

## **Advocacy for Student Rights/IEP's – Kristen Weidus, Partner at Ruder Law**

***Due to technical difficulties, the recording from our speaker series on Wednesday, September 22, 2021 is not available. In order to share the resource information, we offer the following taken from the interview between Christine Brookins and Kristen Weidus.***

Attorney Kristen Weidus was featured on September 22, 2021 in the Connecting Our Community Special Needs Speaker Series. Kristen is a Partner at Ruder Law in Downtown Pittsburgh. She shared her expertise in Legal Advocacy for Student Rights specifically as it applies to Special Education and Disabilities.

Kristen received the Westmoreland Bar Association's Outstanding Young Lawyer Award in 2016. Kristen was also selected as a Pennsylvania Rising Star by SuperLawyers in 2021.

### **Christine**

*Before advocacy begins, we need to understand the rights that our students have. Can you get us started with that?*

### **Kristen**

Sure. First, know that there are laws that protect the students. In a few minutes, we will these laws in more detail and how they apply to students with disabilities. Throughout this discussion, we will mention some "Magic Words." You will want to keep these in mind.

1. Evaluation
2. IEP v. 504
3. Compensatory Education
4. Advocate (Attorney)
5. Deliberate Indifference

### **Christine**

*It's good to call out those terms in advance. So, what laws form the foundation?*

### **Kristen**

There are several pieces of legislation. The Individuals with Disabilities Education Act, often called IDEA, outlines school districts' responsibility to provide eligible students with disabilities with specially designed instruction, or modifications to the delivery of the educational programming offered by the school.

Section 504 of the Rehabilitation Act addresses equal access to public education and services for students who do not require modifications to the delivery of instruction.

Under both laws, eligible students with disabilities are entitled to "FAPE," which means a free and appropriate public education. Each law outlines more specifically the standards that must be met for a school to provide a student with FAPE.

**Christine**

*What are the first steps toward getting a student the supports they need?*

**Kristen**

If a parent suspects that their child has a disability and requires more support in school, they should request an Evaluation. Although not required, it is best to request this evaluation in writing. The school has 60 days to respond to this request and to complete the Evaluation. The school then must work with the parent to schedule a meeting to review the Evaluation Report, and to determine if the student requires special education services or supports.

There are often eight (8) major areas for assessment.

- 1.) Cognitive ability – Administered by a school psychologist, it measures IQ and student’s strengths and challenges.
  - 2.) Academic Achievement – Usually done by a special education teacher, it measures areas of need to create meaningful goals.
  - 3.) Behavioral Assessment – Often, this includes input from various people regarding a student’s behavior and social interaction, and also should include observations of the student in a variety of academic environments.
  - 4.) Executive Functioning – Does the student have organizational, self-monitoring, self-regulation, attentional, or working memory needs?
  - 5.) Speech and Communication – This can be done by a Speech Language Pathologist to evaluate expressive and receptive communication. Sometimes, adjustments in the manner of communication can make a big difference.
  - 6.) Assistive Technology—Intended to determine if a student can benefit from the use of assistive technology in the classroom.
  - 7.) Physical Therapy—Does this student need assistance in developing skills to physically navigate the educational environment?
  - 8.) Occupational Therapy—Does this student have sensory, physical, or adaptive skill deficits?
- There are also more specific assessments that can be conducted if you suspect that your child has Autism, or a specific learning disability in a particular academic area.

Also understand that these assessments can be requested at any time.

**Christine**

*Ok. So, once the evaluation is performed, what can we expect to happen?*

**Kristen**

A report will be provided to the parent/guardian. Usually, an IEP meeting is scheduled to discuss the results. The family is invited and participates as an equal member of the team. Bring an agenda to ensure you address all of your questions/concerns.

**Christine**

*What is an IEP?*

**Kristen**

The Individualized Educational Plan (IEP) is a plan or program developed to ensure that a child who has a disability identified under the IDEA receives specialized instruction and related services in the least restrictive environment. Measurable goals are identified and outcomes are documented.

**Christine**

*We have already heard some of those magic words. Now that we know about IEPs, what is a 504 Plan?*

**Kristen**

The 504 Plan ensures that a child who has a disability identified under Section 504 of the Rehabilitation Act receives accommodations that will ensure their academic success and access to the learning environment. This is often used for those who may be medically fragile. With proper accommodations, these students could succeed academically. Sometimes, this equates to make-up time for missed school days, or tutors to stay on pace or catch up. It can mean reduced homework for those that, related to their disability, are not able to focus for the time to complete assignments.

**Christine**

*What is the difference between an IEP and a 504 Plan?*

**Kristen**

Not all students who have disabilities require specially designed instruction. For students with disabilities who do require specially designed instruction, the Individuals with Disabilities Education Act (IDEA) controls the procedural requirements, and an IEP is developed. The IDEA process is more involved than that of Section 504 of the Rehabilitation Act and requires the development of measurable annual goals to document the student's quarterly progress in all identified areas of need.

For students with disabilities who do not require specially designed instruction but have a qualifying disability that impacts their ability to access public education and services, a document is created to outline their specific accessibility requirements. Students with 504 Plans are not entitled to specially designed instruction, but like an IEP, a 504 Plan should be updated annually to ensure that the student is receiving the most effective accommodations for his/her specific circumstances.

**Christine**

*Would you talk to us about transition planning? What is it? When should it start?*

**Kristen**

Transition planning refers to the process of facilitating a student's move from school into the community. Transition is a process and must begin to be discussed no later than at the IEP team meeting scheduled during the academic year that the student turns 14. The IEP team is required to develop measurable annual goals to address three areas: (1) independent living; (2) post-secondary education or training; and (3) competitive employment. In Pennsylvania, providing that the IEP team determines that it is appropriate and necessary for a student to remain in school, a student can receive special education services through the age of 21.

**Christine**

*What should families do if it appears the school is not following the IEP/504 Plan? What if they say they can't?*

**Kristen**

This is when we get to the rest of the magic words. If a service was determined to be appropriate and necessary for a student, documented in the IEP, and the school does not provide it, the student is entitled to what is called compensatory education. Compensatory education is a replacement support or service intended to bring a student to where he/she would be but for the district's failure to provide the identified service. This is one of the Magic Words, and mentioning it to the school team will make clear that a parent knows their child's educational rights.

Remember that it is not the parents' job to know the law. The school is required to know and do what the law requires. If you have tried to communicate with the school and you are not satisfied with the response, you have the right to enlist an advocate. Achieva and the PEAL Center often offer advocacy services free of charge.

If you are not achieving a satisfactory response, you also have the right to engage an appropriate attorney. Because both the IDEA and Section 504 are civil rights statutes, they include fee shifting provisions. This means that families are entitled to reimbursement of attorneys' fees if they are successful in pursuing a claim against their school district. Additionally, most settlements negotiated by attorneys representing families of students with disabilities also include reimbursement of the parents' attorneys' fees (so a lawsuit is often not necessary).

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