



Meeting The Educational Needs Of Arizona's Foster Youth

Disability Rights Arizona
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Who We Are

- Arizona's non-profit Protection & Advocacy agency
- Providing advocacy, information, referral services, community legal education and, in selected cases, legal representation to individuals with disabilities



Training Information

- The purpose of this training is to provide general information regarding special education
- The information is provided in summary form and is **not** intended as a substitute to legal advice
- Federal and state law can change at any time, so please stay abreast of possible changes to the law

THE NEED



Why Special Education is Important for Foster Youth

- Twice as many foster youth are eligible for special education as those in the general student population
- About 40% of Arizona foster youth change schools at least once during a school year, compared with 10% of other students
- The dropout rate for foster youth is triple the rate of students statewide





Why Special Education is Important for Foster Youth, ctd.



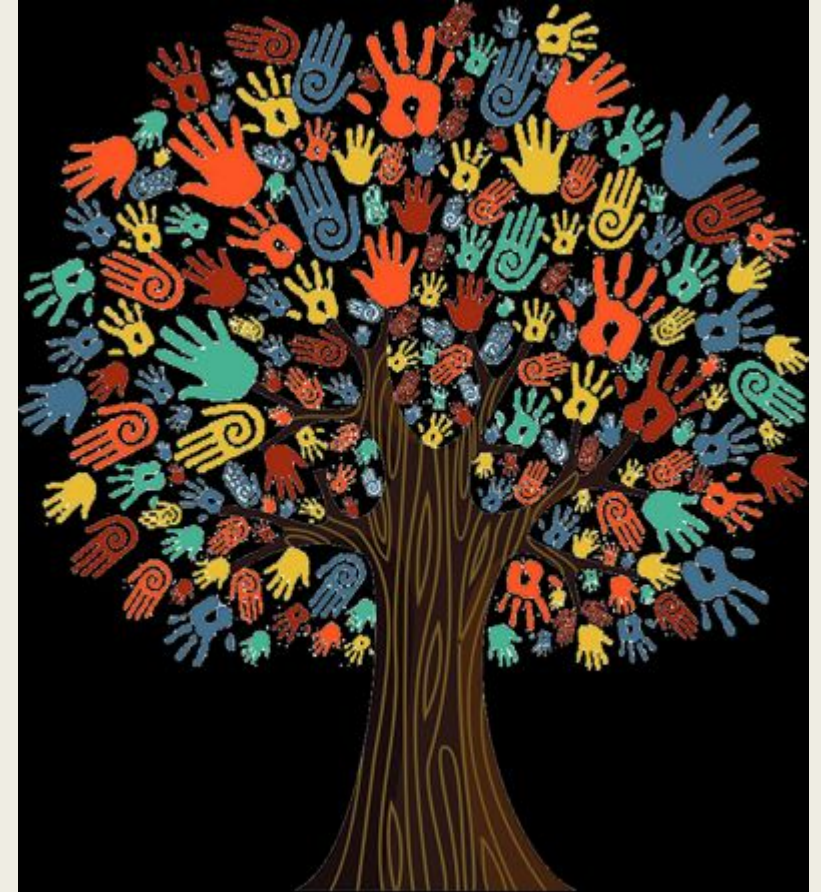
- When foster youth become adults, 25% spend time homeless, 25% experience incarceration, and 50% face unemployment
- Many of these negative outcomes can be prevented or ameliorated by the implementation of appropriate and timely support services
- The special education system is dependent on parental involvement

WHAT IS SPECIAL EDUCATION?



What Is Special Education?

- Special education is the practice of educating students in a way that addresses their individual differences and needs
- Special education is not a place—it can be delivered in a variety of settings



FEDERAL LAWS AT PLAY



Individuals with Disabilities Education Act (IDEA)

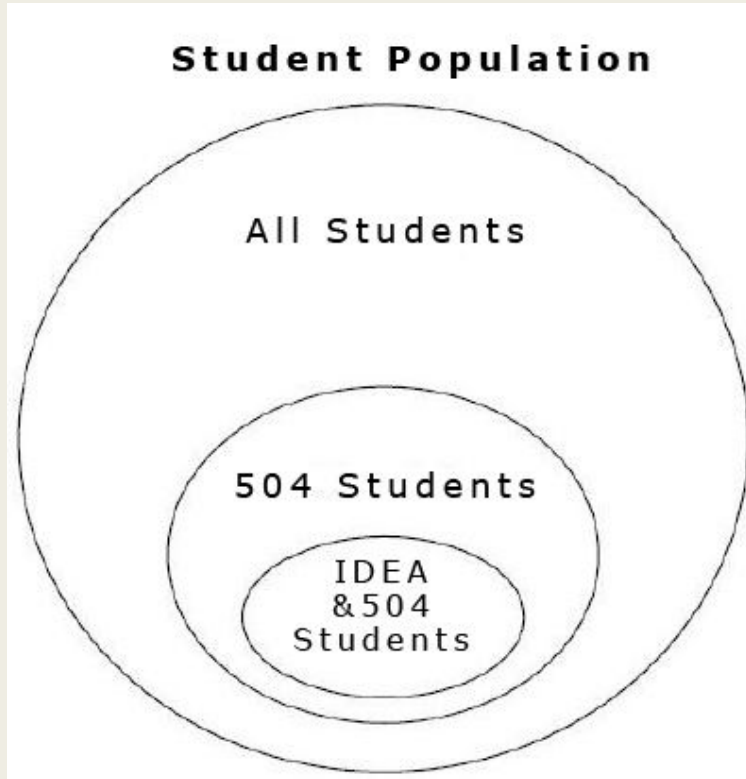
- A federal law requiring states to provide appropriate special education and related services to all eligible children with disabilities
- IDEA Part B applies to eligible children age 3 until they graduate from high school (or through age 21)
- IDEA Part C applies to infants and toddlers with developmental delays and entitles them to early intervention services
- Key IDEA decisions must be made with informed consent from a designated decision maker (the IDEA “parent”)

IDEA





Section 504 of the Rehabilitation Act



- Federal law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance, including public school districts
- Has a broader definition of disability than IDEA, covers more students
- Requires schools to provide services and changes to the learning environment to meet the needs of the child as adequately as other students

IEP VS. 504



IEPs and 504 Plans – What’s the Difference?



- Students who qualify under IDEA will be given an Individualized Education Program, or IEP.
- All students with disabilities are protected by Section 504 of the Rehabilitation Act, which is a broad civil rights law that protects students from disability-based discrimination.
- If a student with a disability does not qualify under IDEA, but needs accommodations or related services, that student may be provided a 504 plan.



IEPs and 504 Plans – What’s the Difference?

- **Eligibility** The eligibility requirements for IEPs are narrower than the eligibility requirements for 504 plans, so fewer students are eligible for IEPs than for 504 plans.
- **Services** Students with IEPs may be provided special education, related services, and accommodations. Students with 504 plans are typically only provided accommodations and sometimes related services.
- **Specificity** IEPs come from IDEA, a law with far more requirements than Section 504. For that reason, IEP documents typically include more information than 504 plans.
- **Rights** Under both IDEA and Section 504, students with disabilities are entitled to a free appropriate public education. However, students eligible for IEPs under IDEA have more procedural safeguards than students eligible under Section 504 only.



What is in an IEP?

- Present levels of performance
- Goals
- Special education, related services, supplementary aids and services
- Least Restrictive Environment
- State and district test accommodations
- Transition plan/services



What Is in a 504 Plan?

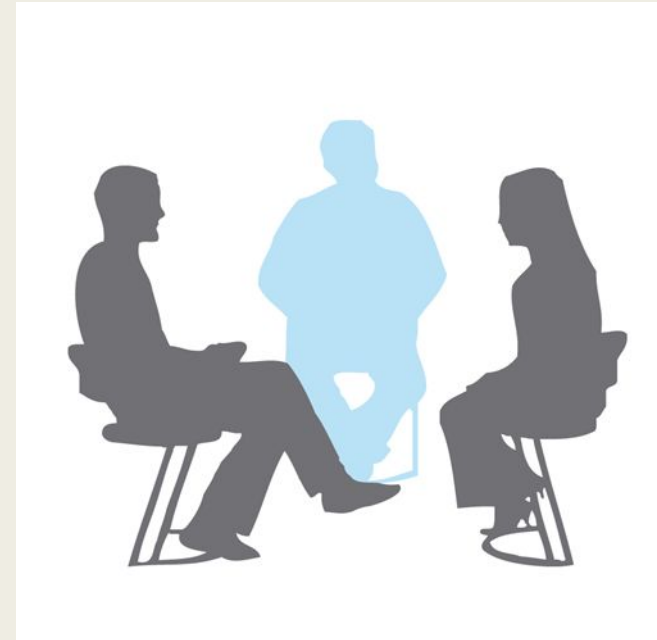
- ?? No statutory requirements
- Whatever is necessary to ensure student has equal access to an education
- Usually accommodations and placement, sometimes related services

DISPUTE RESOLUTION



Disagreements

- Independent Educational Evaluation
- Mediation
- State Complaint
- OCR Complaint
- Due Process



IDEA PARENT ISSUE



IDEA Requires a “Parent’s” Written Consent

- A child’s “parent” must give written consent for a student to be evaluated and for special education services to begin or change, and is a member of the IEP team
- “Parent means — (1) A biological or adoptive parent of a child; (2) A foster parent; (3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or (5) A surrogate parent.” [34 C.F.R. § 300.30]



Who is the IDEA Parent?

- If more than one party meets the definition of a parent, the biological or adoptive parent must be presumed to be the parent for IDEA purposes unless the biological or adoptive parent's educational rights have been terminated.
- The biological/adoptive parent is the IDEA parent even when a child is in out-of-home care and even when the parent is incarcerated or institutionalized.
- The child welfare agency (including group home staff) is never the IDEA parent*

*limited exception for tribal social services

- The school is never the IDEA parent



When is bio/adoptive parent not the IDEA parent?

- A bio/adoptive parent is not the IDEA parent when:
 - The identity or whereabouts of the bio/adoptive parents are unknown
 - The bio/adoptive parents are deceased
 - The bio/adoptive parents' rights have been severed by a court
 - The bio/adoptive parents fail to actively participate in the special education process and the child welfare agency identifies another person who can serve as the IDEA parent (ARS 8-514.08(B))
 - If a party to the case believes bio/adoptive parents are not acting in the best interests of the child, the party may move the court to temporarily suspend bio/adoptive parents' special education decision making rights and name someone else as the IDEA parent



Uncertainty Hurts Kids

- For kids in foster care, the identity of the IDEA parent is not always clear, especially when there is more than one person who could be the IDEA parent (e.g., child is placed in a foster home but bio parents' rights have not been severed)
- If schools do not know who has special education decision-making rights, they may delay or deny special education evaluations and services to the detriment of the child



Judicial Rule Change

- Summer 2022, new juvenile court rule was implemented to address this problem
- Ariz. R. P. Juv. Ct. 310(c):
 - *"In a dependency, Title 8 guardianship, or termination of parental rights action, DCS must promptly notify the court concerning the child's entitlement to special education services, related services, or an initial evaluation, under A.R.S. §§ 15-761 through 15-774. The court must enter a signed order designating a person, other than a DCS child safety worker, who has special education decision-making authority as to the child, as provided in A.R.S. § 8-514.08."*



What about children in group homes?

- If there is no person who qualifies as the IDEA parent, the LEA must make reasonable efforts to appoint a surrogate parent within 30 days.
- Surrogate parents can be volunteers, CASA advocates, family members, etc.
- A surrogate parent cannot be a person who is an employee of an education or child welfare agency providing education or care to the child



Special Education vs. General Education Decisions

- The IDEA parent is not the person making all school-related decisions for the student, only the special education decisions governed by IDEA
- General education decisions, like enrolling a student in school, consenting to field trips, and handling attendance issues, are the responsibility of the child's legal guardian—usually DCS, or the placement holding the DCS Notice to Provider
- In other words, you don't need to be the IDEA parent to enroll a student in school, but the DCS specialist should not be the one consenting to special education testing.

SCHOOL STABILITY



School Stability—The Problem

- About 40% of Arizona foster youth change schools at least once during a school year, compared with 10% of other students
- It is estimated that foster youth lose 4-6 months of academic progress with every school change
- Credit loss, zero or poor IEP services





Best Interests Determination

- A “best interests determination” regarding where a foster child will attend school should be made at the TDM
- School of origin is the default; only change schools if it’s not in the child’s best interest to stay at school of origin
- If a child’s foster care placement changes, the school of origin would then be considered the school in which the child is enrolled at the time of the placement change
- The cost of transportation CANNOT be considered when determining the best interest of the child



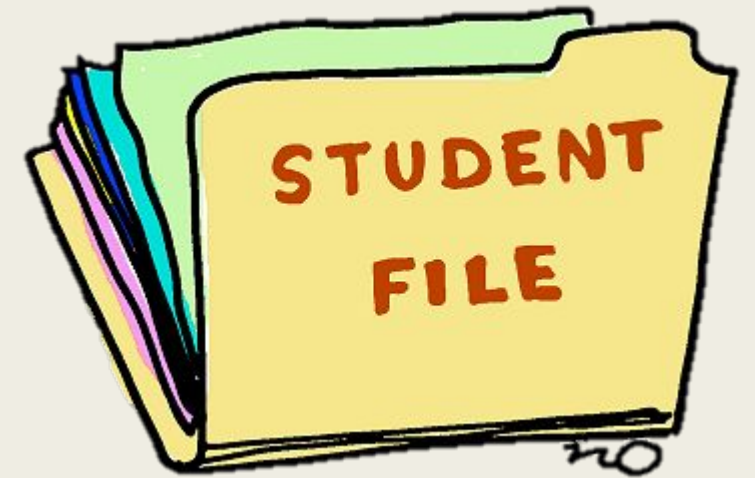
Best Interests Determination, ctd.

- Factored into the best interest determination should be:
 - *The safety of the child*
 - *The wishes of the parent, caregiver, and child*
 - *The distance and time for the child to travel to and from the school*
 - *Projected duration of out-of-home placement*
 - *The child's academic, developmental, and socialization needs*
 - *The effect a school change will have on the child's learning and any potential for loss of credits*



Best Interests Determination, ctd.

- When a determination is made that remaining in the school of origin is not in a child's best interest, LEAs must ensure that a child in foster care is immediately enrolled in his or her new school even if the student does not have the required documentation
- The enrolling school must then contact the student's prior school for relevant records





Case Plan



- If staying at school of origin, case plan should include plan for DCS and LEA to arrange transportation to school
- Takes into account educational stability when making placement decisions



Know a child in need of legal help with special education?

Call Disability Rights Arizona

Phone: (602) 274-6287

Website: www.azdisabilitylaw.org



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