



Autism Resources Fair 2024

Transcript of Special Education Law in New Jersey: An Overview with Andrew Meltzer

00;00;05;08 - 00;00;11;46

Andrew

It's really an honor to be here. And this is probably my third or fourth time at the Ocean County Autism Resources Fair.

00;00;12;09 - 00;00;34;30

Andrew

So I'm a special education attorney at Sussan, Greenwald and Wessler. I've been there about a decade now, and yes, I am old enough to be a lawyer. That's why I don't dye my hair otherwise the judges will be like, Are you sure you're still in law school? But I digress. So as Wendy said, I was a student with an IEP from kindergarten through 12th grade, so I know what it's like to not get the appropriate services.

00;00;34;30 - 00;00;51;51

Andrew

And I also know what it's like to get the right services and be able to move forward. My parents instilled in me a sense of self advocacy that I took way too seriously when I was in school. But look, if it helped me get to where I am today, I'm grateful. So there's a lot we need to cover in the next hour.

00;00;51;51 - 00;01;12;47

Andrew

I'm going to try to keep it to about 30 or 40 minutes and then be happy to answer questions first as long as you like. So today we're going to talk about special education in New Jersey, an overview, what it means. And we'll also be talking about several of the laws, the individuals with disabilities Education Act, Section 504 of the Rehabilitation Act.

00;01;12;52 - 00;01;21;38

Andrew

What does an appropriate IEP mean and what to do if your school district is saying no and you need to have a dispute with them

00;01;21;43 - 00;01;55;22

Andrew

It all starts with the Individuals with Disabilities Education Act or the IDEA This law started in 1975. That's also when our law firm started as well. It's a law of parental and student protection, and it's designed to provide protections to students with disabilities ages basically ages zero through 21. And this is really important. The IDEA has very rich language in it, and it talks about disability being a part of the human condition.

00;01;55;37 - 00;02;18;50

Andrew

And that's the goal of all children and adults to be as independent as possible. So the goal of this law is to help students with disabilities to be as independent to the maximum extent they're capable of, not only for getting through school but for employment and further education. That the IDEA mandates that states and school

00;02;18;50 - 00;02;23;30

Andrew

districts provide children with a free, appropriate public education and what does that mean?

00;02;23;31 - 00;02;29;56

Andrew

Well, first off, the word free, as we know, is a total misnomer. Everyone's spending thousands and thousands and thousands every year. So

00;02;29;56 - 00;02;48;42

Andrew

free should really be taken away. So it should probably be APE instead FAPE. So a free, appropriate public education. What that means is that the student has a right to special education and related services, which are things like speech, occupational therapy, physical therapy, counseling, ABA, applied behavior analysis,

00;02;48;42 - 00;02;49;13

Andrew

and the

00;02;49;13 - 00;02;51;50

Andrew

right to be educated in the least restrictive environment.

00;02;51;50 - 00;03;20;14

Andrew

And we'll talk about what all of these things mean. So an appropriate placement is one that addresses the totality of the student's needs, the whole child. It should address their strengths, weaknesses and be specifically targeted toward their areas of need to provide significant and meaningful educational benefit. The least restrictive environment is defined as the environment closest to home, where progress rather than regression or stagnation takes place.

00;03;20;19 - 00;03;24;39

Andrew

School districts always say that it means a general education environment with

00;03;24;39 - 00;03;26;04

Andrew

neurotypical peers or

00;03;26;04 - 00;03;27;29

Unknown

Peers without disabilities.

00;03;27;29 - 00;03;29;43

Unknown

But that's not necessarily the case.

00;03;29;43 - 00;03;30;59

Unknown

For example, if a

00;03;30;59 - 00;03;33;13

Unknown

student was in a general like classroom, but they couldn't

00;03;33;13 - 00;03;36;56

Unknown

follow anything, they were engaging in behaviors, students were teasing them.

00;03;36;56 - 00;03;46;24

Andrew

That's not the least restrictive environment for them. But if they're in, let's say, a smaller classroom with appropriately trained staff, they're making a lot of academic progress.

00;03;46;29 - 00;04;08;46

Andrew

That would be the least restrictive environment for them. You can have more than one appropriate placement, but only one least restrictive environment. So if a public school program and an out of district private school option look the same on paper, the least

restrictive environment by law is the public school. But when they look different, that's when the legal disputes come into play.

00;04;08;51 - 00;04;31;07

Andrew

So placement, as I said, is the appropriate learning environment for your child. The IEP all it first needs to consider placement in the regular education setting. It doesn't mean that the student has to stay there. So when you look at the continuum of placements, there's a lot of them. There's consultation services within the general education classroom, in class resources.

00;04;31;07 - 00;04;54;16

Andrew

Another type of placement, which is a general education teacher and a special education teacher in the same classroom, but they follow the general education curriculum. Then there's pull out resource programs, which is a smaller class. You're pulled out for certain subjects in smaller groups, and it's all students with IEPs in there. Then you have self-contained classes which are completely separate classes from special education.

00;04;54;20 - 00;05;12;48

Andrew

And then if those types of programs don't work for your child, then you're allowed to look at out of district placements. And that's actually going to be the next presentation with John Mulholland, who I know very well, and you should definitely go to that as well. So the first is a New Jersey Department of Education approved school, private school for students with disabilities.

00;05;13;03 - 00;05;40;59

Andrew

Then you can look at not approved but accredited private schools for students with disabilities. Those are schools that are not approved for special education by the Department of Education, but they're accredited by a regional accreditation body. So there's a lot of different schools that are like that. For example, dyslexia schools such as Cambridge and Laurel in Princeton are two of those, but those are schools that decided not to go with the New Jersey Department of Education standards, But it is no difference on their quality.

00;05;41;13 - 00;05;59;59

Andrew

You can place students at those types of schools. There's something called the Naples Act, which is something that our office helped pass a number of years ago. If none of those types of schools work, you are allowed to look at residential schools. And then finally, the most restrictive educational environment is home instruction, because you're not in any school at that point.

00;06;00;12 - 00;06;16;53

Andrew

And it's usually for students that for medical reasons, cannot be attending public school or any type of school for a period of time. These days, unfortunately, there's a lot of school refusal going on. So a lot of students that are having trouble getting into school due to psychiatric reasons and up being on home instruction for a certain period of time.

00;06;17;08 - 00;06;44;03

Andrew

And that's 1 to 1 instruction with the special education teacher either in your house or somewhere else like the library. I wanted to talk next about the child find obligations. the child's find obligation, it's very, very important. That is an affirmative obligation on the school district, not the parents, but the school district to actively seek out and assess students in all areas of suspected disability.

00;06;44;08 - 00;07;19;22

Andrew

So a lot of times parents are the ones that need to notify their child's study teams to evaluate their child for special education. But it's actually the school district that is supposed to be keeping an active lookout for those students. And if a, if a school district evaluates a student in some areas of disability, like, for example, if your child is on the autism spectrum and they do a psychological and educational evaluations, but if the student's behaviors and they don't do a functional behavior assessment, that's not considered a complete evaluation and would be a violation of the school's child find obligation.

00;07;19;27 - 00;07;43;07

Andrew

So in order to qualify for an IEP, a student needs to be between the ages of three and 21, be diagnosed with a disability. the disability, And this is the three pronged test, diagnosis for have to be suspected of having a disability. The disability must adversely affect educational performance. And that doesn't mean academics. education in New Jersey is a broad concept.

00;07;43;11 - 00;08;05;35

Andrew

That's a lot more than academics. It's social, emotional, it's for some things, it's toileting, activities of daily living, whatever student needs to learn to be as independent as possible as an adult. So I've had cases where students or school say, we don't need to evaluate because the student's grades are too good. A student is not required to fail to be eligible for special education related services.

00;08;05;40 - 00;08;29;27

Andrew

I mean, I took honors and AP courses, got A's and B's, and nobody disputed that I needed an IEP. So it really depends on what the student's actual needs are. And then the third prong is, does the student need special education and related services? And special education means

specialized instruction different than the general education curriculum, related services, speech counseling, OT, PT,

00;08;29;32 - 00;08;30;40

Andrew

And so on.

00;08;31;25 - 00;08;37;30

Andrew

the child study team, once they decide to evaluate this student, have 90 days to do so.

00;08;37;36 - 00;09;04;27

Andrew

90 calendar days. And once those evaluations are completed, they must provide the reports to the parents and an eligibility meeting is scheduled. In the eligibility meeting, the district goes through the evaluations and then tells you if your child is eligible for an IEP or not, if they are great, then they tell you what of the 14 eligibility categories.

00;09;04;27 - 00;09;31;15

Andrew

In New Jersey, there are for classification. One of the most important concepts here is eligibility category does not dictate services, so your child can be classified as a specific learning disability, even if they're on the spectrum. But they still have to address all of the child's needs. And then the team will develop an IEP and individualized education program.

00;09;31;20 - 00;09;57;25

Andrew

So what is an IEP? The IEP is known as the Roadmap to Special Education or the blueprint. It's a legal document. So when a school provides it and you agree to it, the school district must provide the services within it. It's binding. So the it discusses what the child's needs are academic, functional and nonacademic, social, emotional functioning and life skills.

00;09;57;30 - 00;10;29;01

Andrew

The IEP has to address all of the child's needs and the IEP needs to have annual goals. And those goals, by law, are supposed to be goals that are designed for a student to achieve within a one year period. Not make progress on, but achieve. And that's very important because a lot of times what I see in cases is school districts send IEP progress reports saying that their student is making progress on all of their IEP goals, but the same IEP goals are happening for three or four years in a row.

00;10;29;05 - 00;10;47;15

Andrew

That means they're not achieving them. So pay very careful attention when schools say that your child is making progress, are they achieving their IEP goals or are they not? You don't have to achieve every IEP goal for an IEP to be appropriate but you should be achieving at least a number of them each year. And IEPs are living, breathing documents.

00;10;47;15 - 00;11;11;41

Andrew

They can be changed at any time. Parents can call an IEP meeting at any time at the school can as well. And if progress is not being made, you can always adjust that. You don't have to wait until the end of the year. Now, another thing here is just a practical tip. Every student's IEP has to be accessible to school staff, but they're not obligated to read it, even though they should be.

00;11;11;52 - 00;11;35;02

Andrew

So it's always important that at the beginning of every school year, you share your child's IEP with every staff member working with your child and let them know some takeaways about it. The IEP also details any accommodations and modifications that need to be made. So do they need extended time? Copies of notes, positive encouragement? Do they need a behavior plan?

00;11;35;07 - 00;12;09;29

Andrew

They also, IEPs need to contain transition services. They're basically services for students as they progress to adulthood. So that means that you need to find out what the student is expected to achieve or what they want to do in life. That could mean going to college, that could mean some other type of post-secondary education. It can mean vocational, it can be day programming. and starting at age 14, potentially, but no later than age 16, the IEP must contain transition goals and objectives.

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Andrew

one of the other pieces of information that the IEP is supposed to indicate what the school is going to do, not what the child is going to do. So if an IEP is filled with language about a child's, or saying things like, A child needs to do this. A child needs to ask for this. That's not necessarily appropriate because that's not teaching the child what those skills are.

00;12;32;29 - 00;13;01;24

Andrew

It's one thing to build independence which should be encouraged, but the IEP should be saying what the school is going to do for your child and as I said before, education is more than academic, so the IEP needs to address all of the child's needs. So the IEP must include the strengths of the student, academic, developmental and functional needs and really, and also provide modifications for state testing.

00;13;01;29 - 00;13;24;24

Andrew

Now, in other cases, where a student has behaviors that impact their education or the learning of others, the IEP needs to potentially consider a behavior intervention plan, and that is done via what's called a functional behavior assessment or analysis or FBA. Many of you may be familiar with that term, but if your child is having a lot of behaviors in school, you should ask for one.

00;13;24;39 - 00;13;58;58

Andrew

And it's conducted by a board certified behavior analyst. And it also needs to include the communication needs of the student IEPs or behavior intervention plans. Another thing is assistive technology, and that could be for a student that is nonverbal or functionally nonverbal communication devices or different other types of devices to help them access their education. If you think a student needs it, you can ask the school district for an assistive technology evaluation, or if it's pretty obvious they should provide it.

00;13;59;03 - 00;14;27;04

Andrew

So one of the pieces of an IEP is called The PLAAFP or Present Levels of Academic Achievement and Functional Performance. We use a lot of acronyms in this area of law. so it includes how the child's disability affects their involvement in the general education environment and participation in activities. As I said before, IEPs need to have annual goals, which means what a student is expected to achieve within a one year period.

00;14;27;08 - 00;14;50;14

Andrew

At the end of any IEP meeting you have what the district an IEP needs to be provided to the parents or written notes from the meeting. Most of the time it comes a little bit after the meeting, but there needs to be a summary of what occurred. In an initial IEP meeting, your first ever IEP, the Child Study team must develop the IEP and it only goes into effect if you sign it.

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Andrew

If you don't sign it, you won't get an IEP or special education. But there's a very important concept here for every IEP following the initial IEP, it goes into effect within 15 days, whether you sign it or not. So if you get an IEP taking away a service or proposing something that you disagree with, as long as you file for mediation or due process or have an attorney or advocate do it within 15 days, you can stop that IEP from going into effect.

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Andrew

One of the most important legal tools available to parents is called Stay Put. It's an automatic injunction, which means that when you file for mediation or due process, your IEP, which is

your previously agreed upon IEP, must stay in effect. During the duration of the dispute or until a judge decides. So that can stop the school district from making changes for months or potentially even more than a year, depending on how backed-up the courts are.

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Andrew

It's one of the most important legal protections you have. I can't emphasize that enough.

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Andrew

so just a couple of tips. Make sure to save your child's IEP and all progress reports each year, because if you're seeing, for example, that your child is not meeting their goals and objectives and the goals and objectives are being repeated year after year, you'll be able to see it. IEPs need to be reviewed at least once a year, called the annual review meeting.

00;16;11;29 - 00;16;38;41

Andrew

But IEPs can be made at any time. Every three years, the school district is allowed to reevaluate your child for special education and related services. You should always agree to do it. School districts may ask you to waive it because they don't want to do it, or they say, oh we're going to find them eligible anyway. But it's a good idea to do that because otherwise you're operating with an IEP with outdated data.

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Andrew

You want to see if your child is making progress or not. So I always recommend to consent to reevaluations. Now the next thing I want to talk about is FAPE itself. Free appropriate public education. Courts generally say when they look at a legal dispute is the child being provided with FAPE. So how will we know it and when do we see it?

00;17;01;05 - 00;17;23;50

Andrew

So I'm going to go through a couple different court cases that talk about what that means. The first Supreme Court case is called ROWLEY, and it first talks about how a child needs to be given the basic floor of opportunity to benefit educationally from their instruction. That's not really in effect as much anymore. We have a much more ambitious standard now, which I'll get to.

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Andrew

So FAPE is providing at public expense without charge to the parents, but we know that doesn't happen. We need to meet a state's educational requirements. The district has to comply with the IEP and needs to include educational programming individually tailored to that child's unique needs to allow them significant and meaningful educational benefit. As I said, education is a

broad concept and those are the sort of things that it encompasses besides academics, and it's much more expansive than that too. Now.

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Andrew

This is one of my favorite cases, Ridgewood BOE V. N.E. because it talks about how do you know if a child is getting significant and meaningful educational benefit? It's from the Third Circuit, which is the federal court that governs in New Jersey, Pennsylvania, Delaware and Maryland. But the court says that they must consider the potential of the particular disabled student before it.

00;18;17;02 - 00;18;43;56

Andrew

The benefit must be gauged in relation to that child's potential. When students display a considerable amount of intellectual potential, the IDEA requires a great deal more than a negligible educational benefit. So that means that progress for each student is individualized. And if a student is capable of doing many different things, we would want the IEP to take that into account.

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Andrew

Now, this is a, this is a pretty funny thing, but also kind of ridiculous. The New Jersey Supreme Court has said that an IEP, a student is not entitled to the Cadillac of education but to a serviceable Chevy. So the school district is not obligated to maximize your child's potential or provide the best educational program, but only what is considered appropriate.

00;19;09;29 - 00;19;34;43

Andrew

So you always have to be very careful. Never, ever use the word best when talking with the public school because they're not obligated to provide the best. Always say appropriate any time. Appropriate, appropriate, appropriate. We do have a new. Oh how did I go all of a sudden, to page, to Slide 60. That was a weird. Okay. So we have a new case now, meaning 2017.

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Andrew

That's so. So it's a relatively new case. The US Supreme Court has established a national standard for special education. The case is called Endrew F and it says that IEPs need to be appropriately ambitious in light of the child's circumstances, that they are to be given the opportunity to meet challenging goals and objectives. So we're not using de minimis anymore.

00;19;57;34 - 00;20;28;03

Andrew

Thank God we're seeing that kids need to be given the ability to meet challenging items in school. So if an IEP is under utilizing a student's abilities, then it's not appropriate IEP goals. As I said, you don't have to achieve every single one of them, but you should be achieving at least a number of them. Now, the other law I wanted to talk about briefly is Section 504 of the Rehabilitation Act.

00;20;28;08 - 00;20;35;14

Andrew

So this law is a law of accommodations and modification. It's not an IEP. A 504 plan is different.

00;20;35;14 - 00;20;51;45

Andrew

A 504 plan can be part of an IEP. But but not everything in an IEP can be part of a 504 plan. A lot of times, if a child is not eligible for an IEP but still needs help, a 504 plan can provide some accommodations and modifications.

00;20;51;59 - 00;21;02;59

Andrew

It's not designed to provide specialized instruction, but it's designed to level the playing field. And it's only really in the general education setting to provide an equal opportunity.

00;21;02;59 - 00;21;15;37

Andrew

So it's an anti-discrimination law and a legal criteria is that it substantially limits one or more major life activities, and it has to be a physical or mental impairment.

00;21;15;41 - 00;21;37;20

Andrew

A lot of times school districts will only use learning but that's only one of them. You can get a 504 plan for anything from thinking, concentrating, communicating, breathing, reading, all of these things. You can get accommodations for. And I often give a presentation on special education supports in college. You can't get an IEP in college, but you use a 504 plan.

00;21;37;34 - 00;21;57;07

Andrew

So it's something to keep in mind going forward. Examples of accommodations are including, but not limited to tailoring homework assignments, to modify tests, simplifying instructions, copies of notes, verbal and visual instruction, behavioral management techniques.

00;21;57;07 - 00;22;09;25

Andrew

There we go. So also oral testing, using tape recorders, computerized instruction. Often a misnomer is that IEPs and 504s

00;22;09;50 - 00;22;43;57

Andrew

are different and that a 504 is considered inferior to an IEP. That's not the case because 504 plans are available to a wider variety of students than IEPs. So they can potentially get services that they would otherwise not be available to do. The last part of the presentation I'm going to talk about are what to do if you have a legal dispute with your school district. At the end of every IEP meeting or special education meeting, the school district needs to provide procedural safeguards which talk a lot about what I'm talking about in the presentation.

00;22;44;02 - 00;23;11;14

Andrew

But you'll be getting that and you can also access it online. It's called parental rights in special education or PRISE. type it in on Google and you'll be able to find it. Now I'm getting to your dispute question. There are a lot of things you can do if the school district is not providing an appropriate program or you think it's not providing an appropriate program, you can have an informal meeting with your child study team or case manager, an IEP meeting.

00;23;11;19 - 00;23;37;19

Andrew

And then there's also mediation, which is where you have a mediation with the Department of Education. Resolution meetings with the school district where it's just the school staff and you then there's due process hearings, which are a legal trial. You can file a complaint with the State Department of Education, and if you're not satisfied with the result, you can appeal to the federal or state courts resolution meetings.

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Andrew

I generally don't recommend my clients do because you're just meeting with the same people that said no to you already without anyone else new. So I don't usually go into that. I'm much a much bigger fan of mediation because that's when you get a mediator from the Department of Education. It's free and they meet with you and the school district to try to come up with a plan to resolve everyone's concerns.

00;24;04;20 - 00;24;08;34

Andrew

Due process is an administrative hearing from an administrative law judge,

00;24;09;26 - 00;24;31;17

Andrew

and it resolves disputes regarding IEPs, whether your child should be classified or not. Are they in the right educational placement? So for example, if a parent wants an out of district school, but the school district feels the public school is appropriate, then the parent can file for due process to seek to compel the school district to provide that placement.

00;24;31;22 - 00;24;42;05

Andrew

To prepare for due process, you need to obtain and review all your students records. Determine the need for experts, meaning like in neuropsychologist, a psychiatrist, BCBA,

00;24;42;05 - 00;25;00;26

Andrew

Because school district employees are automatically considered experts under the law. So as parents and our clients, we often have been seen for expert evaluations. So that way we can get expert information about what their child needs and then be able to argue it in court, or get the school district to settle the case.

00;25;00;31 - 00;25;07;46

Andrew

We actually, as a firm settle 98% of our cases because it gets the child what they need faster rather than rolling the dice with the judge.

00;25;07;46 - 00;25;18;13

Andrew

So a couple of parent rights I wanted to talk about. As a parent, you are a full member of the child's IEP team and an equal member, even though it may not feel that way.

00;25;18;18 - 00;25;30;32

Andrew

But just remember that so you can call an IEP meeting at any time. You also have the right to provide information about your child that could be used for developing an IEP, for evaluations or educational programs

00;25;30;32 - 00;25;43;43

Andrew

you also have the right to ensure that your written permission is given before any formal evaluations begin. And you have the right to access your child's entire educational file.

00;25;44;27 - 00;26;10;02

Andrew

You also have the right to confidentiality of your students records on the rights of FAPE, as I said. Now, here's something I also want to bring up. If you disagree with the results of your, the child study team evaluations that your school provided, you have the right to request an independent evaluation, meaning that the school district has to pay for an outside evaluation in an area that you request.

00;26;10;07 - 00;26;42;47

Andrew

Now, while they can be helpful there some caution about that because the school district is still paying for it. So they control the purse strings. And we often advise families to pay privately for an evaluation because then you have a little bit more say as to what goes into it. And it is a little bit more transparent. Okay, You have the right to transportation and related services and the right to mediation and due process to challenge any decisions from the school district.

00;26;42;52 - 00;27;07;47

Andrew

I want to end before going to questions with some practical tips. Be prepared, go into the IEP conference knowing what you want. You can send a letter in advance to your child's school to talk about what your concerns are and what do you want to discuss. Now something very important. Don't be adversarial with the school district in an IEP meeting, it never ever works. Don't yell, don't scream, don't insult.

00;27;07;52 - 00;27;30;18

Andrew

Even if they make you so angry, it'll always backfire. The best thing to do is you get more bees with honey than vinegar. So be courteous but be concerned. And then it makes it much easier to settle later on. Don't hide information. Don't be afraid to share it because schools can also say, Well, we didn't do this because we didn't know this was problem.

00;27;30;23 - 00;27;48;02

Andrew

We know about the timeline. 15 days to invoke stay put. And also don't be afraid to get an expert involved to conduct evaluations and help figure out what your child needs. Know your rights by looking at PRISE, consult with an attorney or advocate if need be.

00;27;48;02 - 00;27;49;01

Andrew

Okay.

00;27;49;01 - 00;27;50;17

Wendi

Thank you.

00;27;50;22 - 00;27;51;52

Andrew

My pleasure.

00;27;54;10 - 00;28;01;24

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