

Special Education Law in Public Schools
By Torin Togut

Members of the Gwinnett Bar may ask what I do in private practice. I usually reply I represent families of children with disabilities in special education. "What is special education law?" they ask. Well, that is difficult to explain in a few words, but I will try to give you a very condensed version of special education law.

Special education law has evolved quite a bit since Congress enacted the Education for All Handicapped Children's Act in 1975. The current law, which is entitled "The Individuals with Disabilities Education Improvement Act of 2004" or IDEA, 20 U.S.C. §§ 1400 *et seq.*, is a comprehensive statute with a stated purpose "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A).

To provide an eligible student with a free, appropriate public education, local educational agencies must annually develop an Individualized Educational Program, or IEP, for each qualifying student in conformity with 20 U.S.C. §§ 1414(d)(1)(A), 1414(d)(2)(A). The IEP is a written document that provides the basic plan and goals for the student's education over the academic year. 20 U.S.C. § 1414(d)(1)(A)(i). An "appropriate education" means specialized instruction and related services that are designed to provide educational benefits to the child with a disability. *Board of Educ. of Hendrick Hudson Cen. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 (1982). An IEP is developed through a collaborative process that is a central characteristic of the IDEA. 20 U.S.C. § 1414(d)(1)(B) (requiring the IEP be developed by a team that includes the student's parents, as well as a regular education teacher, a special education teacher, a representative of the local school district, and a person who can evaluate the various assessments conducted in advance of the IEP meeting).

To ensure parents are involved with the IEP process, the IDEA contains a myriad of procedural safeguards. 20 U.S.C. § 1414(d)(3) & § 1415(a)-(d). If parents believe a school district has violated the IDEA's procedural safeguards or failed to provide their child with a free appropriate public education due to the IEP's substantive deficiencies, they can seek an administrative due process hearing. 20 U.S.C. § 1415(f). At the hearing, the court determines whether the IEP development process complied with the IDEA's procedures. *Rowley*, 458 U.S. at 206. Second, the court evaluates whether the IEP provides the student with a free appropriate public education. *Id.* If the IEP satisfies both steps, the school district has complied with the IDEA. *Id.* at 207. A party aggrieved by the due process decision can appeal to federal or state court. 20 U.S.C. § 1415(i)(2)(A).

If you want to know more about the IDEA, just ask me or your colleagues at Thompson, Sweeny, Kinsinger & Pereira who represent the Gwinnett County School District.

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