

**Missouri Council of Administrators of
Special Education**

**Special Education 101: A Primer on the
Individuals with Disabilities Education Act
Basic Issues**

presented by

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A Primer on the Individuals with Disabilities Education Act

Basic Issues

I. Child Find

A. IDEA Source

- 20 U.S.C. § 1401(3)
- 20 U.S.C. § 1412(a)(3)

B. Federal Regulatory Source

- 34 C.F.R. § 300.111 (Each state must have in effect policies and procedures to ensure that “[a]ll children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated”)

C. Missouri State Plan

- Pages 18-19 (“It is the policy of the State of Missouri that all children with disabilities, residing in the state, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated. This requirement applies to highly mobile children with disabilities (such as migrant and homeless children) and children who are suspected of being a child with a disability and in need of special education even though they are advancing from grade to grade. The State of Missouri also ensures that it has procedures in place to determine which children are receiving needed special education and related services.”)

D. Issues That May Arise

- Homeless children
- RtI/delay in evaluation
- Parentally-placed private school children

E. Notable Cases

- *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181 (9th Cir. 2010) (ignoring child’s possible disability is a refusal to act).
- *Robertson County Sch. Sys. v. King*, 99 F.3d 1139 (6th Cir. 1996) (“[A] parent who is a neophyte to special education and is unacquainted with IDEA cannot be expected to appear and say ‘My child is eligible for special education services under IDEA, and I am here to refer my child

for an individual assessment.’ A request for assessment is implied when a parent informs a school that a child may have special needs.”)

- *Dep’t of Educ., State of Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190 (D. Haw. 2001).
- *Strock v. Indep. Sch. Dist. No. 281*, 06-CV-3314JMRFLN, 2008 WL 782346 (D. Minn. Mar. 21, 2008).
- *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918 (W.D. Tex. 2008).

F. Comments

II. Evaluation/Reevaluation

A. IDEA Source

- 20 U.S.C. 1414(a)-(c)

B. Federal Regulatory Source

- 34 C.F.R. § 300.301 - § 300.305
- 34 C.F.R. § 300.307 - § 300.311 (specific learning disability)

C. Missouri State Plan

- Pages 31-39

D. Issues That May Arise

- Timeliness/Parental requests
- Areas tested
- Information provided by parents
- Consent

E. Notable Cases

- *New Paltz Cent. Sch. Dist. v. St. Pierre ex rel. M.S.*, 307 F.Supp.2d 394 (N.D.N.Y.2004) (holding that a delay of approximately ten months from the time mother informed school district that son was experiencing difficulties until performance of comprehensive evaluation constituted a Child Find violation)
- *D.G. ex rel. B.G. v. Flour Bluff Indep. Sch. Dist.*, CIV.A. C-10-94, 2011 WL 2118813 (S.D. Tex. May 24, 2011) (There is no bright line rule as to what constitutes a “reasonable time.” Certain courts have found periods as short as a few months as unreasonable, whereas others have found periods a year or longer to be reasonable, depending on the circumstances.)
- *Gregory K. v. Longview School Dist.*, 811 F.2d 1307 (9th Cir.1987) (“If the parents want [the student] to receive special education under the Act, they are obliged to permit such testing.”)

- *Andress v. Cleveland Indep. Sch. Dist.*, 64 F.3d 176, 178 (5th Cir. 1995) (“If a student’s parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation.”)

F. Comment

III. Eligibility

A. IDEA Source

- 20 U.S.C. 1401(3)
- 20 U.S.C. 1401(30)
- 20 U.S.C. 1414(b)(4) - (6)

B. Federal Regulatory Source

- 34 C.F.R. § 300.8 (definition of child with a disability)
- 34 C.F.R. § 300.306
- 34 C.F.R. § 300.311 (specific learning disability)

C. Missouri State Plan

- Pages 19 – 31 (eligibility criteria)
- Page 35

D. Issues That May Arise

- Needs special education and related services
- Lack of appropriate instruction
- Adverse impact

E. Notable Cases

- *Hansen ex rel. J.H. v. Republic R-III Sch. Dist.*, 632 F.3d 1024 (8th Cir. 2011) (Court finds child met criteria for **both** emotionally disturbed and other health impaired).
- *Yankton Sch. Dist. v. Schramm*, 93 F.3d 1369 (8th Cir. 1996) (Orthopedic impairment. District had argued: “Tracy was eligible for special education in her last IEP only because her disability affected her performance in physical education. Once she completed ninth grade, the district was no longer required to provide her with physical education, and her need for special education thus ended. Since Tracy receives excellent grades, the district reasons that Tracy’s impairment does not affect her ability in any other area, which means she is not disabled within the meaning of IDEA.”). District lost.

F. Comment

IV. IEP Team/Parent Participation

A. IDEA Source

- 20 U.S.C. § 1414(d)(1)(B)–(d)(1)(D)
- 20 U.S.C. § 1414(f)

B. Federal Regulatory Source

- 34 C.F.R. § 300.321 (IEP Team)
- 34 C.F.R. § 300.322 (Parent Participation)
- 34 C.F.R. § 300.328 (Alternative means of meeting participation)

C. Missouri State Plan

- Pages 45-48
- Page 50 (Role of regular education teacher)

D. Issues That May Arise

- Notice to parents
- Native language other than English
- Excusal
- Attending only part of the meeting
- Alternative means of participating
- Transition providers

E. Notable Cases

- *M.L. v. Fed. Way Sch. Dist.*, 394 F.3d 634 (9th Cir. 2005) (“The plain meaning of the terms used in section 1414(d)(1)(B) compels the conclusion that the requirement that least one regular education teacher be included on an IEP team, if the student may be participating in a regular classroom, is mandatory – not discretionary.”)
- *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 657-58 (8th Cir. 1999) (“A school district’s obligation under the IDEA to permit parental participation in the development of a child’s educational plan should not be trivialized. *See Rowley*, 458 U.S. at 205–06, 102 S.Ct. 3034 (“It seems to us no exaggeration to say that Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard.”). Nevertheless, the IDEA does not require school districts simply to accede to parents’ demands without considering any suitable alternatives. In this case, the record shows that the School District considered both the possibility of providing Grace with in-home instruction and the possibility of reimbursing her parents for the cost of educating her at home through the Institutes, but rejected these options on the ground that they would not provide her with sufficient

interaction with other children. The School District's adherence to this decision does not constitute a procedural violation of the IDEA simply because it did not grant Grace's parents' request. For these reasons we agree with the hearing panel's determination that the School District did not deprive Grace's parents of their procedural rights.”).

- *R.B., ex rel. F.B.v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 939 (9th Cir. 2007) (“If Congress had wanted the child’s current regular education teacher on the IEP team, Congress would have used more specific language than ‘at least one regular education teacher of such child.’ Indeed, the phrase ‘at least one’ contemplates that the IEP team will include regular education teachers other than the child’s current teacher. Requiring ‘the current regular education teacher’ to assume the role set aside for ‘at least one regular education teacher’ would interpret the statute too narrowly.”)

F. Comment

V. IEP Document/Services/FAPE

A. IDEA Source

- 20 U.S.C. § 1412(a)(1)
- 20 U.S.C. § 1412(a)(12)
- 20 U.S.C. § 1414(d)
- 20 U.S.C. § 1414(e)

B. Federal Regulatory Source

- 34 C.F.R. § 300.320 (Definition of IEP)
- 34 C.F.R. § 300.323 (When IEPs must be in effect)
- 34 C.F.R. § 300.324 (Development, review and revision of IEP)

C. Missouri State Plan

- Pages 40 – 42 (FAPE)
- Pages 43 – 45 (IEP components)
- Pages 58 – 51 (Transfer students/Amending IEP/Other)

D. Issues That May Arise

- Pre-determining services
- Use of restraints and seclusion

E. Notable Cases

- *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 200-01, 102 S. Ct. 3034, 3048, 73 L. Ed. 2d 690 (1982) Implicit in the congressional purpose of providing access to a “free appropriate public education” is the requirement that the

education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. It would do little good for Congress to spend millions of dollars in providing access to a public education only to have the *201 handicapped child receive no benefit from that education. The statutory definition of “free appropriate public education,” in addition to requiring that States provide each child with “specially designed instruction,” expressly requires the provision of “such ... supportive services ... as may be required to assist a handicapped child *to benefit* from special education.” § 1401(17) (emphasis added). We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

- *Sch. Bd. of Indep. Sch. Dist. No. 11 v. Renollett*, 440 F.3d 1007, 1011 (8th Cir. 2006) (“To pass substantive muster, the IEP must be ‘reasonably calculated to enable the child to receive educational benefits.’ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982).”)
- *Fort Osage R-1 Sch. Dist. v. Sims ex rel. B.S.*, 641 F.3d 996, 1004 (8th Cir. 2011) (“[E]ven assuming that B.S. does suffer from autism, and that the IEP materially failed to include this diagnosis, the Sims cannot show that this purported procedural error was harmful. This is because the IEP was substantively reasonable and because the error did not deprive B.S. of any educational benefits.”)
- *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 10-2176, 2011 WL 3300681 (8th Cir. Aug. 3, 2011) (“To satisfy the procedural requirements of the IDEA, a ‘school district must follow the procedures set forth in the [statute] to formulate an IEP tailored to meet the disabled child’s unique needs.’ *Id.* at 1011. Congress intended that such procedures would guarantee ‘parents and guardians a large measure of participation’ in the IEP process and would assure that the resulting IEP included ‘much if not all of what Congress wished in the way of substantive content.’ *Rowley*, 458 U.S. at 206–07, 102 S.Ct. 3034. If a school district fails to comply with IDEA procedures, however, the IEPs that result from the violation are not necessarily invalid. *Renollett*, 440 F.3d at 1011. Rather, ‘[a]n IEP should be set aside only if [the] procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parent’s opportunity to participate in the formulation process, or caused a deprivation of educational benefits.’”)
- *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 657 (8th Cir. 1999) (“[N]othing in the IDEA or its regulations prohibits a school district from coming to an IEP meeting with tentative recommendations for its development prepared in the parents’ absence.”)

F. Comment

VI. Placement/LRE

A. IDEA Source

- 20 U.S.C. § 1412(a)(5)

B. Federal Regulatory Source

- 34 C.F.R. § 300.114 (LRE requirements)
- 34 C.F.R. § 300.115 (Continuum of alternative placements)
- 34 C.F.R. § 300.116 (Placements)
- 34 C.F.R. § 300.117 (Nonacademic settings)
- 34 C.F.R. § 300.118 (Children in public or private institutions)
- 34 C.F.R. § 300.328 (Educational placements)

C. Missouri State Plan

- Pages 51-54
- Page 56 (Chart of Placement Options in Missouri)

D. Issues That May Arise

- Change of placement occur
- State school placements
- Parentally-placed private school students where FAPE is at issue
- Residential placements
- Homebound students

E. Notable Cases/Other Materials

- “Historically, we have referred to ‘placement’ as points along the continuum of placement options available for a child with a disability, and ‘location’ as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability.” 71 Fed.Reg. No. 156 at p. 46588 (OSEP August 14, 2006).
- *C.B. ex rel. B.B. v. Special Sch. Dist. No. 1, Minneapolis, Minn.*, 636 F.3d 981, 991 (8th Cir. 2011) (“The parents were not required to allow the District another opportunity to try yet again with a different IEP that featured the CLASS program when the District did not propose that alternative in any of the IEPs that preceded C.B.’s withdrawal. Reimbursement for the costs of enrollment in a private school is authorized if the hearing officer finds that the District “had not made a free appropriate public education available to the child *in a timely manner* prior to that enrollment.” 20 U.S.C. § 1412(a)(10)(C)(ii)(emphasis added). A less restrictive environment is the ideal, but C.B.’s move to Groves after years of frustration in the

public schools is a far cry from ‘the apparently widespread practice of relegating handicapped children to private institutions or warehousing them in special classes’ that concerned Congress. *See Burlington*, 471 U.S. at 373, 105 S.Ct. 1996. We thus join the Third and Sixth Circuits in concluding that a private placement need not satisfy a least-restrictive environment requirement to be ‘proper’ under the Act. *See Warren G. v. Cumberland Cnty. Sch. Dist.*, 190 F.3d 80, 83–84 (3d Cir.1999); *Cleveland Heights–Univ. Heights City Sch. Dist. v. Boss*, 144 F.3d 391, 399–400 (6th Cir.1998).

* * *

Aside from the concern that Groves educates primarily children with disabilities, there is no doubt that it was a proper placement for C.B.

- *T.F. v. Special Sch. Dist. of St. Louis County*, 449 F.3d 816, 820 (8th Cir. 2006) (“A child receives a free appropriate public education if he receives ‘personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.’ *Rowley*, 458 U.S. at 203, 102 S.Ct. 3034. The IDEA requires that public school districts offer eligible children ‘instruction and supportive services reasonably calculated to provide some educational benefit.’ *Springfield*, 358 F.3d at 999 n. 7. The statute also requires that students with disabilities be educated in the ‘least restrictive environment,’ 20 U.S.C. § 1412(a)(5)(A), reflecting a ‘strong preference’ that disabled children attend regular classes with non-disabled children and a presumption in favor of placement in the public schools. *Independent Sch. Dist. No. 283 v. S.D.*, 88 F.3d 556, 561 (8th Cir.1996). ‘[C]hildren who can be mainstreamed should be mainstreamed, if not for the entire day, then for part of the day; similarly, children should be provided with an education close to their home, and residential placements should be resorted to only if these attempts fail or are plainly untenable.’ *Evans v. Dist. No. 17*, 841 F.2d 824, 832 (8th Cir.1988).
- *Hunt on Behalf of Hunt v. Bartman*, 873 F. Supp. 229, 246 (W.D. Mo. 1994) (“[U]nder the current State Plan, the referral stage is the critical point at which IDEA’s least restrictive environment requirement is given effect. Upon receiving notification that a child is eligible for service in the State Schools, the local school district is supposed to consider the range of alternative placements, treat the State Schools as an option, and make a decision as to the child’s placement. Tr. at 65–69 (Heskett testimony). It is at this stage that the local school district is supposed to consider whether supplementary aids or services could be used to implement the child’s IEP in a local school program. *Id.* at 68–70, 82.
- *Evans v. Dist. No. 17 of Douglas County, Neb.*, 841 F.2d 824, 832 (8th Cir. 1988) (“There was no guarantee that the programs proposed by Millard would have accommodated Christine. However, the school district should have had the opportunity, and to an extent had the duty,

to try these less restrictive alternatives before recommending a residential placement.”)

- *A.W. By & Through N.W. v. Nw. R-1 Sch. Dist.*, 813 F.2d 158, 162 (8th Cir. 1987) For our present purposes, the most important provision of the Act is section 1412(5), which provides that “to the maximum extent appropriate, handicapped children * * * are to be educated with children who are not handicapped, and that * * * removal of handicapped children from the regular educational environment [should occur] only when the nature or severity of the handicap is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily.” *Id.* § 1412(5). This requirement is known as “mainstreaming.” *Mark A. v. Grant Wood Area Educ. Agency*, 795 F.2d 52, 54 (8th Cir.1986). It is also referred to as the “least restrictive environment” in the federal regulations implementing the Act. 34 C.F.R. §§ 300.550–.556 (1986). These regulations repeat the above statutory language, *id.* § 300.550, and further require that each state receiving funds pursuant to the Act establish a “continuum of alternative placements” for handicapped children including the opportunity for education in “regular classes, special classes, [and] special schools.” *Id.* § 300.551(b)(1). Missouri has enacted analogous legislation addressing mainstreaming. *See* Mo.Rev.Stat. § 162.680.2 (1978)
- *A.W. By & Through N.W. v. Nw. R-1 Sch. Dist.*, 813 F.2d 158, 162-63 (8th Cir. 1987) This statutory framework reveals the strong congressional preference for mainstreaming. *See Board of Educ. v. Rowley*, 458 U.S. 176, 181 n. 4, 102 S.Ct. 3034, 3038 n. 4, 73 L.Ed.2d 690 (1982); *Mark A.*, 795 F.2d at 54; *Springdale School Dist. # 50 v. Grace*, 693 F.2d 41, 43 (8th Cir.1982), *cert. denied*, 461 U.S. 927, 103 S.Ct. 2086, 77 L.Ed.2d 298 (1983). This congressional preference, however, is not absolute. “Congress recognized that regular classrooms simply would not be a suitable setting for the education of many handicapped children. * * * The Act [itself] provides for the education of some handicapped children in separate or institutional settings.” *Rowley*, 458 U.S. at 181 n. 4, 102 S.Ct. at 3038 n. 4; *see* 20 U.S.C. § 1412(5) (“nature or severity of the handicap [may be] such that education in the regular classroom cannot be achieved satisfactorily”).
- *A.W. By & Through N.W. v. Nw. R-1 Sch. Dist.*, 813 F.2d 158, 163-64 (8th Cir. 1987) We are satisfied that the district court properly analyzed A.W.'s claim. We believe that the Sixth Circuit in *Roncker* correctly interpreted the Act's mainstreaming provisions as allowing a court to consider both cost to the local school district and benefit to the child. This interpretation is consistent with the language of 20 U.S.C. § 1412(5), which significantly qualifies the mainstreaming requirement by stating that it should be implemented “to the maximum extent appropriate,” 20 U.S.C. § 1412(5) (emphasis added), and that it is inapplicable where education in a mainstream environment “cannot be achieved *satisfactorily*.” *Id.* (emphasis added). It is consistent with the

Supreme Court's conclusion in *Rowley* that the Act does not require states to provide each handicapped child with the best *possible* education at public expense, 458 U.S. at 188–89, 102 S.Ct. at 3041–42, and the Court's recognition that available financial resources must be equitably distributed among all handicapped children. *Id.* at 193 n. 15, 102 S.Ct. at 3044 n. 15. It is also consistent with our earlier interpretations of the Act,⁸ *Mark A.*, 795 F.2d at 54; *Springdale School Dist.*, 693 F.2d at 43, and the interpretation of at least two additional circuits. *See Department of Educ. v. Katherine D.*, 727 F.2d 809, 813–14 (9th Cir.1983) (the Act's requirements must be construed in light of the reality of limited public funding), *cert. denied*, 471 U.S. 1117, 105 S.Ct. 2360, 86 L.Ed.2d 260 (1985); *Age v. Bullitt County Pub. Schools*, 673 F.2d 141, 145 (6th Cir.1982) (need for free, appropriate education must be reconciled with state's need to allocate scarce funds among as many handicapped children as possible); *Doe v. Anrig*, 692 F.2d 800, 806–07 (1st Cir.1982) (reality of limited public monies must be considered in reviewing placement decisions), *ovr'ld on other grounds*, *Doe v. Brookline School Comm.*, 722 F.2d 910, 917 (1st Cir.1983); *see also Tokarcik v. Forest Hills School Dist.*, 665 F.2d 443, 458 (3d Cir.1981) (noting that mainstreaming in the instant case did not adversely affect state finances), *cert. denied*, 458 U.S. 1121, 102 S.Ct. 3508, 73 L.Ed.2d 1383 (1982).

- *A.W. By and Through N.W. v. Northwest R-1 School Dist.*, 813 F.2d 158, 164 (8th Cir. 1987) To do so would tie the hands of local and state educational authorities who must balance the reality of limited public funds against the exceptional needs of handicapped children.
- *Taylor P. ex rel. Chris P. v. Missouri Dept. of Elementary & Secondary Educ.*, 06-4254-CV-C-NKL, 2007 WL 2907825 (W.D. Mo. Oct. 3, 2007) Segregating a child from the mainstream setting is allowed when the handicapped child would not benefit from mainstreaming, when any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services which could not feasibly be provided in the non-segregated setting, and when 'the handicapped child is a disruptive force in the non-segregated setting. *Id.* (quoting *Roncker*, 700 F.2d at 1063).
- *Pachl v. Seagren*, 453 F.3d 1064, 1067-68 (8th Cir. 2006) (“[W]e have emphasized that the statutory language significantly qualifies the mainstreaming requirement by stating that it should be implemented ‘to the maximum extent *appropriate*,’ 20 U.S.C. § 1412[a](5) (emphasis added), and that it is inapplicable where education in a mainstream environment ‘cannot be achieved *satisfactorily*.’ *Id.* (emphasis added).” *A.W. v. Northwest R-1 Sch. Dist.*, 813 F.2d 158, 163 (8th Cir.1987). Thus, removing a child from the mainstream setting is permissible when ‘the handicapped child would not benefit from mainstreaming,’ when ‘any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services which could not feasibly be provided in the non-segregated setting,’

and when ‘the handicapped child is a disruptive force in the non-segregated setting.’ *Roncker*, 700 F.2d at 1063.”)

F. Comment

VII. Notices

A. IDEA Source

- 20 U.S.C. § 1414(b)(1)
- 20 U.S.C. § 1415(b)(3) and (4)
- 20 U.S.C. § 1415(c)(1)

B. Federal Regulatory Source

- 34 C.F.R. § 300.503
- 34 C.F.R. § 300.503
- 34 C.F.R. § 300.508(e)

C. Missouri State Plan

- Page 60

D. Issues That May Arise

- Failure to provide notice
- Reasonable time
- Trigger for limitations period
- Lack of substantive content

E. Notable Cases/Other Materials

- *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 947 (W.D. Tex. 2008) (“Under the IDEA, local education agencies are required to provide ‘prior written notice’ to the parents of a child, whenever that agency proposes to initiate or change, or refuses to initiate or change ‘the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child.’ 20 U.S.C. § 1415(b)(3). Federal regulations reflect these mandates without significant alteration. See 34 C.F.R. § 300.503. Nowhere in either the text of the IDEA or the federal regulations have exceptions been carved out to relieve local educational agencies of this responsibility when a parent agrees with the agency's refusal to evaluate.”)
- *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 947-48 (W.D. Tex. 2008) (“Federal law in this regard is clear; whether parents agree to the refusal or not, local educational agencies must comply with their IDEA responsibility to provide written notice upon their refusal to evaluate a child for special education services.”)

F. Comment

VIII. Consent/Revocation of Consent

- A. IDEA Source
 - Unknown

- B. Federal Regulatory Source
 - 34 C.F.R. § 300.9 (Definition of Consent)
 - 34 C.F.R. § 300.300 (Parental Consent)

- C. Missouri State Plan
 - Pages 2 and 61-63

- D. Issues That May Arise
 - Discipline
 - Initial Evaluation
 - Initiation of Services

- E. Notable Cases

- F. Comment

IX. Due Process Hearings

- A. IDEA Source
 - 20 U.S.C. § 1415(a)-(j), (l) and (m)

- B. Federal Regulatory Source
 - 34 C.F.R. § 300.517 (Filing a due process complaint)
 - 34 C.F.R. § 300.508 (Due process complaint)
 - 34 C.F.R. § 300.509 (Model forms)
 - 34 C.F.R. § 300.510 (Resolution process)
 - 34 C.F.R. § 300.511 (Impartial due process hearing)
 - 34 C.F.R. § 300.512 (Hearing rights)
 - 34 C.F.R. § 300.513 (Hearing decisions)
 - 34 C.F.R. § 300.514 (Finality of decision/appeal/impartial review)
 - 34 C.F.R. § 300.516 (Civil Action)
 - 34 C.F.R. § 300.517 (Attorneys' fees)
 - 34 C.F.R. § 300.518 (Child's status during proceedings)
 - 34 C.F.R. § 300.520 (Transfer of parental rights at age of majority)

- C. Missouri State Plan

- Pages 64-74 and 79-80

D. Issues That May Arise

- Mediation
- Extension of Resolution Period
- Exhaustion of Administrative Remedies
- Selecting Hearing Officers
- Burden of Proof
- Costs

E. Notable Cases

- *Atlanta Indep. Sch. Sys. v. S.F. ex rel. M.F.*, 740 F. Supp. 2d 1335, 1345 (N.D. Ga. 2010) *reconsideration denied*, 1:09-CV-2166-RWS, 2010 WL 4837613 (N.D. Ga. Nov. 23, 2010) The Court relied upon its earlier decision in *Babicz v. Sch. Bd. of Broward Cnty.*, 135 F.3d 1420, 1422 n. 10 (11th Cir.1998), in which it held that “any student who wants ‘relief that is available under’ the IDEA must use the IDEA’s administrative system, even if he invokes a different statute.” *M.T.V.*, 446 F.3d at 1158. In *Babicz*, the Court held that “claims asserted under Section 504 and/or the ADA are subject to Section 1415(f)’s requirement that litigants exhaust the IDEA administrative procedures to obtain relief that is available under the IDEA before bringing suit under Section 504 and/or the ADA.”

F. Comment

X. Discipline/Manifestation Determinations/Expedited Hearings

A. IDEA Source

- 20 U.S.C. § 1415(k)

B. Federal Regulatory Source

- 34 C.F.R. § 300.530 (Authority to Remove/Services during Suspensions/Manifestation Determinations/Special Circumstances)
- 34 C.F.R. § 300.531 (Determination of Setting)
- 34 C.F.R. § 300.532 (Appeal/Expedited Due Process Hearing)
- 34 C.F.R. § 300.533 (Placement during Appeals)
- 34 C.F.R. § 300.534 (Children Not Determined Eligible)
- 34 C.F.R. § 300.535 (Referral to Law Enforcement/Judicial Authorities)
- 34 C.F.R. § 300.536 (Change of Placement)

C. Missouri State Plan

- Pages 80-85

D. Issues That May Arise

- Pattern of Removal
- Manifestation Determinations
- Services during Removal

E. Notable Cases

F. Comment

XI. Teacher Liability under the IDEA

A. IDEA Source

B. Federal Regulatory Source

C. Missouri State Plan

D. Issues That May Arise

- Failure to Implement
- Retaliation
- Restraint and Seclusion

E. Notable Cases

- *Atlanta Indep. Sch. Sys. v. S.F. ex rel. M.F.*, 740 F. Supp. 2d 1335, 1345 (N.D. Ga. 2010) *reconsideration denied*, 1:09-CV-2166-RWS, 2010 WL 4837613 (N.D. Ga. Nov. 23, 2010) The Court relied upon its earlier decision in *Babicz v. Sch. Bd. of Broward Cnty.*, 135 F.3d 1420, 1422 n. 10 (11th Cir.1998), in which it held that “any student who wants ‘relief that is available under’ the IDEA must use the IDEA’s administrative system, even if he invokes a different statute.” *M.T.V.*, 446 F.3d at 1158. In *Babicz*, the Court held that “claims asserted under Section 504 and/or the ADA are subject to Section 1415(f)’s requirement that litigants exhaust the IDEA administrative procedures to obtain relief that is available under the IDEA before bringing suit under Section 504 and/or the ADA.”

F. Comment