

# Special Education Dispute Resolution



# Council for Children's Rights

## Disclaimer

The information provided in this training does not, and is not intended to, constitute legal advice. Instead, all information is provided for general informational purposes only.

# What We Do

- \* Education Advocacy for Individual Families
  - \* Individual representation for students and their legal guardians in need of legal assistance regarding education matters such as special education, Section 504 Plans, and school discipline.
  - \* Families can contact [gethelp@cfcrights.org](mailto:gethelp@cfcrights.org) or 704-943-9609 for assistance.
- \* Education Navigation
  - \* A service centered on students involved in the juvenile court of Mecklenburg County that is intended to address issues related to their education rights, such as inappropriate disciplinary actions, inadequate IEPs or Section 504 Plans (or a total lack thereof), charter schools' failing to meet a student's needs, etc.
  - \* Families can contact [ELP@cfcrights.org](mailto:ELP@cfcrights.org) or 704-943-9611 for assistance.
- \* Systemic Advocacy
  - \* As a small team, we cannot individually assist every family that needs support with education advocacy. By devoting time to strategically elevating significant issues affecting many students, our work can have a greater community impact.
- \* Community Trainings
  - \* We offer free trainings to community partners and parent groups. Our trainings cover a range of topics related to education advocacy.
  - \* Interested parties can contact [ELP@cfcrights.org](mailto:ELP@cfcrights.org) or 704-372-7961.

# Agenda

- \* Three Quick Notes
- \* Overview of Types of Education Interventions
- \* Fundamental Concepts of IDEA
- \* Avenues for Dispute Resolution
  - \* IEP Meetings
  - \* Independent Educational Evaluations
  - \* Facilitated IEP Meetings
  - \* Dispute Resolution Consultants
  - \* Mediation
  - \* State Complaints
  - \* Due Process Hearings
- \* Example Scenario

# Three Quick Notes!

# Special Education, aka:

- \* The terms “Individualized Education Program” (IEP), “Exceptional Children” (EC), and “Special Education” are often used to refer to the same thing and may be considered interchangeable for the purpose of this training
- \* EC services = IEP services = special education

# The Special Education Decision Maker (SEDM)

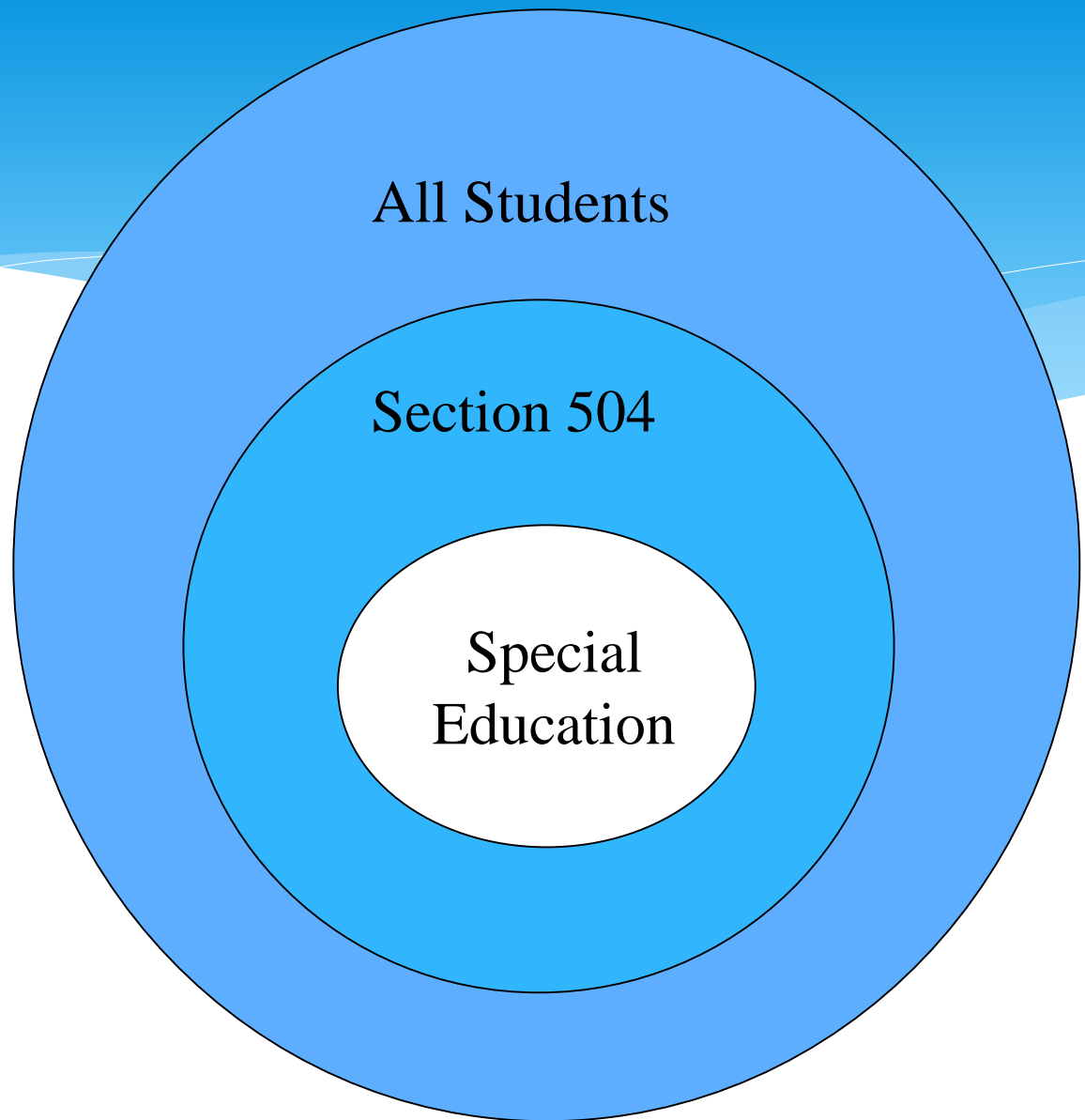
- \* The SEDM is a required member of the IEP team and exercises the student's special education rights, such as:
  - \* Requesting an EC evaluation
  - \* Consenting to EC services
  - \* Utilizing dispute resolution strategies
- \* Possible SEDM Candidates:
  - \* Biological/Adoptive Parent
  - \* Non-Therapeutic Foster Parent
  - \* Guardian (but not the Department of Social Services)
  - \* Kinship Placement
  - \* Local Educational Agency (LEA)-Assigned Surrogate Parent
  - \* Court-Appointed Special Education Decision Maker
- \* For this presentation, we will refer exclusively to the SEDM, rather than any specific individual

# Charter Schools

- \* Everything discussed in this training applies to charter schools, as well as traditional public school systems
- \* Charters must:
  - \* Follow NC and federal law for special education and Section 504 Plans, and
  - \* Follow NC law on school discipline

# Overview of Types of Education Interventions

- \* All Students:
  - \* Multi-Tiered System of Support (MTSS)
- \* Students with disabilities:
  - \* Section 504
  - \* Special Education



# Multi-Tiered System of Support (MTSS)

## A Regular Education Initiative

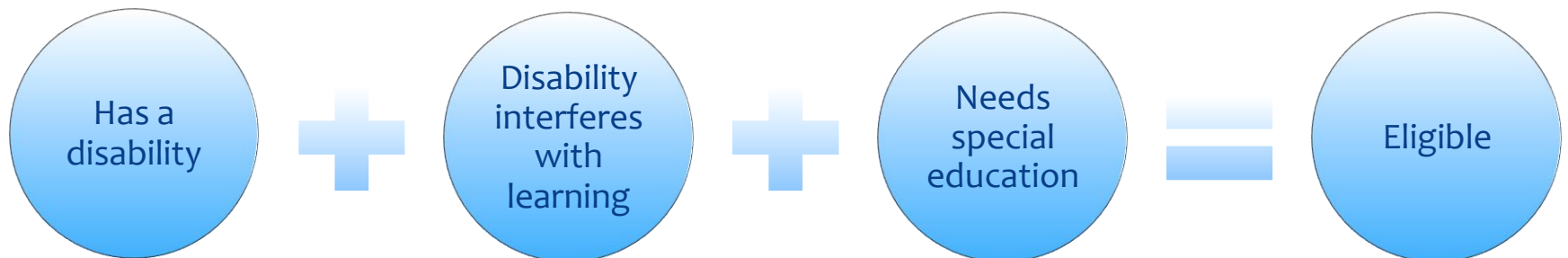
- \* Tier 1
  - \* All students receive the same academic instruction
- \* Tier 2
  - \* Tier 1 services, plus
  - \* Small group intervention
  - \* May include increased time for assignments or more narrowly focused instruction
- \* Tier 3
  - \* Tier 1 & 2 services, plus
  - \* Intensive, individualized supports
  - \* Likely includes progress monitoring, 1:1 instruction, and “wrap-around” services

# MTSS

- \* Key Components
  - \* High quality instruction (Tier 1 - all students)
  - \* Universal screening to identify students in need of supplemental support (Tier 1 - all students)
  - \* Multiple tiers of academic and behavioral support that are progressively more intensive (Tier 2)
  - \* Evidence-based interventions matched to student need (Tier 3)
  - \* On-going progress monitoring of student performance (Response to Intervention (RTI))
- \* Parent participation in this process is important to ensure the student receives the most appropriate supports possible

# Who Gets Special Education?

- \* To receive special education services, a student must:
  - \* Be between the ages of 3 - 21,
  - \* Meet criteria for at least one of the 14 disability eligibility categories, and
  - \* Have a disability that:
    - \* Adversely affects their educational performance, and
    - \* Requires specially designed instruction



# Who Gets Special Education?

## Disability Eligibility Categories

1. Autism Spectrum Disorder
2. Deaf-blindness
3. Deafness
4. Developmental Delay\*
5. Emotional Disability
6. Hearing Impairment
7. Intellectual Disability
8. Multiple Disabilities
9. Orthopedic Impairment
10. Other Health Impairment
11. Specific Learning Disability
12. Speech or Language Impairment
13. Traumatic Brain Injury
14. Visual Impairment

# What is an IEP?

- \* **Individualized Education Program**
- \* The IEP document must include:
  - \* Student's strengths, weaknesses, and needs
  - \* Measurable goals for the student to achieve in the course of a year
  - \* The accommodations, modifications, related services, and specially designed instruction necessary to help the student reach the IEP goals
  - \* Where the services will be provided (i.e., regular education or special education setting)
- \* IEPs are developed by the IEP team, which includes the Special Education Decision Maker (SEDM)
- \* Students with IEPs are entitled to a free appropriate public education (FAPE)

# IEP vs. Section 504 Plan

- \* IEP
  - \* Each public school student who receives special education and related services must have an IEP
  - \* Allows students to receive specialized instruction
- \* Section 504 Accommodation Plan (Section 504 Plan)
  - \* For a student with a disability who does not require specialized instruction, but needs accommodations/modifications to make sure they receive equal access to their education
  - \* Broader definition of disability
- \* If a student has an IEP, they do not require a Section 504 Plan

# IEP vs. Section 504 Plan

## IEP

- \* Sam meets eligibility criteria as a student with a Specific Learning Disability. His IEP provides services with a special education teacher several times a week to address his individual goals in reading, writing, math, and organization. He also receives modified assignments, extended time on tests, and takes tests in a room with fewer students.

## Section 504 Plan

- \* Erin has severe Myopia (nearsightedness). Her Section 504 Plan requires seating near the teacher/board and all printed materials be presented in a larger font.

# IEPs & Section 504 Plans

- \* Annual Reviews:
  - \* IEPs are required to be reviewed annually, and it is common for Section 504 Plans to be reviewed annually as well
- \* Very important for the SEDM/legal guardian to attend IEP and Section 504 meetings and advocate for changes to help their student
- \* SEDM/Legal guardian may request an IEP/Section 504 meeting at any time during the year
- \* SEDM/Legal guardian should follow up with teachers to make sure services, accommodations, and modifications are being provided as written

# Fundamental Concepts of the Individuals with Disabilities Education Act (IDEA)

# IDEA: Fundamental Concepts

- \* IDEA guarantees:
  - \* A free appropriate public education (FAPE)
  - \* In the least restrictive environment (LRE)
- \* These two concepts can be vague and create conflict between schools and families about the services and placement students receive

# FAPE

- \* Special education and related services that are:
  - \* **Free**
    - \* Provided at no cost to parents
  - \* **Appropriate**
    - \* Sufficient to achieve reasonable educational progress
    - \* Not “best” or to “maximize potential”
    - \* “Appropriately ambitious” in light of the student’s circumstances
    - \* *Hendrick Hudson Dist. Bd. of Educ. v Rowley (1982); Endrew F. v. Douglas County School District (2017)*
  - \* **Public Education**
    - \* Supervised and directed by the local school system

# Special Education

- \* Special education is defined as:
  - \* Specially designed instruction
    - \* Adapting the content, methodology, or delivery of instruction
  - \* At no cost to parents
  - \* That meets the **unique** needs of the student with a disability

# Related Services

- \* A service is “related” if it is **necessary** to help a student benefit from special education
- \* Examples:
  - \* Speech-language therapy
  - \* Audiology services
  - \* Transportation
  - \* Physical therapy
  - \* Occupational therapy
  - \* Orientation and mobility
  - \* Counseling services

# LRE

- \* **Least Restrictive Environment**
- \* To the maximum extent appropriate, students with disabilities shall be educated with students who are not disabled
- \* Continuum of placement options:
  - \* Consultation services (least restrictive)
  - \* Inclusion classes (co-taught)
  - \* Resource services (pull-out)
  - \* Separate classes
  - \* Separate schools
  - \* Home/Hospital instruction (most restrictive)

# Special Education Dispute Resolution

# Avenues for Dispute Resolution

- \* IEP Meetings
- \* Independent Educational Evaluations
- \* Facilitated IEP Meetings
- \* Dispute Resolution Consultants
- \* Mediation
- \* State Complaints
- \* Due Process Hearings

# Dispute Resolution: IEP Meetings

- \* The SEDM can request an IEP meeting at any time
- \* If there have been ongoing issues, it may be helpful to request that a district-level EC representative attend the meeting

# Preparing for IEP Meetings

- \* Request and review relevant documents, such as:
  - \* Current IEP
  - \* Any recent evaluations
  - \* Other relevant school records (testing, IEP progress reports, disciplinary referrals)
- \* Ask for a copy of the draft IEP in advance; review it side-by-side with the current IEP
- \* Ask relevant providers and professionals to participate in person, by phone, or in writing
- \* Draft statements regarding your:
  - \* Current concerns for your student's education
  - \* Vision for your student's educational future
- \* Prepare a list of relevant questions
- \* Brainstorm helpful suggestions/interventions
- \* Understand your desired outcome (plan your meeting goals)

# IEP Meeting Strategies

- \* Activity participate
  - \* Ask questions
  - \* Get clarification
  - \* Present concerns and find out how they can get resolved
    - \* If not through the IEP meeting, then how/when?
  - \* Make suggestions
- \* Be respectful and work to foster relationships
- \* Make sure that everything that was agreed to, rejected, and refused is written on the **Prior Written Notice** IEP form
- \* Get a copy of all documents from the meeting
- \* If it is not in writing, assume it did not/will not happen

# Dispute Resolution: Independent Educational Evaluations

- \* An Independent Educational Evaluation (IEE) is performed by a qualified professional not employed by the school district
- \* The school will pay for the IEE or file a due process claim
- \* SEDM has the right to an IEE if:
  - \* The school's evaluation does not accurately reflect the student's skills and deficits
  - \* The school's evaluation is incomplete
  - \* The school refuses to perform a requested evaluation

# Dispute Resolution: IEEs

- \* Requesting an IEE
  - \* SEDM must put the request in writing (letter/email)
  - \* Send the letter to the student's EC case manager
  - \* The letter/email should express disagreement with the district's evaluation
  - \* The SEDM is not required to explain why they disagree with the evaluation

# Dispute Resolution: Facilitated IEP Meetings

- \* Provided through the North Carolina Department of Public Instruction (NC DPI)
- \* Will be conducted by an impartial facilitator at no cost to the SEDM or the school
- \* Purpose is to help guide effective communication between team members
- \* The facilitator does not take a side and does not make any decisions
- \* Most useful in these situations:
  - \* When SEDM is not feeling heard by other members of the IEP team
  - \* IEP team meetings have been unproductive because of strained relationships
  - \* There is a need for meaningful discussion about changes to the IEP, such as different goals, additional accommodations or modifications, or a change in special education services

# Dispute Resolution: Facilitated IEP Meetings

- \* Can be requested by:
  - \* SEDM
  - \* Adult student with a disability
  - \* School representative
- \* Requested by filling out the Facilitated IEP Meeting Request form
- \* Must be requested at least 10 days before the meeting
- \* Both the SEDM and the school district must agree to having a Facilitated IEP Meeting

# Dispute Resolution: Dispute Resolution Consultants

- \* NC DPI Consultants work with SEDMs and LEAs and can provide consultation

Name	Role	Phone Number	Email
Teresa King	Facilitation, Mediation, Due Process, & State Complaints - Corrective Action	984-236-2573	<a href="mailto:Teresa.King@dpi.nc.gov">Teresa.King@dpi.nc.gov</a>
Deborah Throm	State Complaint Investigator	984-236-2572	<a href="mailto:Deborah.Throm@dpi.nc.gov">Deborah.Throm@dpi.nc.gov</a>
Leigh Mobley	State Complaint Investigator	984-236-2571	<a href="mailto:Leigh.Mobley@dpi.nc.gov">Leigh.Mobley@dpi.nc.gov</a>
Polly Lilly	State Complaint Investigator	984-236-2567	<a href="mailto:Polly.Lilly@dpi.nc.gov">Polly.Lilly@dpi.nc.gov</a>
Cathy Boshamer	State Complaint Investigator	984-236-2646	<a href="mailto:Cathy.Boshamer@dpi.nc.gov">Cathy.Boshamer@dpi.nc.gov</a>

# Dispute Resolution: Mediation

- \* Process where a trained, neutral mediator helps resolve a dispute between SEDM and the school district
- \* Good option if the IEP team is unable to reach consensus regarding the identification, evaluation, educational program, or placement of a student
- \* Helps parties express views and understand position of the other party
- \* May be initiated by the SEDM or the school district
  - \* Voluntary process to avoid litigation – neither party can be forced to mediate
- \* May be requested any time there is a dispute between a SEDM and a school

# Dispute Resolution: Mediation

- \* Mediator provided at no cost to the SEDM or school system
- \* All conversation about possible settlement of the dispute is confidential (cannot be later used in a court proceeding)
- \* The mediation agreement is legally binding
- \* Requested by completing a Mediation Request Form
- \* Resource: Preparing for Special Education Mediation and Resolution Sessions: A Guide for Families and Advocates

# Dispute Resolution: State Complaints

- \* Process to allege that the local educational agency (LEA) has violated a requirement of IDEA
- \* Alleged violations must have occurred within the past calendar year
- \* 60-day timeline for investigation by NC DPI

# Dispute Resolution: State Complaints

- \* Examples of issues that would be investigated through a state complaint:
  - \* The services described on the IEP were not provided as written
  - \* The school did not evaluate the student and hold an eligibility meeting within 90 days of the referral
  - \* The student's special education services were terminated without an evaluation and meeting
  - \* The school failed to hold a Manifestation Determination Review

# Dispute Resolution: State Complaints

- \* To file a state complaint, include:
  - \* Factual description of what occurred
  - \* Explanation of what law or policy was violated
  - \* What the SEDM wants to happen as a result of the complaint
- \* Can be in a letter or on a form provided by NC DPI
- \* If possible, SEDM should attach written records that show the violation

# Dispute Resolution: State Complaints

- \* If found to have been noncompliant, NC DPI may require the LEA to complete corrective action:
  - \* Remediation
  - \* Compensatory education
  - \* Changes to district practices
  - \* Training for school district staff
- \* Decisions are not appealable
- \* If due process has been filed, NC DPI will not investigate a state complaint filed at the same time

# Dispute Resolution: State Complaints

- \* Resources:

- \* IDEA State Complaint Resource Center:

- <https://www.advocacyinstitute.org/isrcrc/index.shtml>

- \* State complaint information, webinars, and podcasts

- \* Sample complaints

- \* NC DPI Formal State Complaint Procedures

# Dispute Resolution: Due Process

- \* Formal, legal process for resolving disputes about special education issues
- \* Can address matters related to the identification, evaluation or educational placement of a student with a disability, provision of FAPE, or appealing a Manifestation Determination Review
- \* Filing a Contested Case Petition starts a proceeding against the school board
  - \* Can result in a settlement agreement or a decision by an administrative law judge
- \* Handled by the Office of Administrative Hearings (OAH)

# Dispute Resolution: Due Process

- \* Petition must allege a violation that occurred not more than **one year** before the date the SEDM or LEA knew or should have known about the alleged action
- \* Student will “stay put” in their current educational placement during the proceedings
- \* Resolution session:
  - \* Within 15 days of receiving the SEDM’s petition, the LEA must convene a resolution meeting
  - \* The LEA and the SEDM may agree in writing to waive the meeting, and they may choose to use the mediation process
  - \* Legally binding agreement

# Dispute Resolution: Due Process

- \* At the hearing:
  - \* Can be represented by an attorney, but not by a non-attorney
  - \* Both sides present evidence and confront, cross-examine, and compel the attendance of witnesses
  - \* An independent administrative law judge will determine the facts and conclusions of law
- \* Either party may appeal the hearing decision state or federal court

# Challenge Your Understanding

- \* A father got a new job and moved to a new city in the same state. The father has a student with special education needs. However, when the father enrolled his student in the new school district, the new school failed to implement the IEP.

What do you suggest that the father do to resolve this issue?

# Contact the Education Law Program

- \* Educational Advocacy for Individual Families
  - \* [GetHelp@cfcrights.org](mailto:GetHelp@cfcrights.org)
  - \* (704) 943-9609
- \* Education Navigation
  - \* [ELP@cfcrights.org](mailto:ELP@cfcrights.org)
  - \* (704) 943-9611
- \* Training Requests
  - \* [ELP@cfcrights.org](mailto:ELP@cfcrights.org)
  - \* (704) 372-7961

# Helpful Resources

- \* North Carolina Department of Public Instruction:
  - \* <http://www.dpi.state.nc.us>
  - \* Exceptional Children Division: <https://ec.ncpublicschools.gov/>
- \* NC Policies Governing Services for Children with Disabilities
  - \* <https://ec.ncpublicschools.gov/policies/nc-policies-governing-services-for-children-with-disabilities>
- \* Exceptional Children's Advocacy Center:
  - \* <http://www.ecac-parentcenter.org/>
- \* LawHelpNC:
  - \* <https://www.lawhelpnc.org/issues/education>
- \* A Parent's Guide to Special Education in NC:
  - \* <https://law.duke.edu.childedlaw/special-education-nc/>

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training survey.