Special Education and the Board: What Do You Need to Know?

School districts are responsible for providing a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district’s jurisdiction. What does that mean for school districts, and what do school board members need to know? In this session you will learn about some of the key pieces of special education that all board members should know.

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Children with disabilities are entitled to a free appropriate public education (FAPE) under special education law. Here are some concepts and considerations for school board members.

Note: Rule Citations are to Iowa Administrative Code chapter 281 – 41.

1. **What is special education?** Special education is specially designed instruction (instructional services or support services (speech, OT, PT, etc.) or both and related services to address the needs of a child with a disability. “Specially designed instruction” means adapting content, methods, or delivery of instruction to do both of these things
   - Address the unique needs of the child resulting from the child’s disability, and
   - Ensure the child’s access to the general curriculum “so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” [Rule 41.39(3)“c”]

2. **Who is a child with a disability?** Child with a disability means a child with a physical or mental condition who, by reason thereof, needs special education. [Rule 41.8] A child must have a physical or mental impairment that causes a need for special education. If a child has a physical or mental impairment, but does not need special education, the child is not eligible. If the child does not meet standards applicable to all children, but not because of a physical or mental condition, the child is not eligible for special education.
3. **What is the child’s curriculum?** All children with disabilities have content aligned to the general curriculum. There is no special education curriculum. The degree of adaptation will vary based on each child’s strengths and weaknesses. [Rule 41.39(3)”c”]

4. **What is the substantive standard to which children with disabilities are entitled?** The substantive standard is as follows: are services “reasonably calculated to confer educational benefit”? *Board of Educ. v. Rowley*, 458 U.S. 176 (1982). “‘Some educational benefit’ is sufficient; a school need not ‘maximize a student’s potential or provide the best possible education at public expense.’” *Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 766 (8th Cir. 2012) (quoting *Lathrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 427 (8th Cir. 2010)). Whether a child’s services meet the *Rowley* standard will depend on the child’s unique needs. There is no one-size-fits-all package of special education services. Do the child’s services match the child’s needs? The IDEA does not require attainment of particular results; however, it does require teams to try reasonable things if a child is not making progress. See *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981 (8th Cir. 2011).

5. **Where are children with disabilities to be educated?** In the least restrictive environment. [Rules 41.115 & 41.116] For most children with disabilities, the default rule is the general education environment. Children with disabilities are to be placed outside of the general education environment only if they cannot receive a FAPE in the general education environment, with or without supplementary aids and services.

6. **What are the protections that parents have under special education law?** Parents have numerous protections, including the right to receive prior written notices, the right to file a due process complaint, the right to file a written complaint with the Iowa Department of Education, and the right to request mediation.

7. **What are the procedural protections available to children with disabilities who are removed for violating a student code of conduct?** Once a child with a disability’s placement has been changed because they have been removed for violating a student code of conduct, the school is obligated to provide the child with a FAPE. The school is also required to determine whether the child’s misconduct was a manifestation of the child’s disability. If it is (with three exceptions), the child is returned to the location from which the child was removed.

8. **What parts of the school program are children with disabilities entitled to access?** A child with disabilities is entitled to the opportunity to benefit from the full range of program options (Title I, CTE, AP, PSEO, IB, etc.), including extracurricular and co-curricular opportunities.
9. **What are the roles of the school board in special education?**
   a. Look at achievement and placement data. Are children with disabilities progressing academically? Are children with disabilities interacting with their peers (both disabled and non-disabled)? What is being done to grow progress and integration?
   b. Look at the resources committed to special education. Do special educators have the tools that they need? Are they used wisely? Can partnerships help use resources more efficiently?
   c. Look at the placement options available. What plans does the district have for children with more complex needs? What relationships or partnerships does the district have?
   e. Frame questions to the superintendent, curriculum director, and special education director around the key concepts in this document. How are the big ideas of special education law being implemented in the district?
   f. Look at the budget. Are special education funds being used for special education purposes, and only for special education purposes?
   g. Ratify contracts determined required by IEP and placement teams and school district administration (pro forma, see below).

    a. Making eligibility, programming, or placement decisions.
    b. Changing eligibility, programming, or placement decisions once made by the IEP team or placement team.
    c. Except in very rare circumstances, serving on an IEP team. Does a school member have the qualifications to serve as the LEA [district] representative or have “knowledge or special expertise regarding the child”? [Rule 41.321(1)] If so, the school board member is not a proper IEP team member. Even if the school board member is a proper IEP member, the member’s role is limited to considerations that are proper for the individual child. A school board member who sits in on IEP team meetings to ensure cost containment is in violation of special education law. *Letter to Anonymous*, 18 IDELR 969.
    d. Determining whether a disciplinary removal that results in a change in placement is a manifestation of a child’s disability.

Questions? Comments? Insults?
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