

The background of the slide is a green chalkboard. In the lower-left area, two pieces of pink chalk are lying on the surface. There are some faint, white chalk markings on the board, including a curved line and some scattered dust.

Hot Topics Facing Schools: Special Education Gifted Education Compliance

**Presented to the OSPA
Spring Conference
May 9, 2014**



What You Need to Know From ODE/OEC

- Sue Zake:
 - *ODE/OEC Updates*
- Mike Demczyk:
 - *ODE/OEC Gifted Updates*
- Bernadette Laughlin:
 - *Dispute Resolution Options*

Not Quite Ready for Prime Time 14-15

Still a work in progress.....

- *Current Required Forms (the PR's) will continue to be used until revised required forms are posted.*
- *The guidance document is under revision. You still may find it on the ODE website BUT it has NOT been updated, so beware!*
- *The annotated ETR, the annotated IEP and the annotated services plan have been REMOVED from the ODE website and contain outdated information. Do not use!*



GIFTED EDUCATION UPDATE

Mike Demczyk: Gifted Coordinator. ODE

Dispute Resolution

- Filing a formal complaint
- Filing a request for a due process hearing
- Mediation
 - *Must be agreed to by parents and LEA*
- Facilitated ETR/IEP meetings
 - *Must be agreed to by parents and LEA*
- Contacting Sandy Kaufman, 614-752-1404

Today's Panel

Sue Zake: Director of the Office for Exceptional Children

Mike Demczyk: Gifted Coordinator, OEC

Bernadette Laughlin: Due Process Coordinator, OEC

Bobbe Miller: Education Consultant, Squire Sanders

Linda Gorczynski: Attorney, Squire Sanders

Setting the Stage For Today

- Today's presentation will not give legal advice nor is it a substitute for legal advice when discussing scenarios or specific situations/students that might be specific to your district. Please make sure you consult with your district's attorney.
- Become familiar with and knowledgeable about:
 - *Ohio's Operating Standards.*
 - *Your District's special education policies and procedures.*
 - **Whose Idea Is This?** :sets out the procedural requirements for IDEIA commonly associated with what parents need to know. **However**, this document also.....Can be your quick reference when special education issues arise.

What Are The Main Differences Between Idea And 504? A quick review

IDEIA:

An **education** act which gives federal funding to state and local education agencies to guarantee special education and related services to students with disabilities

- Students 3 through 21
- 13 disability categories
- Specially designed instruction
- Federal funding provided

504

- A **civil rights** law intended to prohibit disability discrimination in public and private programs/activities that receive federal funding
- Birth to death
- One disability definition
- Provides accommodations, modifications or services to allow access to education
- No federal funding




Providing a “FAPE” Under IDEIA

- School districts are legally required to provide a free appropriate public education (“FAPE”) to all students who are identified as a “child with a disability” under the IDEA.
- School districts meet this obligation by:
 - *complying with the IDEIA’s procedural mandates, and*
 - *developing an individualized program for each child that is reasonably calculated to provide the child with an educational benefit.*

What Does That Look Like?

- *a current MFE that assesses all necessary areas;*
- *a current IEP that is being implemented as written;*
- *progress is being measured as stated in the IEP;*
- *services are provided as stated in the IEP (i.e., if the IEP includes 30 minutes of speech/language therapy each week, 30 minutes is provided);*
- *all accommodations/supports included in IEP are being provided exactly as written (i.e., in all areas by all personnel)*

A chalkboard with two pieces of pink chalk and a white arrow pointing upwards.

PROPOSED REVISIONS TO OPERATING STANDARDS FOR OHIO EDUCATIONAL AGENCIES SERVING CHILDREN WITH DISABILITIES

In Depth Coverage: By the Chapter!

3301-51-01:

- “Intellectual disability” replaces “cognitive disability” (B)(10)
- “Visual impairment” definition aligns with federal language and includes partial sight and blindness. Added: “does not include a disorder in one or more the basic psychological processes, such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia” (B)(10)(xiii)(a)(b)
- Clarifies and separates team composition for an initial evaluation and reevaluation team (removes “IEP team” from initial evaluation). (B) (22)
- Transition services: added the development of employment “in an integrated competitive environment” (B)(65)(a)(ii); Added the skills required by transition providers and coordinators (65)(a)(iii)(b); Added Competitive Employment definition from Federal law (65)(d)(e).

In Depth Coverage: By the Chapter!

3301-51-05

- Adds parental informed consent requirements for initial use of public benefits or insurance and annual notice (C)(6)
- Adds additional transfer of rights language (D)(1)
- Removes language regarding:
 - *IEPs serving as prior written notice (H)(4)(c)*
 - *Discussions at resolution sessions being confidential (K)(9)(a)(iii)*
- Adds the availability of scholarship notification and specifies the contents of the notice; how it must be sent, and when it must be sent. (L)

In Depth Coverage: By the Chapter!

3301-51-06

- *Removes the requirement of a reevaluation for identified preschoolers transitioning from preschool to school age services (D)(1)(c)*
 - EXCEPTION: Those identified as “developmentally delayed” must be reevaluated.
- *Removes “J”: Additional procedures for identifying children with hearing impairment or deafness*
- *Clarifies that any single “source of information, such as a single measure or score” can NOT be used as the sole criterion for determining eligibility and an appropriate educational program..... (E)(2)(b)*

In Depth Coverage: By the Chapter!

3301-51-07:

- *Replaces current transition services language to reflect starting at 14 years old or earlier if appropriate (H)(2)*
- *Adds language about the comprehensive eye exam required notice sent to parent once a child begins receiving services for the first time (K)(3)(c)*

In Depth Coverage: By the Chapter!

3301-51-08: clarifications

- *Added: District where charter/non-chartered non-public school is located is responsible for additional child find activities for children enrolled in either AU or JP scholarship program. The district will also determine if these children will receive services through a services plan. (B)(6)*
- *Children who are eligible under the AU or JP scholarship, attending charter/non-chartered non-public schools, and participating in AU or JP scholarship may be eligible to receive services funded through IDEA private school proportional share funds. Children who are eligible under the AU scholarship, participating in the AU Scholarship and attending charter/non-chartered/non-public school may be eligible to participate in the Early Childhood Special Education flow through benefits. (R)(1)*

In Depth Coverage: By the Chapter!

3301-51-08: clarifications

- DOR not required to provide FAPE to Student with a disability who resides in the district and is participating in either scholarship program:
 - *Parent has right to file a written complaint or request a due process alleging that the DOR violated a requirement of IDEA*
 - *Parent may NOT allege that the DOR violated a requirement involving the implementation of the IEP nor whether the child has received FAPE. (R)(3)*

In Depth Coverage: By the Chapter!

3301-51-09

- *Annual training for paraprofessionals in areas specific to the students with whom they work:*
 - Following lesson plans, implementing follow up instruction, supporting effective classroom organization and behavior management, working effectively with teachers.
(H)(2)(b)(iii)(a)(ii)
- *Direct supervision of paraprofessionals by licensed teacher(s) or service provider(s) (H)(2)(b)(iii)(a)(iii)*
- *Using existing ratios, specifies how intervention specialists and related service providers will determine **workload** (I)*
- *Provides additional clarification for SLPs and psychologists regarding calculations of **workload** for mixed caseloads. (I)(3)((f)iv) and (I)(3)((g)(iii)*
- *Removes alternative plans (I)(6)*

In Depth Coverage: By the Chapter!

3301-51-11

- *Clarifies that not any single “source of information, such as a single measure or score” can be used as the sole criterion for determining preschool eligibility for special education.*

3301-51-21

- *Publishers of electronic textbooks listed with the superintendent of public instruction as “for sale” that are not fully accessible to children with visual impairments or others with print disabilities must provide National Instructional Materials Accessibility Standard (NIMAS) file sets to the NIMACenter.*



Autism Scholarship Program Rule Review

3301-103

- *In process: part of the 5 year review cycle*
- *The proposed changes serve to make the rules consistent with current practices, align the definition of 'parent' with the definition of 'eligible applicant' as used for the Jon Peterson Scholarship program, the inclusion of professionals able to provide intervention services to students in the program, and to indicate the ability for a parent to use scholarship funds to purchase special education services not listed by the school district in the child's IEP.*

When is a PR-01 Required?

- Parents or guardians of a child with a disability must receive prior written notice when a change is proposed to the child's free and appropriate public education.
 - *If parents agree with the initial evaluation and want services, only a PR-02 is necessary.*
 - *A PR-01 MUST be sent after each IEP meeting even if the parents agree with the IEP; changes; etc.*
 - *The PR-01 must be sent to the parents **after** the IEP meeting is completed but **before the implementation** of the new/amended/revised IEP.*

When is a PR-01 Required? (cont.)

Until a revised PR-01 form is published, Districts should follow the steps listed below:

- *When parents agree with proposed IEP, under the PR-01 heading “Type of Action Taken”, check “Other”*
- *Under PR-01 question # 2 begin the section with: “At the IEP meeting on (Date), the following proposed action or refused action was agreed upon by all members of the IEP team:”*
- *Document any parent requests, even if the parent dropped the request during the meeting.*

What Should a PR-01 Do?

- A prior written notice is the District's opportunity to "tell its story". (Courts rely on prior written notices as evidence of the team's decisions.)
- When completing a PR-01, you should:
 - *Answer each question thoughtfully and completely.*
 - *Be sure you have included all the facts (dates, etc.).*
 - *For evaluations, explain **why** the evaluation is going to be conducted (more than "because it's required").*
 - *Do not use acronyms/abbreviations without defining them.*
 - *Do not use individual names ; use titles/roles*
 - *If there is more than one reason for a proposed or refused action, include all of them.*
 - *Make sure to identify and document parent concerns, disagreements, requests.*
 - **Keep to the facts and be specific**

What Are Common PR-01 Mistakes?

- Some of the most common mistakes when completing a PR-01 are:
 - *Failing to answer the questions that are included on the form (i.e., including lots of information that does not actually respond to the questions);*
 - *Indicating that one or more of the questions are not applicable (N/A);*
 - *Completing a PR-01 **during** a meeting and handing it to the parents as the meeting concludes; and*
 - *Failing to consult with colleagues regarding the necessity or the content of a PR-01 in difficult situations.*

PR-01 Scenario - Reevaluation

- The Situation
- The student is due for his three-year reevaluation.
- Type of action taken:
 - One of the boxes **must** be checked.
 - In this case, check the box:
 - Reevaluation.
- A description of the action proposed or refused by the school district:
 - The district is proposing to conduct Jack's required three-year reevaluation

PR-01 Scenario - Reevaluation

- An explanation of **why** the school district proposes or refuses to take the action:
 - *The district is proposing to reevaluate Jack because it is legally required to complete a reevaluation every three years. Additionally, the district is proposing to reevaluate Jack so that updated data from the evaluation can be utilized to determine eligibility and, if Jack remains eligible under the IDEIA, utilized to develop an IEP that meets his individual needs.*

PR-01 Scenario - Reevaluation

- A description of other options that the IEP team considered and the reasons why those options were rejected:
 - *No other options were considered or rejected.*
 - This is the typical response.
 - *The district considered conducting a record review reevaluation at the request of the parents, but rejected this option because the district team members believe additional assessments are necessary in order to determine eligibility and educational needs. Parents are in agreement with this decision and have provided written consent.*

PR-01 Scenario - Reevaluation

- A description of each evaluation procedure, assessment, record or report the school district used as a basis for the proposed or refused action:
 - *The team considered Jack's IEP progress report, work samples, grade card, information from private assessments provided by the parents, information from Jack's most recent ETR and information from Jack's parents and teachers.*

PR-01 Scenario - Reevaluation

- A description of other factors that are relevant to the school district's proposal or refusal:
 - *The team decided that there are no other relevant factors.*

Scenario Take Aways

- Answer all of the questions.
 - *Even for a reevaluation, N/A is not an appropriate response.*
- If there were disagreements at the meeting, document the disagreements.
 - *Examples include which assessments will be used, whether to conduct assessments or complete a record review, etc.*
 - *If the disagreement was resolved, document the resolution. If not, include the information in the responses to the questions regarding the district's proposed action.*

Parent Disagreement With PR-01

- Parent disagreement with a PR-01 can take several forms:
 - *Parent requests the opportunity to submit a statement of disagreement with the PR-01*
 - This is not problematic and, if a parent makes this request, the district should accept the parent's statement of disagreement and include it in the student's file with the PR-01.
 - *Parent requests a meeting with the director of special education or requests a written rebuttal:*
 - *Districts are not required to do either , but can do so at the discretion of the administrator.*
 - *Parent requests Administrative Review which does require Supt./designee to provide a formal response.*

Predetermination

- Predetermination is when district personnel make IEP team decisions outside of the IEP team meeting and without appropriate parent input.
 - . *Pre-IEP meetings are allowed to plan for options to discuss at the IEP meeting.*
 - *You can review the results of private assessments at a PRE IEP meeting and prepare a DRAFT response to share with the parents BUT you MUST discuss that response with the parents at the meeting and consider their input BEFORE making any decision.*
 - *Allow all staff members to speak their opinion, even if they are contrary to the final team decision...BUT ...make sure they have data to support their position.*

Predetermination Examples

- We don't do that in this district.
- We don't use the ABA program here.
- All of our students with SLD receive their services in the regular education setting.
- The way we schedule our aides prevents us from offering 1/1 services, but there will always be coverage for students on IEPs.
- Here's what we came up with. It's our final offer.

Are these examples of predetermination?

- In the ETR, under educational needs, the OT recommends direct OT 30 minutes twice a week.
- At the IEP annual review, the SLP says that Suzie has met all of her speech goals, so she is dismissing her from services.
- At the IEP annual reivew, the SLP says that Suzie hates coming to speech, is not making any progress, and so she is giving her a speech vacation for the next school year.

Evaluations: Deadlines

Request for evaluation

- *Within **30 days** of receipt of parent request the district must:*
 - Obtain parental consent to evaluate **OR**
 - Provide prior written notice (PR-01) to parent stating school does not suspect and will not evaluate. **Be sure team has sufficient hard documentation supporting content of PR-01**
 - During that 30 day period prior to obtaining consent, interventions may be implemented and data may be collected on those interventions.
 - Once consent is received, the team has 60 days to determine eligibility.

Related Deadline Issues

- Missed IEP or ETR deadlines because the parent does not sign.
 - *The reason for the parent's refusal does not matter. Some common reasons include:*
 - Parent does not agree with the addition or deletion of goals/objectives, services, etc. on the IEP;
 - Parent wants **essential** data removed from the ETR
 - Parent wants the team to consider additional information from outside providers;
 - Parent does not want to sit in the room with XXX.
 - Parent takes document home for further “consideration”; and
 - The parent does not show up for the scheduled meeting.

Related ETR Issues

- If a parent does not sign an ETR and the team determines that the child is eligible, an IEP must be developed within 30 days.
 - *In this instance, the district is also required to send a PR-01*
- If a parent (or team member) does not agree with the ETR, the parent may:
 - *write a statement of disagreement and the District should attach it to the ETR.*
 - *File due process*
 - *File a complaint with ODE/OEC*
 - *Request an IEE*
- School breaks don't change the 60 day timeline

IEEs(State level hearings)

- M.V. ex rel. G. V. Shenendehowa Cent. Sch. Dist 113 LRP 9749 (N.D.N.Y. 3/07/13)
 - *It's okay to set a cap on the cost of an IEE if that is the reasonable rate in the community.*
- T.P. by T.P. and B.P. v Bryan Countly Sch. Dist., 114 LRP 13925 (S.D.Ga 3/24/14)
 - *Parents have 2 years after the evaluation to request an IEE at public expense.*

Evaluations/Reevaluations

- IDEA does not REQUIRE a medical diagnosis as part of eligibility for ANY of the disability categories.
- District may request parent to share non-educational report/records BUT evaluation cannot be delayed or denied if information is not received.
 - *IF the planning team determines that a medical diagnosis is NECESSARY to determine eligibility, then the DISTRICT must pay for that evaluation (unless parent is willing/volunteers to use their insurance or Medicaid).*



Evaluations/Reevaluations

- Must use a variety of assessment tools and strategies so that the team can consider relevant functional, developmental and academic information about the child.
- No single measure or assessment may be used as the sole criterion for determining eligibility.
- No single person can complete a multi-factored assessment and determine eligibility.



Non- Educational Diagnoses/evaluations

Do these evaluations/diagnoses make a student automatically eligible under IDEIA?

- Parent obtains:
 - *Medical diagnosis of “depression”*
 - *DSM5 diagnosis of “Autism” (or any of the 13 disability categories)*
 - *Private speech provider tells parent child needs speech and language services in school.*
 - *Private psychiatrist writes “residential placement” on a prescription pad and tells the parent the school must provide it.*



Procedures for handling non - education diagnoses/evaluations

- Review report
- Obtain a release to speak with evaluator
- Information to obtain from evaluator:
 - *Time spent with child: where; when; with whom*
 - *What information was used to write the report?*
 - Assessments
 - Interviews
 - Contact with school personnel
 - Other documentation?

Determining Eligibility

Determines if child qualifies:

- Does he meet one of the 13 disability categories as defined by IDEIA?
- Does the disability have an adverse effect on his education? (not due to lack of appropriate instruction or LEP)
- Does the child have educational needs that require specialty designed instruction?
 - *Wentzville R-IV School District 113LRP 12657 (SEA MO 3/10/13)*
- These are the SAME questions that must be answered when considering eligibility at the re-evaluation.

Why Reevaluate?

- Reevaluations:
 - *Establish continued eligibility (or not!)*
 - *Determine CURRENT educational needs*
 - *Determine present levels of performance*
 - *Determine additional modifications/accommodations to meet current IEP goals*
 - *Gives district data to defend its program and to prove that the child has made progress*



Waiving Re-evaluations: What to Consider

- Waivers should be a rare exception rather than the rule. That decision must be based on the student's individual needs and what information the team needs to prepare an appropriate IEP.
- Parents agrees with IEP now but has a disagreement with it in the future:
 - *Reevaluation data, documentation, and expertise will help establish a student's progress and needs.*



The ETR/IEP Relationship

- Educational needs in the ETR must reflect the findings from the evaluation data.
- Educational needs in the ETR must be specific enough so that IEP goals can be generated and other needs can be addressed through appropriate accommodations, modifications, and supports and services.
- The IEP 's contents must relate to the educational needs as specified in the child's ETR - no "cookie cutter" goals!



The ETR/IEP Relationship: Points to Ponder

- What do you do if there are needs in the ETR that are not addressed in the IEP?
- What do you do if you are using an ETR that is 2 years old?
- What do you do if one (or more) of the needs identified on the ETR is no longer a problem for this child?

ETR and IEP Issues

- Making decisions outside the ETR/IEP process.
 - *This can occur in e-mails, parent meetings, informal chats, teachers lounges, IAT meetings, etc.*
 - Team members decide (before a meeting) that they do not think the child is going to be eligible because he is “like the rest of the kids in his class”,
 - Team members must consider any request and determine when the change requested is an IEP team decision and when the change is something outside the IEP process. (did you document what you did?)
 - For example, a request for a new SLP (person) is not an IEP team decision. A request for group speech instead of 1:1 speech or a change in the amount of time *is* an IEP team decision.



Top Procedural Issues – Cherry Picking Evaluation Procedures

- Parents placing “conditions” on an evaluation, may lead to lack of consent.
 - *Some examples include parents mandating who will conduct the evaluation, where it will take place, the presence of the parent, the evaluation tools that will be used, etc.*
 - *Districts and parents should make every attempt to reach agreement. However, if agreement cannot be reached, the parent has the option of either consenting or not consenting.*
 - *Remember, the district has certain rights and child find obligations that must be met.*
 - *The district cannot proceed without consent. This could force a record review or due process.*

Consent: What is the General Rule?

- You must have prior written consent to release education records containing personally identifiable information (other than directory information) about a student.
 - *Release of student records or personally identifiable information to third parties without parental consent is a violation of state and federal law.*
 - ***Beware – Simply because an individual works for the district does not automatically mean he/she is authorized to access a student's education records!***

Consent Issues

- If parent does not consent initially for an initial evaluation, it does not absolve the district from asking again if the data collected over time (about their child) shows the continued struggle and lack of response to Rtl.
- Consent must be obtained to conduct an FBA or any other individual assessment if it is done outside of the usual assessment parameters which automatically require parental consent.
- There is a difference between a release of records and consent to speak to a previous school or a doctor about a child. Make sure you get the appropriate consent!

More consent Issues:

- If a parent does not consent to a reevaluation, a records review with existing data can be used to determine continued eligibility but no new individual eligibility assessments can be given.
- Seek written consent:
 - *For all assessments you think are necessary and let parent tell you “no”.*
 - *To obtain information from a third party.*
 - *Even if parents are absent from IEP meetings.*
 - *Even if parents say “our word is good with each other”.*
 - *And document all attempts to obtain parent consent (including the date AND THE YEAR).*

Consider Outside Assistance

- ODE IEP/ETR Facilitation
 - The presence of a facilitator may help parents feel less “outnumbered”.
 - Everyone may behave better.
 - If parents refuse, be sure to document.
- ODE Mediation



QUESTIONS?

- Pre-submitted
- From the floor