SPECIAL EDUCATION RIGHTS

CHRIS SHANK ATTORNEY, YOUTH, RIGHTS & JUSTICE

BEFORE WE BEGIN

- Relationships are important.
- Find your allies. There is always someone in the room who knows and understands your child.
- You do not need to remember everything I say today.
- You are the expert on your child.

TWO FEDERAL LAWS PROTECT CHILDREN WITH DISABILITIES

- Individuals with Disabilities Education Act
 - Free Appropriate Public Education
 - Ensures special education and related services
 - 20 USC §1400-1482; 34 CFR §300.1 et seq.
 - Must meet eligibility standards
- Section 504 of the Rehabilitation Act
 - Anti-discrimination law
 - Ensures equal access to education
 - All students with disabilities are covered

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

SOME BASICS

Put your requests in writing!!!

Can be an informal email:

Dear teacher, Thank you for taking a minute to speak to me at the end of the day today, and for sharing that Joey has improved his reading fluency and comprehension with the new reading program. You also mentioned that Joey is struggling in his interactions with his peers, and we discussed adding in social skills group time with the speech language pathologist. We discussed holding a brief IEP meeting to add this service to his IEP. Please let me know if any of following times would work for the rest of the team.

Thanks again for your time!

WHY IN WRITING?

- Helps the district: they have a reminder of your request and you are clarifying exactly what you're asking for.
- Helps you to document what you have requested and when you requested it.
- Triggers some legal timelines and protections.
- Reach out to district level folks not just building level

PRIOR WRITTEN NOTICE

OR PRIOR NOTICE OF SPECIAL EDUCATION ACTION

- Parents have the right to receive Prior
 Written Notice whenever
 - The student is identified as having a disability
 - The IEP team changes the category of disability
 - The student is evaluated or re-evaluated
 - The district proposes or refuses to change the provision of FAPE.
 - The student is initially placed in a special education program
 - Any time the child's placement is changed

WHY IS PWN IMPORTANT?

- It provides you with written documentation that you requested something from the district and they have refused to provide it or have agreed to provide it.
- It also requires the district document why they are refusing the request.

WHAT DOES THE NOTICE HAVE TO SAY?

- It must describe the action the district wants to take or is refusing to take.
- Explain the options that were considered and why they were rejected
- List evaluations, records or reports the district used as a basis of their action or refusal
 - Where is the data to support that decision?
- Must be in your native language.

PRIOR NOTICE OF SPECIAL EDUCATION ACTION DATE: _____ Dear:_____, This notice informs you of the following action: which is a_D proposal or D refusal to D initiate or D change the following aspect of special education: D Identification D Placement (other than initial placement) D Provision of a free, appropriate public education (includes IEP) This action is proposed because: This action is based on the following evaluation procedures, tests, records or reports: Other options we considered were: We rejected these options because: Any other factors considered by the team:

Sincerely,

WHAT IS AN EVALUATION?

- An evaluation is defined as any procedure used to determine:
 - Whether the child has a disability and/or
 - The nature of the special education and related services needs.
 - The extent of the special education and related services needs.

PARENTAL CONSENT

- What is consent? Parent is:
 - Fully informed of all information relevant to the activity for which consent is sought
 - In his or her native language or other mode of communication.

AND

- Parent understands and agrees in writing to carrying out the activity
 - Consent form must describe the activity to which they are consenting. If it is a consent to release of records it must include a list of records that will be released and to whom.
- This means you should ASK QUESTIONS!

PARENTAL CONSENT REQUIRED

- Written parental consent is required in Oregon:
 - Before any evaluation or reevaluation. OAR 581-015-2110
 (2)(b)
- When consent is not required:
 - No consent required for review of existing data
 - No consent required for screening a student by teacher or specialist to determine appropriate instructional strategies for curriculum implementation
 - Administering a test or evaluation that is administered to all children (unless consent is required of all parents for that test)
 - Conducting evaluations tests, procedures or instruments identified on the student's IEP as a measure for determining progress.
 - If the district made reasonable efforts to obtain consent and the child's parent has failed to respond.
 - 34 CFR 300.300 (c)

EVALUATIONS GENERALLY

- Must be completed within 60 school days of the date that parents sign the consent form in Oregon
- Washington: 25 days to decide whether to evaluate
 - 35 school days to complete the evaluation
- Evaluators must prepare a written report with the results of the evaluation. Then the IEP team meets to review the results
- Should be explained in terms parents can understand.
- Team must include parents and someone who can explain evaluation results.
- Put request in writing, ask for a consent form within x (5) school days.

INDEPENDENT EVALUATIONS

- The district must consider any evaluation you share with them that was completed by a qualified professional.
- Parents have the right to request an independent evaluation at district expense whenever you disagree with the outcome of an evaluation the district has conducted.
- If the district refuses to conduct an evaluation, parents have the right to request an IEE.

- An independent evaluation means:
 - An evaluation conducted by a qualified examiner
 - Who is not employed by the school district responsible for the education of your child.
- District can put limits on the amount spent and qualifications of evaluator, but must be reasonable.
- If you request an IEE, the school district may ask you why you disagree with the school's evaluation, but it cannot require you to explain.
- The district cannot unreasonably delay its response to your request.

ELIGIBILITY

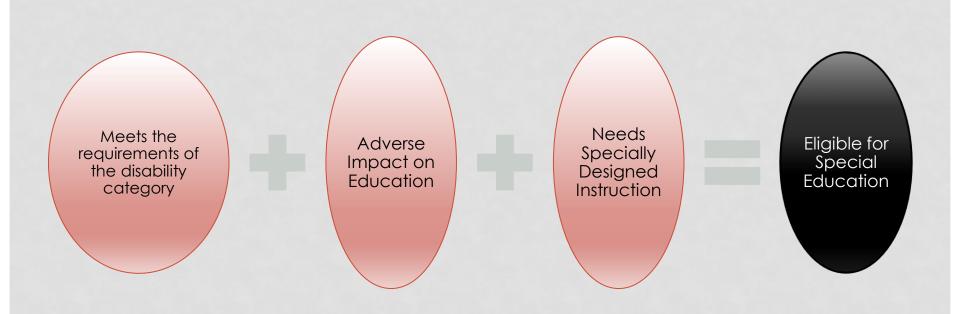


DISABILITY CATEGORIES

- Autism
- Deaf and Blind
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Orthopedic Impairment
- Visual Impairment

- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment (communication disorder)
- Traumatic Brain Injury

ELIGIBILITY



ELIGIBILITY

- Requirements specific to each type of disability
 - http://www.oregon.gov/ode/students-andfamily/SpecialEducation/publications/Pages/School-Age-Sample-Forms.aspx#g 297675cc 6670 4639 a6c3 202e9acd6e42
 - Or google ODE school age sample forms.
- Plus both:
 - Adverse impact on educational performance
 - Needs specially designed instruction

NOTES ON ELIGIBILITY

- Once a student is found eligible for special education under one category, all of the student's needs must be addressed
 - Regardless of whether the need is typical of a student in that category.
- OAR 581-015-2120(4) Determination of Eligibility
 - For a child who may have disabilities in more than one category, the team need only qualify the child under one disability category.
 - However, the child must be evaluated in all areas related to suspected disability or disabilities, and the child's IEP must address all of the child's special education needs.
- Parents have the right to revoke consent for services at any time.

1.	The team has reviewed existing information, including information from the parent(s), the student's cumulative records, and previous individualized education programs or individualized family service plans. Evaluation documentation includes relevant information from these sources used in the eligibility determination.					
					Date Reviewed	
2.	A medical statement or a health assessment statement indicating a diagnosis of health impairment of description of the impairment, and that the child's condition is permanent or is expected to last for rethan 60 days.					
	_	Phy	sicia	n, Nurse Practitioner, or Physician's Assistant Date Conducted	Date Reviewed	
Assessments to determine the impact of				to determine the impact of the suspected disability.		
	_	Examiner		iner Assessments Date Conducted	Date Reviewed	
Additional assessments that are necessary to identify the student's educational needs. Examiner Assessments Date Conducted Date					Date Reviewed	
Th					Date Noviewed	
] y: y: [es es es es	no no no no no	1. 2.	If the following criteria: he student exhibits limited strength, vitality or alertness, including a heightened alertness to nvironmental stimuli that results in limited alertness with respect to the educational environment. he student's limited strength, vitality or alertness is due to a chronic or acute health problem. he student's condition is permanent or is expected to last for more than 60 calendar days.		
The team has determined that:						
y	 1. The student's disability has an adverse impact on the student's educational perspect on the student is at the age of eligibility for kindergarten through age 21, or has an additional child's developmental progress when the child is age three through kindergarters are considered. 2. The student needs special education services. 			n adverse impact on the		
_	es	no		The team has considered the student's special education eligibility, and de eligibility: is is is is is is is i	g the essential lary development;	

WHAT IS SPECIAL EDUCATION

- Specially designed instruction
- Designed to meet your child's unique needs!
- To ensure access of the child to the general curriculum.

FAPE

- Free and Appropriate
 - Always talk in terms of appropriate.
- What's appropriate?
 - Meaningful educational benefit
- Board of Ed v. Rowley (1982)
 - 2 part analysis:
 - Has the district complied with procedures?
 - Is the IEP reasonably calculated to enable the child to receive educational benefit.
 - Amy Rowley was above grade level
- Endrew F. (2017)
 - A school must offer an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances.
 - "Every child should have the chance to meet challenging objectives."
 - "For most children, a FAPE will involve integration in the regular classroom...A focus on the particular child is at the core of the IDEA."

WHAT DOES THIS MEAN FOR YOUR CHILD?

- Takes you from the Present Levels all the way to meeting his or her goals (or almost).
- Does this whole picture look like it's going to get you there?
- Are the goals ambitious? Does the IEP offer access to instructional strategies and curricula aligned to challenging State academic content standards and ambitious goals based on the unique circumstances of that child. (OSEP guidance 2017)
- Unique, individualized.

IEP TIPS

- Always ask for a draft copy of the IEP before the meeting
- Always bring someone with you for support
- Go in remembering that you are an expert on your child.
- Go in remembering your big dreams and family vision!
- Become familiar with Kindergarten benchmarks
- Think about what skills you would like your child to learn at school, versus what you could teach them at home
- Assume you can move tomorrow
- It's okay to take a break during the meeting if you need to.

YOUR IEP MEETING RIGHTS

- You can request an IEP meeting at any time.
 - The district must ensure that the IEP team reviews the IEP at least annually.
 - Revises the IEP, as appropriate to address:
 - Any lack of expected progress toward annual goals
 - Results of reevaluation
 - Information provided to or by the parents
 - The child's anticipated needs.
- The meeting must be held at a mutually agreeable time.
- You have the right to invite other people to participate in the IEP meeting.
- You have the right to an interpreter if English is not your first language or if you are deaf.
- You have the right to be present at every IEP meeting.

IEP TEAM PARTICIPANTS

- One or Both Parents
- General Education Teacher
- Special Education Teacher or Provider
- School District Representative
- Person To Interpret Evaluation Results
- Other Individuals- Bring someone with you!
- Student with a Disability

WHO CAN BE EXCUSED FROM THE MEETING?

- Any team member can be excused if the parent and the district agree IN WRITING.
- That person must provide a written report about the child and their needs if his or her area is going to be discussed at the IEP.

IEP PROCESS- HOW IT WORKS

- Where is the student now in terms of skill levels?
- Where do we want him to be one year from now?
- How are we going to know if he got there?
- How much time/service is it going to take to get him there?
- What setting/classroom/placement does the student need to be in to get there?
- Other questions: Statewide testing, AT considerations, behavior impacts learning

PRESENT LEVELS (WHERE ARE WE NOW?).

- This is where the student's skill level is right now.
 - Should cover all skill areas
 - Should be framed in positive non-judgmental language.
 - Includes Parent Concerns section. Come with your concerns/goals in mind or written out.
- Person Centered Planning.
- One pager on what works and what doesn't work.

IEP GOALS—WHERE DO WE WANT TO BE IN ONE YEAR?

- Develop goals for the student for where you would like them to be in one year.
- Should be <u>very concrete!</u>
- Everyone at the table should be able to read and understand them.
- Needs to be a way to demonstrate that the student has met that goal.
- Should be tied to the general education curriculum
- Think about whether that skill is something you can teach at home.
- Include language that says, 'with their gen ed peers'

CRITERIA AND EVALUATION PROCEDURES

- This is "How are we going to know if the student got there?"
- The school should report the student's progress toward the goal at least as often as report cards come home. (4 times per year in most cases)
- Should be written in language so that you, as a parent, can tell if your student is making progress.
- If your student isn't making progress, call an IEP meeting.

SERVICES SUMMARY

- This is the page that details how much time will be spent in each skill area to reach the goals you just wrote.
 - Specially Designed Instruction
 - Related Services
 - Includes transportation and such <u>developmental</u>, <u>corrective and other supportive services as are required to assist a child with a disability to benefit from special education</u>, and includes orientation and mobility services, speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, school health services and nurse services, counseling services, including rehabilitation counseling services, parent counseling and training, school health services and medical services for diagnostic or evaluation purpose
 - Supplementary aids, services, accommodations, modifications
 - Supports for School Personnel

PLACEMENT DECISIONS

- Now that you've developed the IEP goals, the next step is to determine placement.
- Placement is a TEAM decision. The IEP team looks at the IEP goals and services and determines the least restrictive environment in which those goals can be met.
- Goals and objectives drive the placement.
- Non participation justification

• Congress has found that, "over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective...by...providing appropriate special education and related services and aids and supports in the regular classroom to such children, whenever appropriate." 20 U.S.C. §1400(c)(5)(D)

LEAST RESTRICTIVE ENVIRONMENT

- Schools must educate students with disabilities:
 - In the least restrictive environment
 - To the MAXIMUM EXTENT APPROPRIATE!
 - Special classes or separate schools should only occur when the nature or severity of the disability is such that education in general education classes with the use of supplementary aides and services cannot be achieved satisfactorily.
 - Studies show improved outcomes for kids who have students with disabilities in their class.
 - Our kids are going to be in the community as adults, how does it make sense to segregate them in school.

Plain English:

- Your child needs to be in the classroom with non-disabled peers as much as possible.
- Even if it takes extra supports to do this.



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NON LEGAL NOTES

- Be prepared to hear that your child will learn better/have more supports in a different environment. Not necessarily true and not necessarily a good thing
- Placement is at the end of the meeting. Don't allow the process to be rushed. Ask for another meeting if needed.
- Your child doesn't have to be at grade level to be included in the general education classroom.

- The law presumes that the FIRST placement option considered for EVERY student is the General Education classroom in the school that the student would attend if not disabled.
- Before a child is placed outside the general education environment, the placement team (IEP team) must consider whether supplementary aids and services could be provided that would enable the student to be successful in the general education classroom.
- If you do choose or agree to a placement in another setting, the school still must maximize the opportunities for the student to interact with non disabled peers to the extent appropriate.

- A child with a disability is not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general education curriculum.
- Districts **must** offer a full continuum of alternative placements.

FACTORS TO CONSIDER WHEN DECIDING PLACEMENT

- Potential harmful effects and benefits to the child
- Quality and quantity of services the child needs
- Educational impact on other students

Special Education Placement Determination

Student's NameDate	Student ID #	
Placement Team (name and title):		
Person Knowledgeable About the Student	Person Knowledgeable About Evaluation Data	
Person Knowledgeable About Placement Options	Other	
Parent	Other	
This placement is based on: D_the attached IEP dated D_attached evaluation information D_other:		
O OHEL		

Below, document discussions regarding placement option(s), and indicate selected placement

Placement Option(s) Considered	Benefits	Possible Harmful Effects on the Child and/or the Services to be Provided	Modifications/Supplementary Aids & Services Considered	Indicate Whether Option is Selected and Reason(s) Rejected or Selected
Regular class with support				D Selected D Rejected
				D Selected D Rejected
				D Selected D Rejected

HOLLAND CASE DETAILS

- Rachel Holland was an 11 year old girl with intellectual disabilities. Tested IQ was 44.
- District proposed half time gen ed and half time self contained because they didn't think she was making enough academic progress.
- 9th Circuit found in favor of Rachel.
- Presumption and starting point of every placement determination is general education
 - Court noted her social and communication skills and the self confidence she had as a result of gen ed placement.

PLACEMENT DETERMINATIONS

- District must ensure that:
 - The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options AND
 - Is made in conformity with LRE provisions
- Placement must be as close as possible to the child's home.
- Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if not disabled.

ACADEMIC STUDIES

- www.Thinkinclusive.us
- A 2001 study out of Indiana looked at academic progress for students with disabilities in general education and selfcontained classrooms over two years. 47.1% of students with disabilities in general education made progress in math, compared to 34% in self-contained classes. Reading progress was comparable in both settings. Interestingly, the study found typical peers made higher gains in math when students with disability were present. Researchers hypothesized that extra help and supports in these classes created gains for all students.
- Citation: Waldron, N., Cole, C., & Majd, M. (2001). The
 academic progress of students across inclusive and traditional
 settings: a two year study Indiana inclusion study.
 Bloomington, IN: Indiana Institute on Disability & Community

- A study looking at the outcome of 11,000 students with all types of disabilities found that more time in a general education classroom correlated to fewer absences from school, fewer referrals for misbehavior, and more post-secondary education and employment options.
- Citation: Wagner, M., Newman, L., Cameto, R., and Levine, P. (2006). The Academic Achievement and Functional Performance of Youth with Disabilities: A Report from the National Longitudinal Transition Study-2 (NLTS2). (NCSER 2006-3000). Menlo Park, CA: SRI International

- Many schools and parents make the argument that typical peers may be negatively impacted by the presence of students with disabilities. Especially those students with behavior problems. But a 1998 study out of Montana found that inclusion does NOT compromise a typical students academic or social outcome. The Indiana study above shows they actually make more progress because of inclusionary practices.
- Citation: McGregor, G., & Vogels berg, R.T. (1998). Indusive schooling practices: Pedagogical and Research Foundations. A synthesis of the literature that informs best practices about indusive schooling. University of Montana, Rural Institute on Disabilities.

WHEN BEHAVIOR INTERFERES WITH LEARNING

- Keep track of what's happening at school
- Take action:
 - If your child is being removed from class on a regular basis
 - You're being asked to pick up your child from school
 - The district is suggesting shortened days
 - Your child has been suspended more than once.

WHAT TO DO

Convene an IEP team and add behavior goals specific to the behavior occurring to your child's IEP.

- Request an FBA and a BIP in writing
 - Functional Behavior Assessment
 - Behavior Intervention Plan

WHAT ARE THOSE?

- Functional Behavior Assessment
 - Looks at the following
 - Why is the behavior happening
 - What need is your child trying to get met?
 - When is the behavior happening? What are the "triggers?"
 - What are the signs that the behavior is about to happen. (precursor, or antecedent behavior)

BEHAVIOR SUPPORT PLAN

- Note the word support
- This should be the supports that can help your child not engage in the behavior and the responses the district can use when the behavior occurs
- You, as parent, are key contributor in helping to develop a good behavior plan

BEHAVIOR SUPPORT PLAN

Should include

- Looking at reducing the trigger events, or ways to help student cope with trigger events
- Ways for staff to respond to the student when staff see the antecedent behaviors
- Other ways to have the student's needs met
- Ways to respond when the behavior occurs
- How to help the student de-escalate (if appropriate)

BEHAVIOR SUPPORT PLAN

- Should not include:
 - Language that blames the student for behavior
 - A list of things the student needs to do differently
 - Beware of a Behavior Contract
 — this is not the same thing as a support plan
 - Punishments disguised as consequences

WHO SHOULD BE WORKING ON THIS?

- YOU are crucial to having a good behavior plan.
- If your child's behavior is fairly straightforward and the team knows your child well, the team, or some subset can develop.
- If the behavior is complex, you aren't clear on why it is happening, your child is injuring themselves or others: Ask for a behavior specialist!
- Even with a behavior specialist, you are crucial to having a good plan.

SCHOOL DISCIPLINE

- Again, if your child is being disciplined repeatedly for behavior related to his/her disability, call an IEP meeting to look at how to address the behavior more constructively.
- Schools can suspend children for up to 10 days in the school year, even if the behavior is related to the child's disability.
- After the 10th day, the district needs to provide services to your child.
- Suspensions include when you are called to pick up your child because they're having a bad day.

DISCIPLINE OF SPECIAL EDUCATION STUDENT

- Once you get past 10 days of suspension, it is considered a change of placement, and the district should conduct a manifestation determination.
- A manifestation determination asks the questions:
 - Did the conduct in question directly result from the district's failure to implement the IEP
 - Was the behavior caused by, or did it have a direct and substantial relationship to his or her disability.

RESOLVING DISAGREEMENTS

What do I do if the district isn't listening or won't agree to what I feel is necessary for my child to receive a FAPE.

REVIEW: HAVE YOU ALREADY?

- If you haven't had an IEP meeting to discuss the issues, that is your first step.
- Document all your requests in writing.
- Get Prior Written Notice from the district denying your request.

YOUR OPTIONS

- Facilitated IEP meeting— a good early resolution tool. This works well when you have a good relationship with the district but communication is beginning to get hard.
- Mediation

 This is a voluntary process in which a neutral person meets with you and the district to resolve a conflict. This is a good option when communication and trust have broken down. Mediation is offered at no cost to the district, and anything shared in mediation is confidential.

MORE OPTIONS

- Filing an ODE complaint.
 - Writing a complaint:
 - Include the problems your child has experienced.
 - What actions you think are necessary to resolve the problems.
 - Can go back only one calendar year.
 - ODE will send out an impartial investigator who will talk to you and the district staff, and will review your child's records.
 - Make sure you request compensatory education!!

- If ODE finds legal violations, they can:
 - Order the district to correct policies and procedures.
 - Provide training to district personnel.
 - Order the district to hold an IEP meeting with a facilitator, conduct evaluations or provide a service necessary.
 - Compensatory education.

DUE PROCESS HEARINGS

- A formal administrative proceeding that looks like a trial.
 - Both sides present evidence, put on expert testimony, cross examine etc.
 - Impartial ALJ hears the evidence and decides the issue.
 - Very expensive proceeding. Best to reserve it for situations that cannot be resolved with less formal processes.
 - Best to have an attorney represent you, although not required.

FERPA

- The law governing your access to your child's records
- You are entitled to have the opportunity to inspect and review your child's education records.
- The district must provide access within a reasonable time of your request (no more than 45 days).

MORE FERPA

- You are entitled to a copy of your child's records if the circumstances effectively prevent you from exercising the right to inspect and review your records.
- The district can charge a reasonable fee for copying, but not a fee for searching and retrieving the records.

- You have the right to challenge information in your child's records if you believe the information is:
 - Inaccurate
 - Misleading
 - Violates your child's right to privacy
- You may ask the district to amend the record.
- If the district decides not to amend the record, you have the right to a hearing under FERPA.
- You can also file a complaint with the FPCO within 180 days.

- The district can only release educational records with written consent of the parents.
- With a few exceptions.

COMMON EVALUATIONS

- IQ tests
 - Wechsler Intelligence Scale for Children (often called the WISC-IV). Also the WASI (Wechsler Abbreviated)
 - Stanford Binet Intelligence Scales
 - Kaufman Assessment Battery for Children (KABC-II)
- Academic achievement
 - Woodcock Johnson (WJ-III)
 - Measures grade levels for academic areas of reading and math

Behavior Rating Scales

- Vineland Adaptive Rating Scales
 - Parent and teacher rating
 - Communication, daily living skills, socialization, overall adaptive
- Achenbach behavior rating scales
 - Areas: Withdrawn, somatic complaints, anxious/depressed, social problems, thought problems, attention problems, delinquent behaviors and aggressive behavior
- BASC (Behavior Assessment System for Children)
 - Parent teacher rating scales.
 - Hyperactivity, aggression, conduct problems, anxiety, depression, attention problems, learning problems, atypicality, withdrawal.

COMMON EVALS CONT

Executive Functioning tests:

- BRIEF

 Behavior rating Inventory of Executive Functioning
 looks at attention, planning, organization, inhibition and
 working memory
 - Inhibit, Shift, Emotional Control, Initiate, Working Memory, Plan/Organize, Organization of Materials, Monitor
 - Parent and teacher rating scales
- Delis-Kaplan Executive Functioning System

ABAS – Adaptive Behavior Assessment System

Communication Testing

- Clinical Evaluation of Language Fundamentals (CELF)
- Test of Problem Solving
- Expressive/Receptive One Word
- Test of Auditory Comprehension of Language