 30 day response requirement COMAR 13A.05.01.14

IEP Process Timeline



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Adversarial vs. Nonadversarial Advocacy

- Determining the best approach as the student's/parent's advocate or attorney
- Attorneys communicate with school system attorneys to reach consensus, if needed
  - Often helpful to have a preliminary phone call to determine where the district is coming from and to identify where the team is in agreement/what the sticking points are.
  - The same can be said **during** IEP meetings, often more successful to be curious and listen to understand rather than listening to respond.
- Advocates work with central office staff or compliance departments if there are challenges with school-based teams

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Importance of Effective Communication

- Managing expectations
- Breaking down jargon
  - Sometimes this means clarifying language parents have used in the past (i.e. “modifications” versus “accommodations”). Sometimes disagreements stem from the language used and not true difference of opinion about need.
  - Empower parents to ask for explanations of terms used during IEP meetings to ensure parent understanding.
- Repairing parent-school relationships
  - Once you complete your representation, the parent will still need to work with the school
  - Help to focus on the issues, not the people

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In the Process

- What does “in the process of eligibility” mean and how does it impact student’s rights?
  - Known and Suspected disabilities
    - Does the district have “reason to suspect” a disability that falls into one of the categories in IDEA?
    - Does that disability require the provision of special education services?
  - Applies for Manifestation Determination Reviews under IDEA and 504

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Rapid Fire Issues

- Working with clients in a different part of the state
- Virtual vs. In-Person Meetings
- Location of Services
  - LRE and location are not the same
- Student Participation
  - What does the student want?
  - What is the most effective way to engage students in the IEP meeting?

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MVLS Special Education Program
Areas of Representation: Considerations

- The school is proposing a more or less restrictive placement and the family disagrees
  - Most litigated issue
  - What does the data say
  - Nonpublic is not always the answer
  - Location of services within a school system often becomes a disputed issue, i.e. picking one school over another even if services are the same
- The school is proposing a reduction in instructional or related services and the family disagrees
  - What does the data say

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MVLS Special Education Program
Areas of Representation: Considerations

- The school has suspended or otherwise removed the child from school for more than 10 days
  - Note: students in Pre-K to 2nd grade can only receive suspensions in limited circumstances and no more than 5 days (Md. Code Ann., Educ § 7-305.1; COMAR 13A.08.01.11 (c))
  - Manifestation Determination Reviews
  - Superintendent/Designee Discipline Conference under COMAR (general ed due process protections)
  - Interim Alternative Education Settings
- The school has requested a due process hearing
  - Force consent to assess
  - Independent Educational Evaluation defense
  - Infrequent cases

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MVLS Special Education Program
Areas of Representation: Considerations

- The school has restrained the child or placed them in seclusion more than 10 times
  - No seclusion in public schools!
  - MSDE Reporting requirements for restraint and seclusion
  - Corrective action requirements for restraint or seclusion over 10 times
  - Properly counting number of instances of restraint or seclusion
- The school has proposed to enroll the child in an alternative education program and the family disagrees
  - The big 3: weapon, drugs, serious bodily injury
  - Reportable Offenses
  - Behavior Threat Assessments
  - Administrative Transfers

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MVLS Special Education Program
Areas of Representation: Considerations

- The family's native language is not English and they would like assistance with navigating the special education needs for the child.
  - LEAs have access to interpreters; ensure the IEP team is aware of the need
  - Ask for more time for IEP meetings where interpreters are needed

MSDE Procedural Safeguards and Other Resources

- Parental Rights, Maryland Procedural Safeguards Notice, Revised July 2024
- Required to be provided:
  - At least annually
  - For manifestation meetings/disciplinary matters
  - When there is disagreement
- Maryland model IEP form
  - Not mandatory, but most districts use this form through Maryland Online IEP
    - Accessible internally for LEA staff
- MSDE Publications and Information
- Check the LEA for compliance and processes guides that are posted

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