

Special Education Law in Maine

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NOTE: *This publication is intended as a basic guideline for parents of students with disabilities. It is not intended as a substitute for or a legal interpretation of federal or state laws and regulations. This publication should not be interpreted as the provision of legal advice. Parents are strongly encouraged to seek the advice of an attorney specializing in Special Education Law.*

Introduction

Three primary laws govern special education in Maine: (1) the Individuals with Disabilities in Education Act (“IDEA”), a federal law which can be found in the United States Code at 20 U.S.C. § 1400, (2) Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794 (at § 504), and (3) Maine’s Special Education Regulations, commonly known as “Chapter 101”. Specific federal regulations were drafted to implement IDEA and Section 504. These can be found in the Code of Federal Regulations at 34 CFR Part 300 (IDEA) and 34 C.F.R. Part 104 (§ 504). Chapter 101 implements IDEA and the corresponding Maine laws within 20-A M.R.S.A. §§ 301 and 303. Other relevant laws include the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, the Family Educational Rights and Privacy Act (FERPA) 20 USC 1232g (regulations at 34 CFR Part 99), and the Maine Human Rights Act 5 M.R.S.A. 4551.

Special Education services are provided through an **Individual Education Program (“IEP”)**. Members of the IEP Team typically include the child’s parent(s), classroom teachers, special education staff, a representative from the school’s central administration, and others who have special knowledge or understanding of the child. Once found eligible for services, a child receives services at or by school administrative units or early intervention programs. The entity’s ultimate obligation is to provide the child with a “**free appropriate public education**” (“**FAPE**”). FAPE is also the legal standard applied by courts and hearing officers.

Eligibility for Special Education

In Maine, children with disabilities between the ages of 5-20 are eligible for special education and related services if their disability *adversely affects* his or her educational performance or school experience. Children with disabilities under age 5 may be eligible to receive early intervention support services through the Department of Education’s Child Development Services (“CDS”).

Categories Eligible for Special Education

Autism	“Other Health Impaired”
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Deaf and Hard of Hearing	Orthopaedic Impairment
Blindness and Visual Impairment	Specific Learning Disability
Emotional Disability	Speech and Language
Mental Retardation	Traumatic Brain Injury
Multiple Disabilities	

A student with *Attention Deficit Hyperactivity Disorder* (ADHD) can be identified under "Other Health Impairment," "Specific Learning Disability," or "Emotional Disability" or under Section 504.

Referral for Special Education

A written referral for Special Education is the first step in determining eligibility. Numerous timelines and deadlines apply once a referral is made. Referrals can be made by school staff and teachers, parents, DHS or other state agencies, and in the case of children who have already been identified as eligible for special education.

Parental Consent and Parental Notification

Parental consent in the form of a signature is required by schools before proceeding with evaluations, placements, and release of records. The term "Parental Notification" is different from the term "Parental Consent." Parental Consent requires a parent's signature, while Parental Notification requires that the school notify the parent(s) *in their native language* before proceeding with an initial referral for special education, results of tests or evaluations, the time and place of an IEP Team Meeting, implementation of the IEP, and any changes in the IEP.

The Individualized Education Program (IEP)

An Individualized Education Program (IEP) is a written education program describing in measurable detail the specialized instruction to be provided to the student. The IEP is developed and overseen by the IEP Team during regular meetings where decisions about the educational program are made through consensus. Once the IEP is in final form, it is considered a legal document and must provide the student with FAPE.

Due Process

Parents (and school districts!) have the right to disagree with any decisions made by the IEP Team and may challenge those decisions through mediation,

complaint, or by requesting a due process hearing. The term "due process" as used in the special education context is no different than the traditional definition of due process guaranteed by the Maine and U.S. Constitutions, i.e., an individual may not be deprived of "life, liberty, or property" without notice or a fair opportunity to be heard. A right afforded all American children is the right to a public education. The primary right afforded children with disabilities is the right to FAPE. In Maine, regulations implementing IDEA are overseen and administered by the Department of Education. Due process challenges are governed under a set of procedural safeguards set forth in DOE regulations and provided to every parent of children receiving special education services. Some of the more important procedural safeguards include:

- The “**Stay Put**” Rule, which provides that the child must remain in the current educational placement for the duration of the proceedings unless otherwise agreed;
- **Parental Consent** and **Parental Notification** (as described above);
- The right to an **Independent Educational Evaluation**, provided at no cost to the parent if they disagree with the school’s evaluation(s);
- The **right to retain an attorney** and/or special education advocates, who may accompany the parents to IEP Team meetings or due process hearings and mediations (in some cases attorneys fees are awarded to parents by a court of competent jurisdiction);
- Numerous safeguards governing the **discipline and removal** of students with disabilities, including what is known as a “manifestation determination” when questions surround whether a student’s disability contributed to the behavior or conduct leading to discipline, which may or may not trigger the need for the school district to implement a *Functional Behavioral Assessment* (FBA) or *Behavior Intervention Plan* (BIP); and
- The **right to appeal** the hearing officer’s decision in a court of law (the vast majority of legal challenges are brought in the U.S. District Court for the District of Maine)

Transition Planning

Transition planning is designed to help the student prepare for the shift from school to adult life. In Maine, the process must begin when the student reaches the age of 14 (recently amended under Emergency Regulations to “Grade 9”), or earlier if it is deemed appropriate. The IEP goals should be tailored to reflect transition planning and relate directly to the student’s long-term goals for life after

high school.

Medicaid Funding for FAPE

Education is paid for through federal, state, and local taxes. While IDEA is a federal mandate (meaning all states must implement IDEA or waive federal funding for educational services), Congress has never funded services at the levels promised. To help meet some of the costs of the legal obligations to students with special needs, some school districts bill Medicaid for eligible services. Examples of Medicaid-eligible services currently being delivered in Maine's schools are:

- Day treatment
- Early Intervention Services
- School Health Services
- School Based Rehabilitation Services
- Occupational Therapy
- Speech/Language Therapy
- Physical Therapy
- Some Mental Health Services

SUMMARY

Special Education is a very complex area of law. It is driven by the individualized needs of the special education student, regulated by ever-changing state and federal laws, and very often fueled by emotion, conflict, and uncertainty. Parents and guardians of children with disabilities should proceed with caution and if possible, should give serious consideration to hiring a lawyer specializing in special education. Parents are urged to contact MSBA's Lawyer Referral Information Service and/or the following non-profit agencies [LINKS]

Southern Maine Parent Awareness

Kids Legal Aid

Learning Disabilities Association of Maine

Maine Department of Education Office of Special Services

Office of Civil Rights (US Dept of Health and Human Services)

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Maine Parent Federation

Disability Rights Center

Autism Society of Maine