

MH3400: LESSON SUMMARY AND REQUIRED ASSIGNMENT The Legal Rights of People with Disabilities Under United States Law - Part 1

INTRODUCTION: I would like to start this part of the course with a personal story. My grandson, Brian, lived with me for most of his childhood. He wasn't a particularly good student so when it was time for him to go to college, there weren't many options for him. A college in western Texas offered him a sports scholarship, so he jumped at the chance. When he got to the college, it was in the middle of nowhere. There weren't any busses or subways, so he bought an old car to get around in. One night he was driving a bunch of his friends home from a party. He dropped them all off and was driving back to campus by himself. A police car came up behind him and signaled him to pull over. The police officer examined my grandson's license and registration and gave him a ticket because his tail light was out. The police officer then said to my grandson "Do you mind if I take a look in your car?" My grandson answered "why?" The police officer responded, "Look, if you have nothing to hide you won't mind if I take a look. Do you have something to hide?" My grandson was 17 and all alone on a deserted highway in Texas. He didn't know what to do, so he said "OK." Also, Brian didn't think there was anything illegal in the car. The police officer searched Brian's car and found a bag of marijuana in the back seat that apparently had dropped out of one of his friends' pockets. Brian was arrested and now had a record. This arrest record continued to follow him and interfere with his life as he graduated from college and sought employment. This whole thing cost me a lot in legal fees!

HERE'S THE POINT OF THIS STORY: All of the above hassles could have been avoided if Brian had known the law and his rights. The law states that police officers are NOT allowed to search your car, home or other property without a warrant unless you consent to that search. As a result, if Brian had known the law, he would have been less intimidated by the police officer and could have simply responded to him by saying: "Do you have a warrant? I don't consent to searches without a warrant."

The same point holds true for helping professionals working with people with disabilities. People with disabilities are entitled to many legal rights under United States law. Unfortunately, however, many of them and their families are NOT aware of what these rights are. Therefore, as a helping professional, it will be your responsibility to: 1) understand the legal rights that people with disabilities have, and 2) inform your clients of their rights under the law!

In this section of the course, we will be looking at THREE specific laws:

Law #1: IDEA which stands for Individuals with Disabilities Education Act. This law specifies the rights of all children with disabilities (and their parents) within our public education system.

Law #2: The Federal Government's definition of a Developmental Disability and the services people with developmental disabilities are entitled to

Law #3: The Americans with Disabilities Act of 1990 (usually referred to as the ADA). The purpose of this law is to prevent discrimination against people with disabilities in higher education, employment, and public accommodations (public buildings, large stores, transportation, etc.)

In this lesson, we will cover Law #1 (IDEA) and Law #2: The Federal Government's Definition of a Developmental Disability.

Law #1: IDEA: Individuals with Disabilities Education Act

This law, which was passed in 1975, was originally called the Education for All Handicapped Children Act. This law brought about a HUGE change. Prior to 1975, children with disabilities were NOT entitled to a free public education. Instead, they were often put in institutions, separated from friends, family, and other children their age. To get an idea of what this meant, imagine a brilliant child who has Einstein's brain power but happens to be in a wheelchair because he or she is paralyzed from the waist down. Despite his/her brilliance, prior to 1975, this child would NOT have been entitled to go to a public school of any kind! If this child's parents could not afford a private school, the child stayed at home or was placed in an institution. Public schools had no ramps, no wheelchair accommodations in restrooms, no accommodations for children with visual or hearing deficits, or learning disabilities.

The purpose of the Education For All Handicapped Children Act of 1975 (now called IDEA) was to make sure that ALL children in the United States would receive an education that was tailored to their specific needs, regardless of disability. This new law contained specific provisions which stated how this education for children with disabilities would be achieved. Provisions of this law spell out the LEGAL RIGHTS that children with disabilities are entitled to. It is your responsibility as a helping professional to: a) know these legal rights, and b) be able to communicate them clearly to children with disabilities and their families.

Provisions of the law (legal rights for children with disabilities and their parents):

1) FREE AND APPROPRIATE EDUCATION: All children, regardless of disability, are entitled to a FREE public education that is APPROPRIATE to their individual needs.

2) LEAST RESTRICTIVE ENVIRONMENT: The education of a child with a disability MUST take place in the least restrictive environment. This provision of the law was originally made in order to prevent children from being locked away in institutions (which obviously are VERY restrictive environments!). However, this provision has come to be interpreted as "children with disabilities have the right to be educated in "THE MOST NORMAL environment possible." So, for

example, let's say a child with a disability needs individual attention and there's a choice for that child to be placed in a special ed classroom OR a regular classroom with a para (teacher's aide). According to this provision of the law, it is the child's RIGHT to be in a regular classroom with a para because that is the "most normal" i.e., least restrictive environment.

3) **INDIVIDUAL EDUCATION PLAN:** Each child with a disability must have an Individual Education Plan (usually referred to as an IEP). An IEP is a detailed document that is created for each child with a disability and which contains **LEARNING GOALS** for the child as well as **SPECIFIC STRATEGIES** to achieve those learning goals which are tailored to that child's specific needs. The IEP also details support services (such as occupational or physical therapy, a para, a psychologist, etc.) that would help the child achieve his/her learning goals. Over time, the IEP is revised by the committee when learning goals are achieved, new learning goals are set, or new strategies to achieve learning goals need to be put into place because the previous strategies are not working.

4) **IEP COMMITTEE:** A child's IEP is created by a committee which meets for this purpose every few months. The IEP committee includes the child's teacher and professionals from any disciplines who might have insight into a specific child's needs such as speech/occupational/physical therapists, school principal, social worker, medical doctor, nurse, psychologist, etc.

5) **THE CHILD'S PARENTS** have a right to attend all IEP committee meetings where the IEP for their child is being created or discussed or changed. Parents also have the right to be heard at these IEP committee meetings for their child and to put forth their own ideas of what would be the best way to educate their child.

6) **DUE PROCESS:** Parents who **DISAGREE** with the IEP committee's decisions about learning goals and strategies to achieve these goals for their child have the right to "due process." Due process means that parents who disagree with their child's IEP have the right to go to an **INDEPENDENT** committee of professionals and put forth their reasons for wanting changes made to their child's IEP. This committee can then modify the child's IEP if they believe that the parents are correct.

Additional Provisions added to the 1975 Education for All Handicapped Children Act

Over the years since 1975, several provisions (additional legal rights) have been added to the law and the name of the law has been changed to **IDEA** (Individuals with Disabilities Education Act). The six original provisions described above remain. Here are three additional provisions added after 1975 which provide children with disabilities and their parents with additional rights under this law:

7) **EARLY INTERVENTION:** Early Intervention (often referred to as EI) allows the parents of children with disabilities to access FREE services for their children BEFORE these children reach the age where they become eligible to attend public school. Some of examples of these services are: evaluation by a developmental specialist, physical therapy, occupational therapy, speech therapy, and attending a preschool for children with special needs.

WHY IS EARLY INTERVENTION SO IMPORTANT: From birth to age five, the child's brain is developing rapidly—the human brain basically doubles in size and complexity during the first five years of life. If therapeutic services are delayed until the child is of school age, then valuable time is lost. In addition, for some disabilities such as speech disorders, learning disabilities and autism spectrum disorder, early intervention during this period of rapid brain development is crucial if the child is to reach his or her full potential. This means that delaying assistance until the child is four or five and is eligible for public school may mean that a particular child is robbed of the opportunity to reach his or her full potential.

This necessity for seeking help as early as possible is often in conflict with what a child's parents are feeling. It is easy to understand why parents might feel that their beautiful son or daughter will “grow out of it” or “just needs a little more time.” An important part of your job as a helping professional will involve helping these parents to understand the negative consequences a delay in getting help for their child could have. After all, some extra help early on will not hurt the child, but delaying help could have potentially very negative consequences for that child's future.

Early Intervention in New York City:

- Early intervention services are available for children with disabilities from birth to age 3

- Board of Education services are available for children with disabilities from age 3 to 21

8) **TRANSITION PLANNING:** After the Education for All Handicapped Children Act was passed in 1975, a huge problem began occurring when children aged out of the public school system—either at age 18 or age 21, depending on the city/state that the child was in. What wound up happening as a result of this was that the child received lots of help and support up through age 18 or 21, but then the parents and child were suddenly left on their own to make the very difficult transition to adulthood and obtaining adult services. The transition to adulthood is very difficult for most of us... just imagine what it was like for parents of children with disabilities when the support services they had come to rely on for many years was suddenly withdrawn!

To solve this problem, it is now MANDATORY that public schools begin transition planning for all children by age 16. Once the child is 16, the IEP committee must work together with the child and his/her parents to create a plan of adult support services that will allow the child to make as smooth a transition to adulthood as possible. The transition plan must be individually tailored to each child's individual needs, preferences and strengths. So, for example, a transition plan might include linkage with vocational training, supported employment, college, residential placement, placement in a day program, or other services that will support the transition to adulthood in a way that meets each child's individual needs, preferences and goals.

9) CHILD ENTITLED TO ATTEND IEP MEETINGS: As discussed above, since the Education for All Handicapped Children Act was passed in 1975, the child's parents were always entitled to attend IEP committee meetings where the child's Individual Education Plan was created, discussed and updated. This part of the law was later updated to allow the child to attend his or her own IEP committee meetings.

Law #2: The Federal Government's Legal Definition of a Developmental Disability

Not all disabilities are developmental disabilities. In other words, a developmental disability is a particular type of disability which will be defined in more detail below. The reason why it is important for helping professionals to understand exactly what a developmental disability is, is because people with developmental disabilities are entitled to a range of services under federal law. Therefore, when you, as a helping professional, encounter someone with a developmental disability, part of your job is to help that person (and their family if relevant) understand the kinds of services they are eligible for.

IMPORTANT: People who have disabilities that are NOT developmental disabilities also qualify for support services but these services are provided by different agencies, so it is a good idea if you understand exactly what qualifies as a "developmental disability" according to the federal government of the United States. In general, developmental disabilities are disabilities that occur during the process of human development which begins at conception, continues through pregnancy and birth and then up until the person has reached adulthood which the law somewhat arbitrarily defines as age 21.

Under the federal government's definition, in order to qualify as having a DEVELOPMENTAL DISABILITY, ALL FOUR of the following conditions must be present:

1) DIAGNOSIS: The person MUST have one or more of the following diagnoses:

-Cerebral Palsy

- Epilepsy
- Autism Spectrum Disorder
- Intellectual Disability (what we used to call “mental retardation”)
- Other neurological impairment (examples: Spina Bifida, severe learning disability, severe ADHD, Tourette’s Syndrome, Praeder Willi Syndrome, etc.)

IMPORTANT: Please notice that other types of disabilities such as visual impairment, hearing impairment, speech delay, etc. are NOT included and therefore people with these other disabilities would NOT qualify for services mandated by this particular law. (As mentioned above, there are other services that can be accessed, however.)

2) DISABILITY MUST OCCUR BEFORE 22nd BIRTHDAY: Yes, this is an arbitrary date which may seem to make no sense! After all, what is the real difference between someone who develops severe epilepsy when he/she is 20 years old and someone who develops epilepsy when he/she is 22 years and one week old? The point is, despite the fact that one could make arguments like this, a person must meet all four conditions in order to qualify for the specific services described below.

3) DISABILITY IS SEVERE AND LONG LASTING: As described in the law, the disability must impose “severe” limitations and must be “expected to continue indefinitely” into the future. It is important to remember that a diagnosis is NOT enough to qualify for services under this law. There are some people who have cerebral palsy or epilepsy or even autism spectrum disorder, for example, but the disability is mild as are the impairments they experience. The point is, to qualify, people must have one of the disabilities listed above AND the disability must be SEVERE, LONG LASTING and must have occurred BEFORE the person’s 22nd birthday!

4) MAJOR DEFICIT IN THREE AREAS OF FUNCTIONING: According to the federal definition, in order to be classified as having a developmental disability, a person must experience a MAJOR DEFICIT in functioning in at least THREE of the following areas:

- Language
- Learning
- Mobility
- Economic self sufficiency
- Self care
- Capacity for independent living
- Self direction

(If you are thinking that these categories are not really clear, i.e., how is “self care” different from “self direction” or “capacity for independent living,” I would agree with you. However, our goal as helping professionals is to understand the

federal government's definition of developmental disability and the services that this law provides to people with developmental disabilities.)

New York State Services for People with Developmental Disabilities:

-Office for People with Developmental Disabilities (usually referred to as OPWDD): OPWDD is the New York State agency that is responsible for providing and/or overseeing all services to people with developmental disabilities. In the past, you may have heard this agency referred to as OMRDD (Office for Mental Retardation and Developmental Disabilities). This name was changed a few years ago when a more person-centered approach (i.e., Office for PEOPLE with...) as opposed to a DISABILITY-centered approach, became more popular and when the federal government eliminated all use of the term "mental retardation" in federal laws. It is important to note that people who meet the above definition of a developmental disability are entitled to LIFE LONG services.

-Case Management: Everyone in New York State with a developmental disability is entitled to case management services. These services can be VERY helpful! A case manager assesses a client to determine specifically what services he or she could use in order to maximize their independence and potential. This assessment should be done with the client in order to determine the client's personal goals, preferences and needs. After determining the client's needs, the case manager then links the client with various services and follows up with the client and the service providers to ensure that everything is going well. Some examples of services that a case manager may help the client access are: physical therapy, social security benefits, residential placement, counseling, legal assistance, higher education, job placement, training programs, etc. Having a case manager can be very helpful to clients because the case manager is knowledgeable about all or at least most of the available services and also because the case manager follows up periodically to make sure that the services accessed for the client are effective and that the client is being treated well.

REQUIRED ASSIGNMENT:

Part 1: Imagine that you are a helping professional working with a family headed by a single mother. There are three children in this family and you notice that the youngest child, a boy, who turned three a couple of months ago, is not speaking at all and seems to feel uncomfortable around other people. You suspect that the three year old might have autism or at least a fairly severe speech delay. You know that EARLY INTERVENTION is important in these cases, and know that if a early intervention is not provided, a child may not reach his/her full potential. When you mention to the mother that she can access early intervention services for her son, she becomes upset and says: "He'll grow out of

it. Lots of kids do. My sister's son was like this and he's fine now... he goes to college and is doing well." Based on this scenario, answer the following questions:

1) Practicing EMPATHY, describe how the mother of the three year old might feel.

2) Knowing that early intervention can be essential, what would you say to the mother in order to convince her to have her son evaluated?

3) Practicing self awareness, if you were actually faced with this scenario as a helping professional, what do you think your COUNTERTRANSFERENCE toward the boy would be?

4) Practicing self awareness, if you were actually faced with this scenario as a helping professional, what do you think your COUNTERTRANSFERENCE toward the mom would be?

Part 2: Under IDEA (Individuals with Disabilities Education Act), children are now allowed to be present at their IEP committee meeting. However, the child does NOT have to attend and there may be circumstances where it is better for a child not to attend. In the future when you are a helping professional, you may have to work with children and families where the question of whether or not the child should attend the IEP meeting comes up. Write an essay describing the ADVANTAGES of allowing children to attend their own IEP committee meetings and the potential PROBLEMS and/or DISADVANTAGES of the child attending the meeting. Be specific and clear and give examples to illustrate your points.

Part 3: Exploring the transition to adulthood: As mentioned in this lesson, mandatory transition planning beginning at age 16 has been added to IDEA. The purpose of transition planning is to help a child with a disability make the difficult transition to adulthood and adult support services. Think about yourself and people you know who have made the transition to adulthood. Answer the following questions in ESSAY format.

-What are the problems people experience making the transition to adulthood? Be specific, giving examples and explaining your ideas!

-Which of these problems do you think is most difficult? Why?

-Thinking about your own (or people you know well) transition to adulthood. What kinds of support would have been useful? Explain.

-What types of formal human services would be useful to people (both with and without disabilities) in making the transition to adulthood

-Is there anything else you would like to add? Please do!