

PROTECTING THE EDUCATIONAL RIGHTS OF STUDENTS WITH DISABILITIES

PART 1

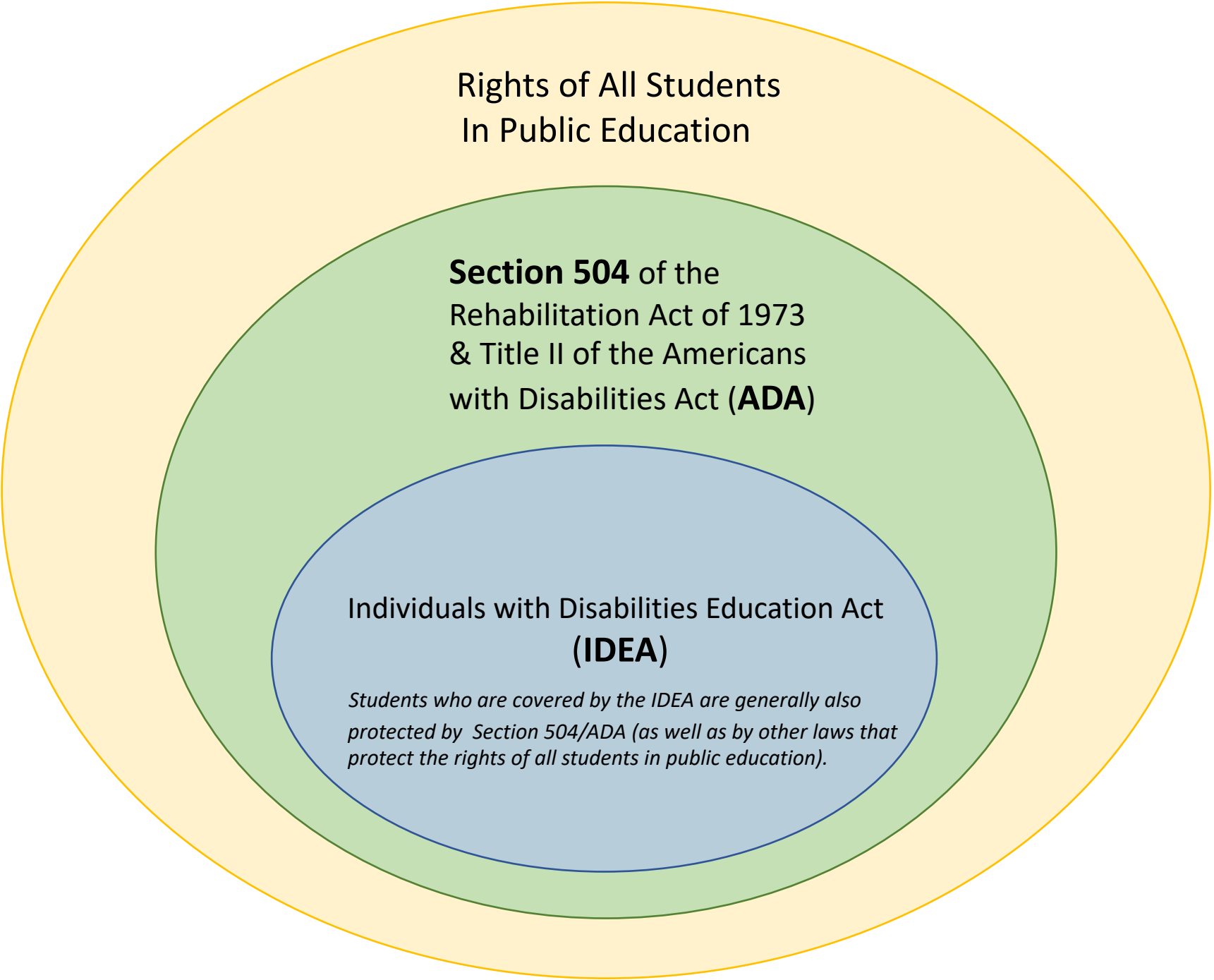


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Overview of Presentation

- Rights of all students in public K-12 schools
- Section 504 (and other laws that prohibit disability discrimination)
- IDEA

Please note that this presentation contains general information about certain topics. This presentation is not intended to provide legal advice about a particular situation, nor is it intended to create an attorney-client relationship. Education cases are often very fact-specific, and whether the actions of a school district are appropriate may depend on the details of that particular matter.



Rights of All Students
In Public Education

Section 504 of the
Rehabilitation Act of 1973
& Title II of the Americans
with Disabilities Act (**ADA**)

Individuals with Disabilities Education Act
(**IDEA**)

*Students who are covered by the IDEA are generally also
protected by Section 504/ADA (as well as by other laws that
protect the rights of all students in public education).*

Rights of All Students in Public Education

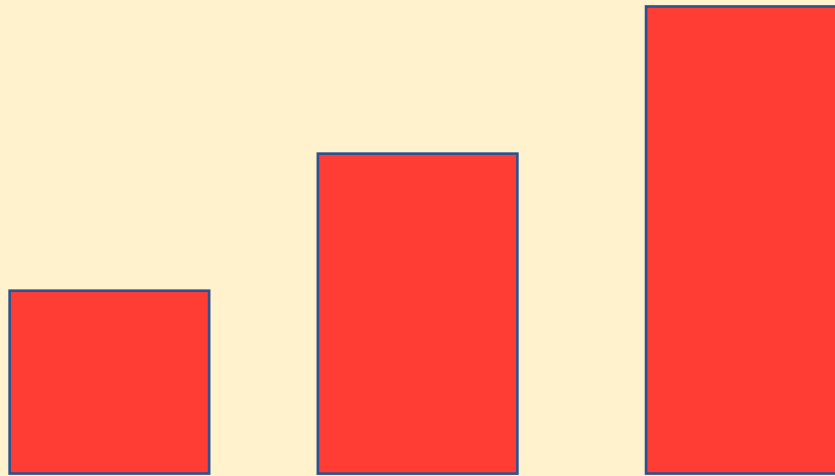
some examples

- Constitutional Rights
 - 1st Amend. – e.g. free speech
 - 4th Amend. – search & seizure
 - 14th Amend. – equal protection
- Family Educational Rights Privacy Act (**FERPA**)
 - Right to Access Records
 - Right to Privacy of Records
 - Right to Challenge Accuracy of Records
- Expulsion Hearing

General Education Programs

Multi-Tiered System of Supports (**MTSS**)

Layered Continuum of Support



some help...

more help...

more help...

Section 504 and the ADA

(and the Colorado Anti-Discrimination Act (CADA))

Main Purpose: Nondiscrimination and Equal Access to Services

Section 504 – applies to recipients of federal funding

Title II of the ADA – applies to state and local government entities

CADA – applies to places of public accommodation in CO (including schools)

All of these laws prohibit discrimination on the basis of disability.

Section 504 Plan

Some Elements of the Evaluation Process

- School district shall draw information from a variety of sources (e.g. tests, teacher recommendation, physical condition, social/cultural background, etc.)
- School district is *not* specifically required to administer tests, but must ensure that tests and evaluation materials that are used meet certain requirements (e.g. tailored to assess specific areas of educational need).
- Placement decision is made group of persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.
Doesn't specifically include parents.
- "Periodic" reevaluation.

Some Components of a Section 504 Plan

- Placement in regular educational environment unless education of student cannot be achieved satisfactorily *even with the use of supplementary aids and services.*
- May include related aids and services that are designed to meet the student's individual educational needs. (In practice, this is typically a list of accommodations.)
- Equal opportunity for nonacademic and extracurricular services/activities. School district must ensure that the student can participate with nondisabled peers in nonacademic and extracurricular services/activities to the maximum extent appropriate to the needs of the *student*.

The IDEA is implemented in Colorado through the
Exceptional Children's Educational Act (ECEA)



Individuals with Disabilities Education Act (IDEA)

Main Purpose: Free Appropriate Public Education (FAPE)

Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. District. RE-1, 137 S. Ct. 988 (2017)

Individualized Education Program (IEP) must be:

“reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.”

“The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. ”

“... every child should have the chance to meet challenging objectives.”

An IEP that provides merely more than *de minimis* progress from year to year is not sufficient.

IDEA

Some Elements of the Evaluation Process

- Requires parental consent.
- Student must be assessed in all areas related to the suspected disability. Evaluation must be sufficiently comprehensive to identify *all* of the child's special education and related services needs – whether or not commonly linked to the disability category. May include a Functional Behavioral Assessment (FBA).
- School district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child – *including information provided by the parent.*
- Parent is part of the IEP Team that determines eligibility.
- Reevaluation *at least* every 3 years.

Some Components of an Individualized Education Program (IEP)

- IEP is developed by the IEP Team, *which includes parents*, and tailored to the individual needs of the student.
- Present levels of academic achievement and functional performance (PLAAFP).
- Goals – Must enable student to make progress in the gen ed curriculum. Can also include short term objectives.
- Placement – Least Restrictive Environment (LRE).
- Description of how progress will be measured and reported.
- May address alternative assessments.
- If necessary, accommodations and/or related services (e.g. counseling, ST, PT, OT, AT, etc.). May include Behavior Intervention Plan (BIP).
- IEP must reviewed *at least* annually.

Often in practice....

Section 504 Plan



IEP





Getting an IEP

Child Find

States are required to find, identify, locate, evaluate and serve children with disabilities until 21 years of age or graduation with a regular high school diploma (with some exceptions).

This includes, but is not limited to:

- **Children who are homeless**
- **Children who are wards of the state**
- **Children attending private schools**

In Colorado, the district of residence for a child with a disability is the school district in which the child lives on a day-to-day basis (with several exceptions).

Parents' Right to Request an Evaluation

- **Parents can request an IDEA evaluation.** The student does *not* have to go through the Multi-Tiered System of Supports (MTSS) process or the Section 504 evaluation process before an IDEA evaluation can be conducted.
(Students *can* have a Section 504 Plan pending the completion of the IDEA evaluation.)
- Generally, the initial evaluation should be completed within 60 calendar days from the date of the parent's written consent, and the IEP Team should meet to determine eligibility within a "reasonable period of time" after the evaluation is completed. The initial IEP must be developed within 90 calendar days from the date that the district obtained the parent's written consent.
- If the school district refuses to do an IDEA evaluation, then they must give the parent Prior Written Notice (**PWN**).



Tips for Requesting an Evaluation

- Request evaluation *in writing* to the principal or special education director and keep proof of receipt.
- Describe the child's disability and how it relates to school performance. Include information about child's diagnosis and medical records, if appropriate.
- Provide your contact information and request a meeting to discuss specific types of testing and provide written consent.
- Follow up and keep records of all communication with the school district.



Next Steps...

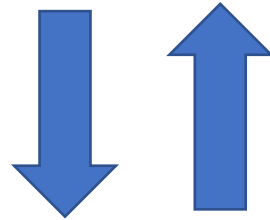
School District
does the
Evaluation



IEP Team
Meeting to
Determine
Eligibility



IEP Team Meeting to
Develop the IEP
(can also happen at the eligibility meeting)



Parent can request a free
Independent Educational Evaluation (**IEE**)

Dispute Resolution

Facilitated IEP Team Meeting

Mediation

State Complaint

* 1 year deadline

Due Process Complaint

* In general, 2 year deadline

* Prerequisite for a lawsuit

Questions & Answers

Education law is like an unplanned city...



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PROTECTING THE EDUCATIONAL RIGHTS OF STUDENTS WITH DISABILITIES PART 2

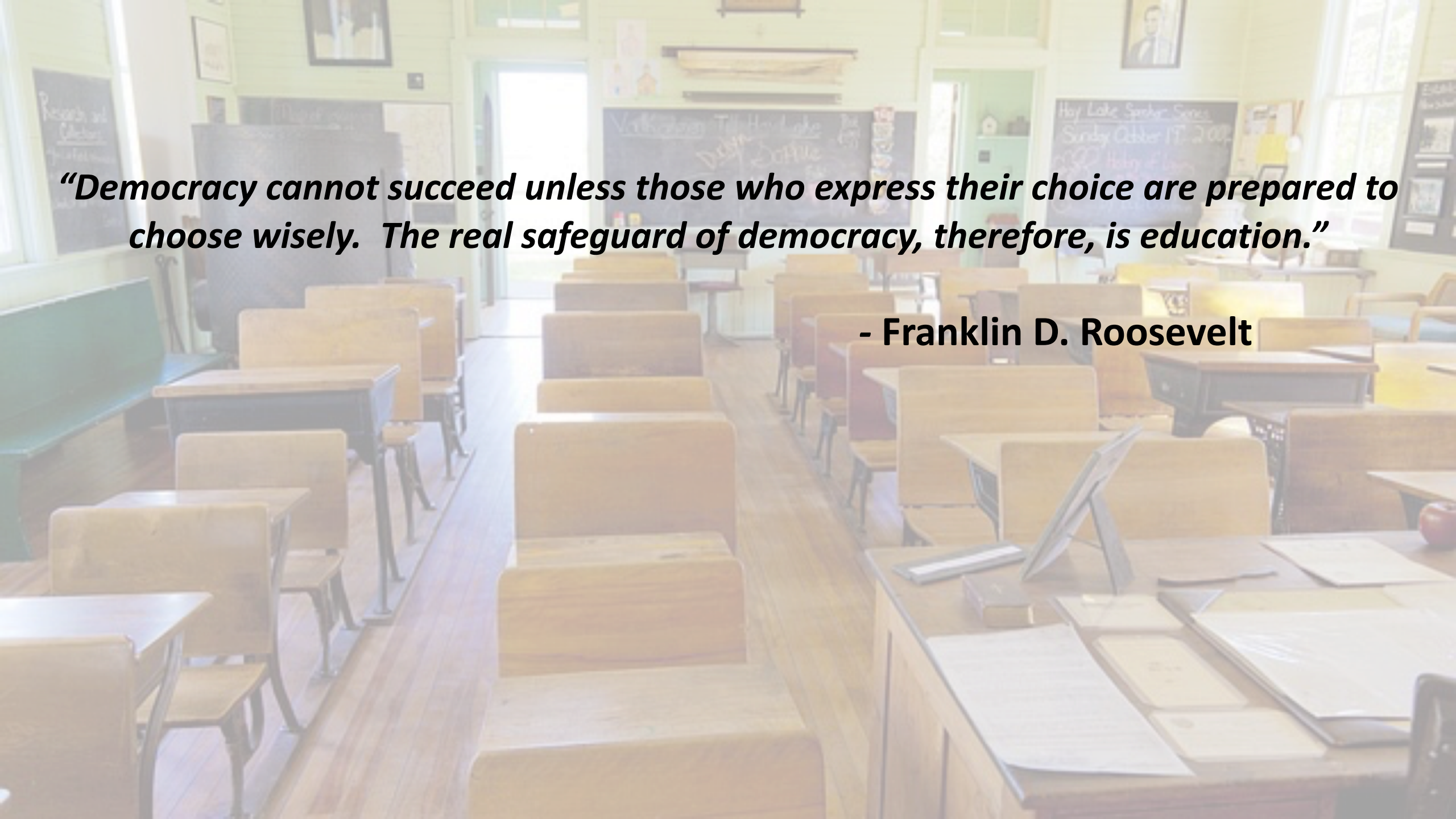


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Overview of Presentation

- Legal framework regarding expulsion
- Additional legal protections under the IDEA and Section 504
- Other issues to consider related to expulsion

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“Democracy cannot succeed unless those who express their choice are prepared to choose wisely. The real safeguard of democracy, therefore, is education.”

- Franklin D. Roosevelt

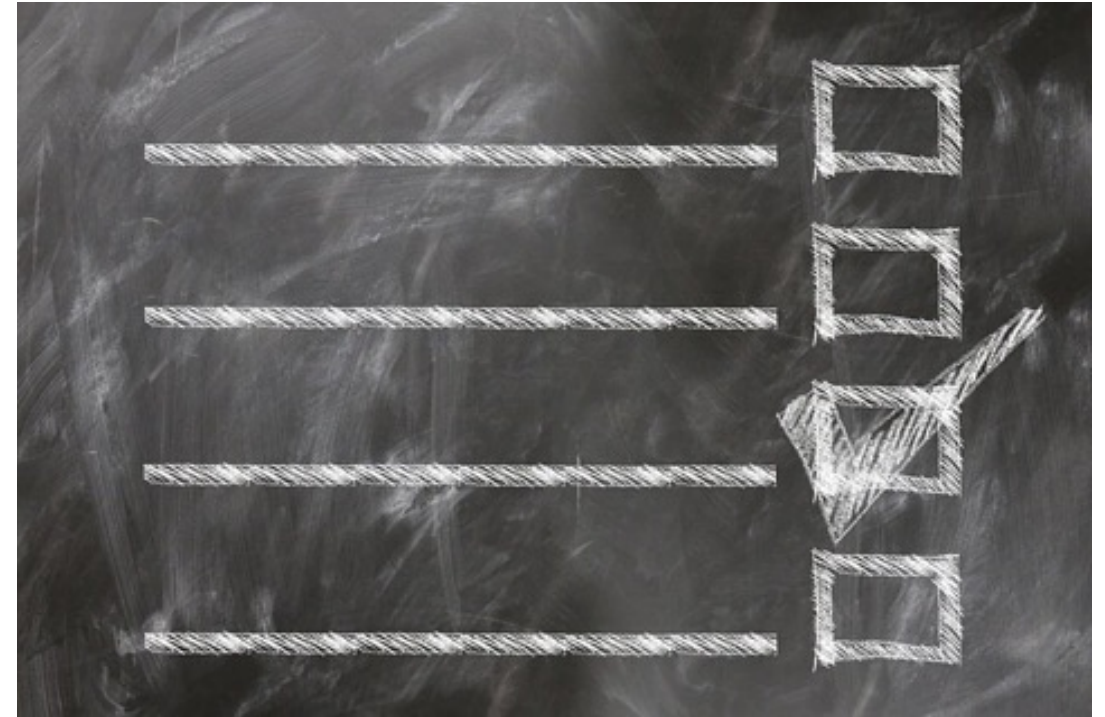
San Antonio Independent School District v. Rodriguez, 93 S.Ct. 1278 (1973)

“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation.”



Goss v. Lopez, 95 S.Ct. 729 (1975)

- **Students have a property interest in their public education that gives them a right to *some* due process protections before they are expelled.**
- **At a minimum, due process for the student includes:**
 - **Oral or written notice of the charges.**
“There need be no delay between the time ‘notice’ is given and the time of the hearing.”
 - **An explanation of the evidence that the authorities have.**
 - **An opportunity to present their side of the story.**



“The [Due Process] Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.”

Examples of Grounds for Expulsion in Colorado

CRS § 22-33-106

- Repeated interference with a school's ability to provide educational opportunities to other students.
- Continued willful disobedience or open and persistent defiance of proper authority.
- Willful destruction or defacing of school property.
- Behavior on or off school property that is detrimental to the welfare or safety of other pupils or of school personnel.

Exception: H.B. 19-1194 – New rules for preschool through 2nd grade students that limit grounds for expulsion.

Process for Expulsion in Colorado

CRS §§ 22-33-105, 106 and 108

- **Hearing before a hearing officer (either the superintendent or their designee). Superintendent shall issue a written opinion within 5 days after the hearing.**
 - School district is *encouraged* to consider factors such as age, disciplinary history, disability, seriousness of violation, whether violation threatened safety of students/staff, and appropriateness of a lesser intervention.
- **Student has 10 days to appeal decision to the board.**
- **Student/parent has 5 days after receiving official notification of the board's action to notify the board that they want court review. The board must issue a statement of the reasons for the board's action. The student/parent then has 10 days to file a court petition.**
- **Court considers whether the school district exceeded its jurisdiction or abused its discretion.**

Services for Expelled Students in Colorado

CRS §§ 22-33-105, 106 and 203

- Expulsion cannot last longer than 1 year.
- School must provide information to parents about educational alternatives.
- Student/parent can request educational services from the school.
- Services provided by expelling school district must be designed to:
 - Enable the student to return to the school where they were enrolled prior to expulsion,
 - Successfully complete the high school equivalency exam,
or
 - Enroll in a nonpublic, nonparochial school or in an alternative school
- In general, school district is not required to provide educational services to a student who is suspended or expelled while receiving these services, until the period of the suspension or expulsion is completed.

*It is unclear what services a student is entitled to if they move out of the school district that expelled them.
School districts can deny admission to students who have been expelled during the preceding 12 months.*

MANIFESTATION DETERMINATION REVIEW (MDR) For Students with Disabilities

- IDEA entitles students to an MDR in some situations:
 - There are also protections in some cases for kids who are not yet deemed eligible (e.g. parent requested an evaluation).
- Entitled to an MDR when:
 - Removal from current placement **exceeds 10 consecutive school days in the same school year;**
 - Or
 - Removal from current placement **exceeds 10 school days in a school year and there is a pattern** (e.g. same behaviors).

- MDR must be held within 10 school days of decision to change placement because of a disciplinary violation.
- Purpose of MDR is to determine whether there is a manifestation because:
 - The conduct in question was caused by or had a **direct and substantial relationship to the child's disability;**
 - Or
 - The conduct in question was the **direct result of the school district's failure to implement the IEP.**

MDR OUTCOMES

MANIFESTATION

- In some cases that involve weapons, illegal drugs, or serious bodily injury, the school district may place the student in an Interim Alternative Educational Setting (**IAES**) for not more than 45 school days.
- Otherwise, the student must return to their placement unless the parent and the school district agree to change the student's placement.
- Additional requirements regarding Functional Behavioral Assessment (**FBA**) and Behavior Intervention Plan (**BIP**).

NO MANIFESTATION

- School district may remove the student.
- School district must provide an FBA and behavior intervention services "as appropriate".
- Right to an expedited due process hearing.

CONTINUED RIGHT TO FAPE

Students covered by the IDEA, who are expelled, are still entitled to FAPE.



Section 504 and Significant Change in Placement

- Section 504 regulations require school districts to conduct a reevaluation before a “significant change in placement”.
- The U.S. Dept. of Education Office for Civil Rights (OCR) considers an exclusion from the educational program for more than 10 consecutive school days, or 10 total school days with a pattern of removal, to be a significant change in placement, requiring a manifestation determination.

<https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>

Other Considerations

- If there is a related juvenile justice/criminal matter (or the possibility that there will be one in the future), it may be advisable to speak with a defense attorney before providing information to the school district.
- If there is inaccurate or misleading information in the education records, it might be possible to address that issue through the Family Educational Rights and Privacy Act (FERPA) and/or the school district's board policies.

Knowledge
is
Power

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