

EDUCATION LAW: PRIORITIES, PATHWAYS, AND PITFALLS

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OVERVIEW

INDIVIDUALS WITH DISABILITIES IN EDUCATION ACT (IDEA)

SECTION 504 OF THE REHABILITATION ACT

Understanding how these two laws work together (and separately) to provide FAPE allows you to better assist a child's educational team in ensuring the child's rights to a Free and Appropriate Education.



PURPOSE

IDEA

- ensure a free and appropriate education for children with disabilities who fall within one of the specific disability categories as defined by the law.

SECTION 504

- a broad civil rights law which protects the rights of individuals with disabilities in any agency, school or institution receiving federal funds to provide persons with disabilities to the greatest extent possible, an opportunity to fully participate with their peers. This includes ensuring FAPE.

According to *Endrew F.*:

To meet its substantive obligation under the Individuals with Disabilities Education Act, a school must offer an "individualized education program" reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

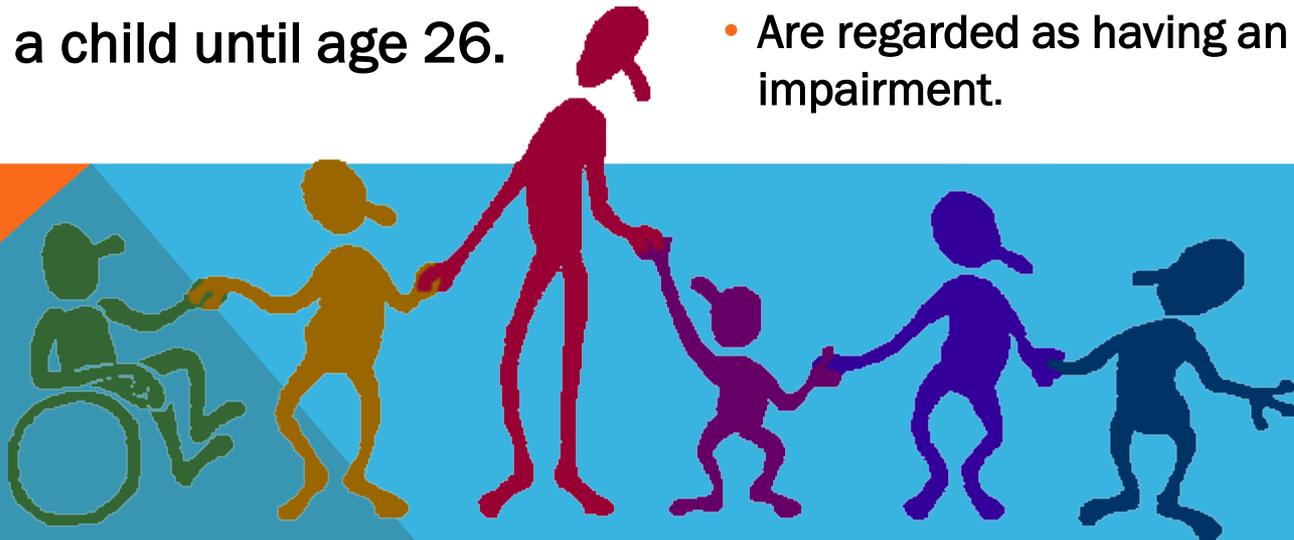
WHO IS PROTECTED?

IDEA

- Children with qualified disabilities; including physical, developmental, and emotional disabilities.
- The child must also require some sort of accommodation to properly benefit from the education that is provided.
- Covers a child until age 26.

SECTION 504

- All persons with a disability.
- A disabled person is:
 - Having a physical or mental impairment that limits at least one major life activity;
 - Have a record of such an impairment or
 - Are regarded as having an impairment.



IDEA QUALIFYING DISABILITIES

There are 13 categories of special education as defined by the Individuals with Disabilities Education Act (IDEA). In order to qualify for special education, the IEP team must determine that a child has one of the following:

Autism

Blindness

Deafness

Emotional Disturbance

Hearing Impairment

Intellectual Disability

Multiple Disabilities



Orthopedic Impairment

Other Health Impaired

Specific Learning Disability

Speech or Language Impairment

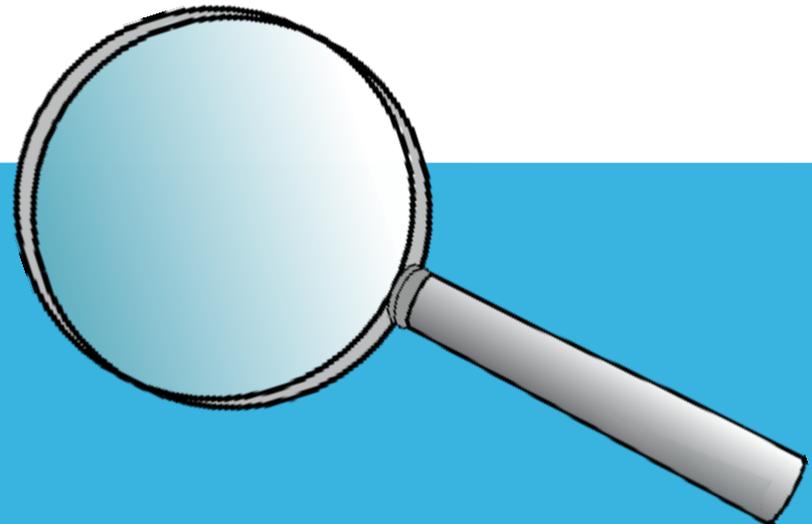
Traumatic Brain Injury

Visual Impairment

WHY ISN'T DYSLEXIA ON THE LIST? IT IS, IF YOU KNOW WHERE TO LOOK.....

R 340.1713 Specific Learning Disability explained; determination.

Rule 13 (1) “Specific learning disability” means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, **dyslexia**, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of cognitive impairment, of emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage. (MARSE)



FROM THE US DEPARTMENT OF EDUCATION

“The purpose of this letter is to clarify that there is nothing in the IDEA that would prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in IDEA evaluation, eligibility determinations, or IEP documents.” –Michael K Yudin



WHO PAYS: INSURANCE COMPANIES VS SCHOOLS

Psychological and neuropsychological testing are also used to develop a specialized treatment plan to help the child improve the performance of these cognitive functions leading to a better performance in school, work, and personal relationships. However, psychological and neuropsychological testing for educational reasons is not covered, as standard Aetna benefit plans exclude educational testing. In addition, psychological and neuropsychological testing performed for educational reasons is not considered treatment of disease. This testing is usually provided by school systems under applicable state and federal rules.

FINALLY: WHAT PROTECTION IS PROVIDED?

IDEA

- Free and Appropriate Education (FAPE)
- Least Restrictive Environment (LRE)
- Child Find – schools have an affirmative duty to find children with disabilities.

SECTION 504

- Free and Appropriate Education (FAPE)
- Remove barriers to general education.
- Reasonable accommodations must be made to allow the child to participate in the general curriculum and extracurricular activities.

SPECIAL EDUCATION, VOUCHERS, AND PAROCHIAL SCHOOLS

Parochial schools are covered by 504 and the IDEA, but . . .

- only if the student is otherwise qualified to participate in the program, without or without minor adjustments.**
- Section 504 provides that private schools must merely provide "minor adjustments" to assist students with disabilities.**

THE REQUIREMENTS IMPOSED UPON PRIVATE SCHOOLS ARE RELATIVELY MINIMAL AS COMPARED TO PUBLIC SCHOOLS.

- * private schools receiving federal funds are obligated merely to comply with the least restrictive environment mandate and comparable facilities requirement,**
 - * provide an equal opportunity to participate in extracurricular activities**
 - * and provide minor adjustments to accommodate students with disabilities.**
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PRIVATE SCHOOLS CAN INCREASE TUITION OR PROGRAM COSTS FOR STUDENTS WITH DISABILITIES

- * If the provision of educational services to a student with a disability results in a substantial increase in the cost of the program, the private school may seek reimbursement.**
- * There is little, if any, authority delineating what constitutes "a substantial cost."**

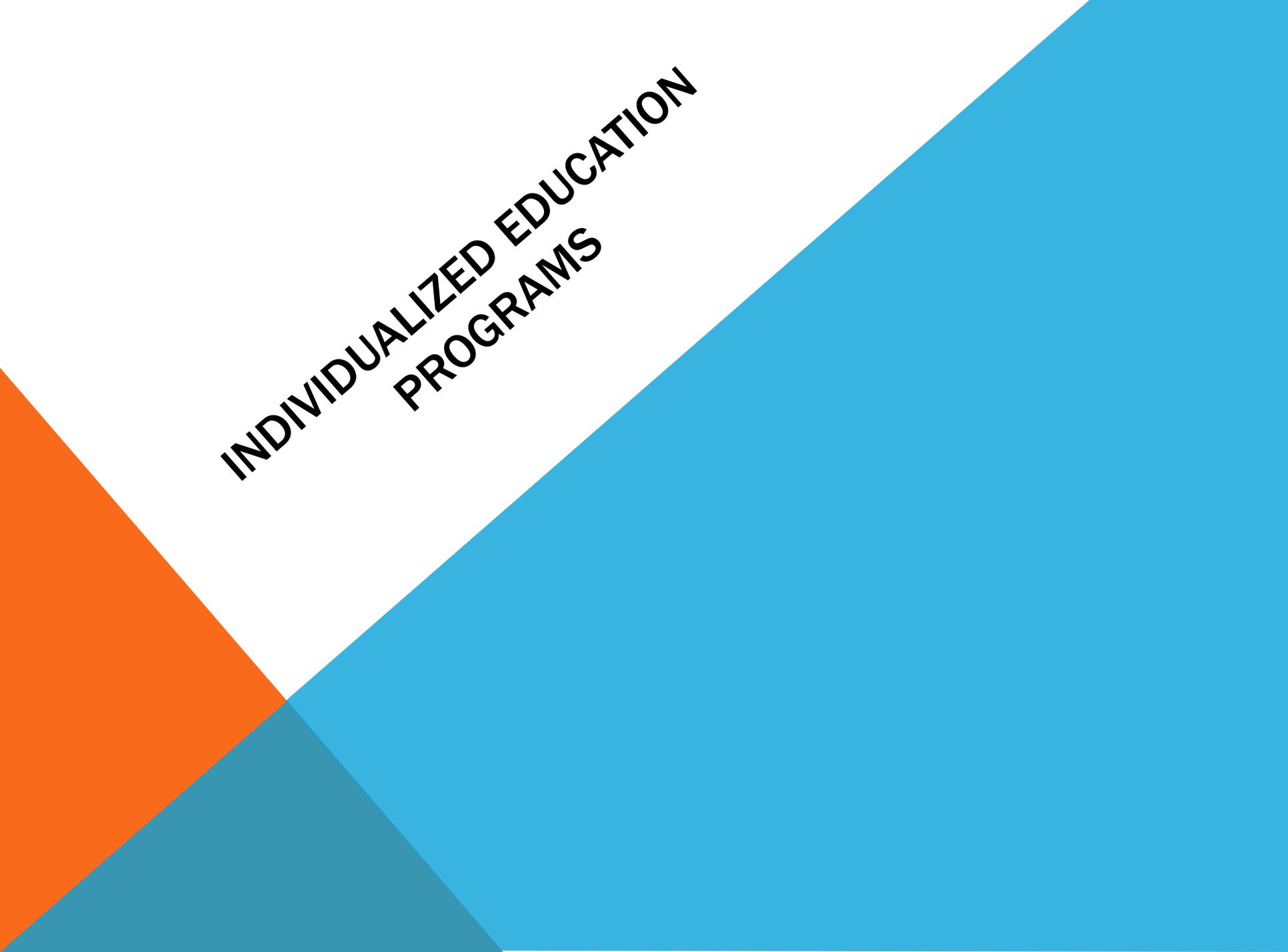
POTENTIAL CONFLICT BETWEEN RELIGIOUS FREEDOM AND EQUAL PROTECTION OF CHILDREN WITH DISABILITIES

Winkler v. Marist Fathers – a student with learning disabilities was denied admission to a Catholic high school;

- * She claimed discrimination based on disability
- * The School invoked the “ecclesiastical abstention” doctrine.

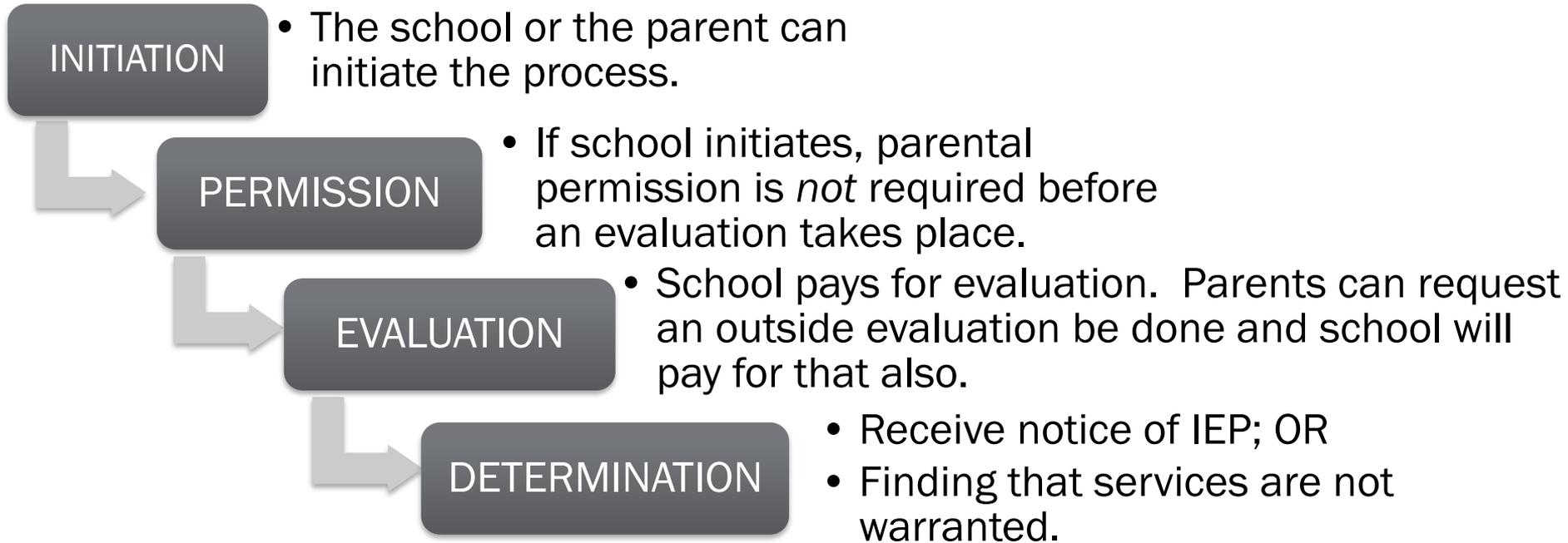
QUESTIONS?





INDIVIDUALIZED EDUCATION PROGRAMS

THE EVALUATION PROCESS



PROCESS TIMELINE (SCHOOL INITIATED)

School Child Find

- School has 10 days to provide parents with written notice and request consent to an evaluation.

Parents Receive Written Notice

- Parents have 10 days to provide consent to an evaluation. If no consent, school may move forward

Written Consent From Parents

- School has 30 days to conduct an evaluation.

Evaluation

- IEP meeting is set up to discuss education plan based on evaluation.

IEP Meeting

- School has 7 days to give parents the education plan.
- School has 15 school days to initiate the IEP.

WHAT IF THE STUDENT IS DENIED SERVICES?

- Parents can have the child **re-evaluated** by an independent evaluator.
 - The School must pay for the first re-evaluation. If the parents want a third evaluation, the parents must pay for it.
- If re-evaluation doesn't yield results, parents can initiate the **administrative appeal process**.
- If administrative appeal process does not yield results, parents can initiate **a formal appeal** through the federal court system.

WHAT IS THE PURPOSE OF AN IEP?

- **Determine the initial eligibility for special education based on the results from the evaluation.**
 - Includes what the student's current level of functioning is.
 - **Determine what available accommodations will help the student benefit most from the education provided.**
 - **Establish goals for the next year.**
 - What should the student be accomplishing within the next year?
 - Establish benchmarks that should be met throughout the year.
 - **Discuss appropriate transactional services that should begin between ages 13-16.**
 - **Discuss and establish goals for post-secondary education services.**
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WHO PARTICIPATES IN AN IEP MEETING?

REQUIRED

- Superintendent or designee with the authority to make implementations on behalf of the school district
- School services providers
- At least one general education teacher
- At least one special education teacher
- Parent

OPTIONAL

- External services providers
- Child, as age and ability allows
- Relatives/Friends
- Interpreters
- Attorneys/Advocates

WHO IS CONSIDERED A PARENT?

- Natural, adoptive, or foster parents
- Guardian (ad litem)
- Individual acting in the place of a natural or adoptive parent with whom the child lives
- Another individual who is responsible for the child's welfare



FORMULATION OF THE IEP

Consideration must be given to the child's strengths and the parents' concerns, as well as the following factors:

- Behavioral problems
 - Limited English language skills
 - Visual or hearing impairments
 - Need for assistive technology
- 

WHAT SHOULD BE INCLUDED IN THE IEP/COMPONENTS

- The Child's Present Level of Academic Achievement and Functional Performance
 - Measurable Annual Goals, Including Academic and Functional Goals
 - For Children with Disabilities Who Take Alternate Assessments Aligned to Alternate Achievement Standards, a Description of Benchmarks or Short-Term Objectives
 - The Special Education and Related Services, and Program Modifications or Supports
 - The Extent, If Any, to which the Child Will Not Participate in Regular Classroom and Extracurricular Activities
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WHAT SHOULD BE INCLUDED IN THE IEP/COMPONENTS

- Any Accommodations Necessary to Measure the Academic Achievement and Functional Performance of the Child
 - Projected Date for the Beginning of Services and Modifications
 - Transition Services (beginning no later than when the child turns 16, or younger if deemed appropriate by the IEP team)
 - Rights that Transfer at Age of Majority
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AN IEP IS IN PLACE, NOW WHAT?

- Annual review to revise or confirm continued eligibility for the services being provided.
 - Reevaluation is required at least every 3 years.
 - Evaluate for changes to or additional disabilities.
 - **Addendums may be used to make minor modifications.**
 - Add, modify, or delete instructional goals or objectives.
 - Modify the amount of time in the current program
 - Add, modify or delete related services
 - Make other minor modifications
 - **Anyone can request an addendum**
 - **Both the School and the parents should agree on any changes.**
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EXTENDED SCHOOL YEAR (ESY)

If there is a risk of *severe regression*, specific services, like an extended school, *may* be appropriate.



QUESTIONS?



THIRD GRADE RETENTION BILL

AN ATTEMPT AT A SIMPLE SOLUTION TO A COMPLEX PROBLEM

BASICALLY, THE BILL SAYS THAT A CHILD NOT READING AT LEVEL BY THE END OF THE THIRD GRADE WILL BE RETAINED FOR ONE YEAR...



BUT, THERE ARE EXEMPTIONS...

(8) If the superintendent of the pupil's school district or chief administrator of the pupil's public school academy, or his or her designee, grants a good cause exemption from the requirements of subsection (5)(a) for a pupil, then a pupil may be promoted to grade 4 without meeting the requirements of subsection (5)(a). A good cause exemption may be granted only according to the procedures under subsection (10) and only for 1 of the following:

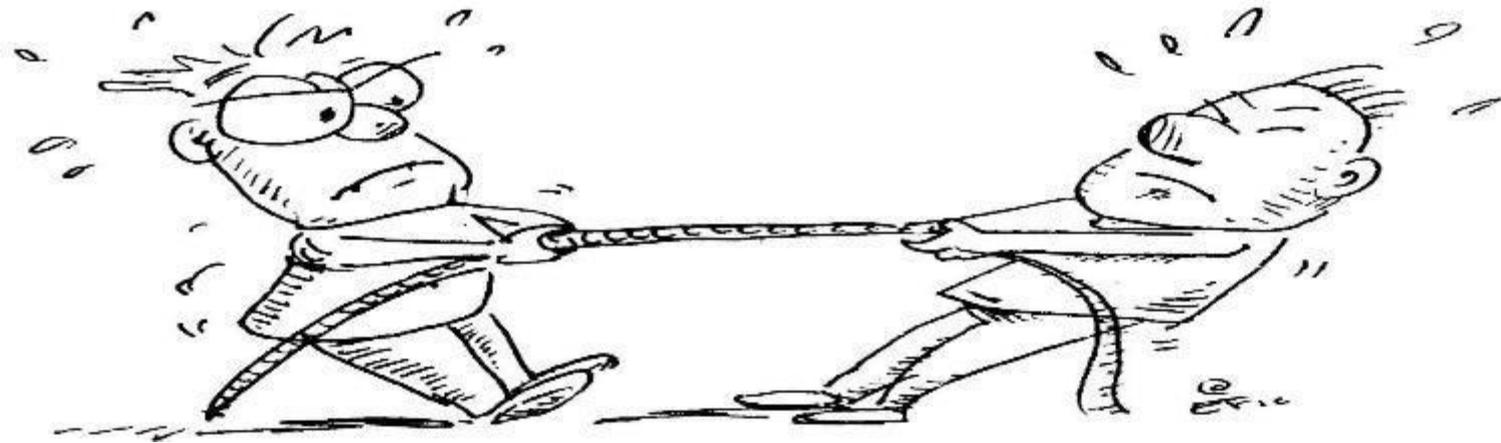
(a) The pupil is a student with an individualized education program or with a section 504 plan and the pupil's individualized education program team or section 504 coordinator, as applicable, makes the decision to exempt the pupil from the requirements of subsection (5)(a) based upon the team's or coordinator's knowledge of the pupil.

OTHER EXCEPTIONS INCLUDE

1. ESL students with less than three years of instruction in English language learner programs.
 2. Students having received intensive reading intervention for 2 or more years but still demonstrating a reading deficiency and were previously retained in kindergarten, grade 1, grade 2, or grade 3.
 3. A student has been in a district for less than two continuous years and there is evidence that the student did not receive appropriate intervention in the preceding district.
 4. Request of the parent or legal guardian (outcome determined by the superintendent or chief administrator or designee for the district).
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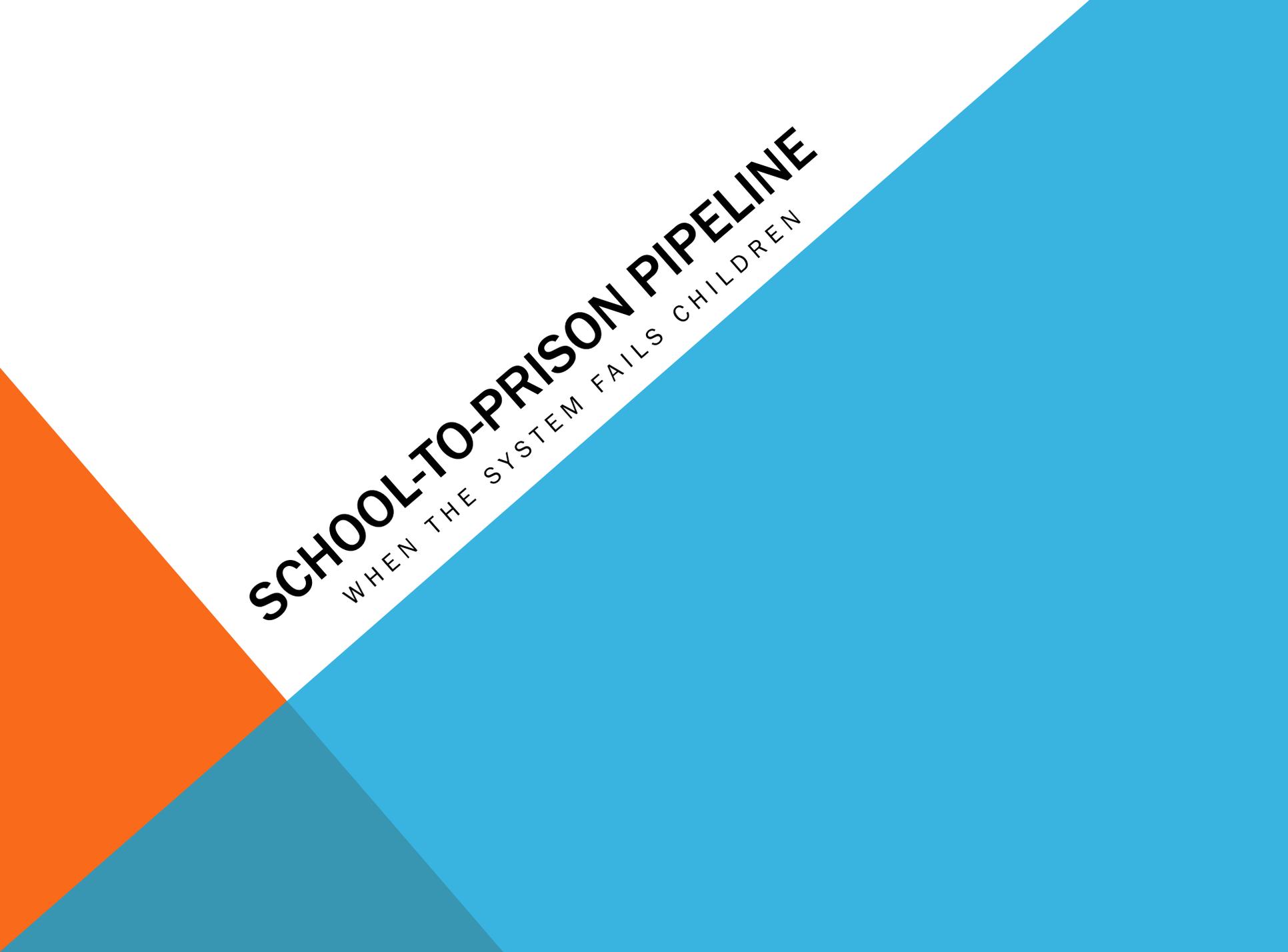
YES, A SCHOOL MAY RETAIN A CHILD AGAINST A PARENT OR GUARDIAN'S WISHES

After this consideration, he or she shall make a determination in writing of whether or not to grant the good cause exemption. This determination shall be made and communicated to the parent or legal guardian at least 30 days before the first day of school for the school year. [The decision of the superintendent or chief administrator, or his or her designee, is final.](#)



QUESTIONS?





SCHOOL-TO-PRISON PIPELINE

WHEN THE SYSTEM FAILS CHILDREN

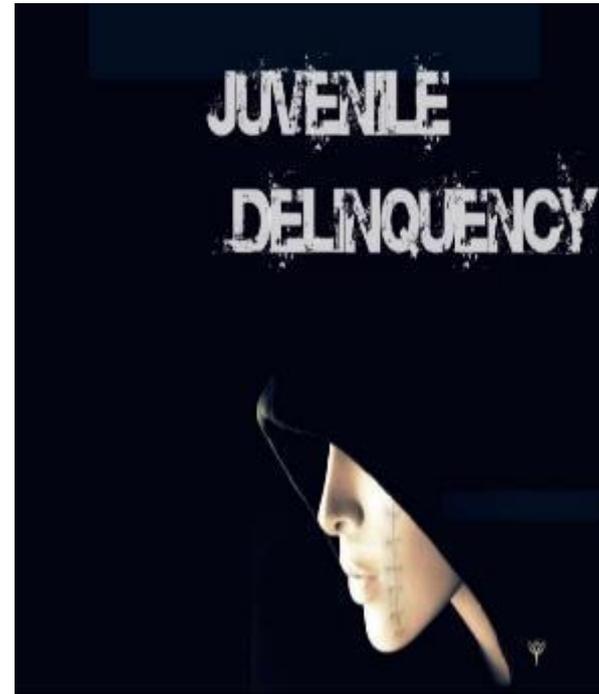
DATA FOR KENT COUNTY, 2015

2047 Juveniles referred to the prosecutor's office or city attorney's office by the police

398 juvenile offenders were placed on community service.

145 juveniles were placed on Electronic Home Monitoring

4,905 hours of community service were completed by juvenile offenders.



A NATIONAL PROBLEM: THE ABA REPORT

For students with disabilities, disproportionality manifests itself in similar ways, and race and ethnicity, gender, and disability compound. Students with disabilities (or those who are labeled as disabled by the school) are disproportionately

- students of color, especially in discretionary categories under the Individuals with Disabilities Education Act (IDEA)
- less likely to be academically proficient
- disciplined, and more harshly so
- retained in grade, but still dropping out or failing to graduate
- more likely to be placed in alternative disciplinary schools or settings or otherwise more likely to spend time out of the regular classroom, to be secluded or restrained
- referred to law enforcement or subject to school-related arrest and incarceration.



ABA REPORT, CONTINUED...

These same differences plague the juvenile justice system where youth of color, youth with disabilities, and LGBTQ youth are typically disproportionately arrested, referred, detained (longer), charged, found delinquent (or transferred to adult court). They are disproportionately confined instead of being placed on probation or into a diversion program. And all along the way, these young people caught in the school-to-prison pipeline are less likely to have access to meaningful education to allow them to graduate from high school and prepare for higher education and work opportunities.



ABA RECOMMENDATIONS

The school-to-prison pipeline is a complex problem with no easy or simple solutions. At their core, solutions should focus on ways to (a) improve academic achievement and increase the likelihood that students will remain in school, graduate, and prepare to become positive, contributing members of our society, (b) decrease the number of suspensions, expulsions, and referrals to law enforcement; and (c) decrease disparities along racial and other lines relating to discipline and academic achievement.

https://www.americanbar.org/content/dam/aba/administrative/diversity_pipeline/stp_preliminary_report_final.authcheckdam.pdf



KEEP IN MIND:

85%

Of juveniles who come in contact with the juvenile court system are functionally illiterate.

QUESTIONS??



THANK YOU!



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