I. CHILD-FIND/IDENTIFICATION TIPS

1. TRAIN all school personnel to take the “Problem Solving Team”/RtI process seriously and to understand that the role of these Teams is not to “get a student into special ed.”

2. TRAIN all school personnel on the overall legal requirements applicable to the identification and education of students with disabilities.

3. ENSURE that if/when developing and implementing an RtI approach to child-find and identification, a parental request for an evaluation is not met with: “I’m sorry, but we can’t do an evaluation right now because your child has not completed RtI.”

4. STRESS the importance and affirmative nature of the IDEA’s child-find requirements.

5. WATCH OUT for “referral red flags.”

6. DO NOT WAIT for parents to initiate a referral for an evaluation.
7. REMEMBER that the concept of "continuous progress monitoring" is always applicable—regardless of whether an overall RtI approach for identification is used—in order to ensure that a student's difficulties are not due to an overall lack of "appropriate" (scientific research-evidence-based) instruction.

8. REFRAIN from diagnosing medical conditions or suggesting medication without the credentials for doing so.

9. REMEMBER to refer a student back to the Problem Solving Team process if a determination is made that the student will not be referred for an evaluation and send prior written notice of any refusal to refer/evaluate.

II. EVALUATION/REEVALUATION TIPS

10. EXERCISE the right to conduct independent evaluations, particularly in potentially adversarial situations, by professionals/experts of the school system's choosing, for purposes of determining eligibility.

11. SHARE fully all relevant evaluative and other educational information about the child with the parents.

12. REFRAIN from suggesting to parents that they are responsible for obtaining educationally-relevant evaluations, including medical evaluations for diagnostic/evaluative purposes.

13. CONDUCT comprehensive evaluations and evaluate in all suspected areas of need, not just disability.

14. MAKE appropriate and thorough decisions regarding the need to conduct reevaluations and presume that a reevaluation is needed rather than presuming that it is not.

15. CONSIDER results of independent or private evaluations that parents present.

16. REMEMBER that parents have the right to request an Independent Educational Evaluation at public expense (IEE) when they disagree with the evaluation completed by and/or obtained by the school system, and RESPOND appropriately to such requests.
17. MAINTAIN and UPDATE a district list of qualified independent evaluators and applicable criteria for independent evaluators.

18. COMPLY with applicable evaluation timelines and appropriately document compliance with them.

III. ELIGIBILITY TIPS

19. ADHERE to applicable State eligibility requirements, including definitions, criteria and minimally required evaluations and other data.

20. UTILIZE an appropriate Eligibility Committee with required participants, including the parent(s) and PROVIDE the parent (and invitees) an opportunity to fully and meaningfully participate in the eligibility decision.

21. REMEMBER that actual "disability labels" should not matter—it's eligibility for services and the provision of FAPE that matter.

22. DON'T RELY solely on test scores when determining eligibility/eligibility.

23. DO NOT LIMIT the definition of "educational performance" to academic performance when determining whether there is a condition that adversely affects educational performance (unless you are in the Second Circuit, perhaps).

24. REMEMBER the third prong for determining eligibility: whether the student's condition adversely affects educational performance to the degree that the student needs special education and related services.
25. DISTINGUISH between SED and BAD, but be careful.
26. DON'T rely solely on medical diagnoses or recommendations for determining eligibility!

IV. IEP DEVELOPMENT TIPS

27. REFRAIN from action that appears to reflect a "predetermination of placement" or, in other words, appears to deny parental input into educational decision-making.
28. CONSIDER keeping drafts of IEPs or meeting notes that reflect changes that were made to the IEP based upon parental input at the IEP team meeting.
29. PREPARE adequately for IEP meetings, while avoiding predetermination.
30. BE SURE to act reasonably in response to parental requests to reschedule IEP meetings, particularly if the request to reschedule is for legitimate reasons.

31. MAKE IEP recommendations/decisions based upon the individual needs of the child.
32. AVOID making IEP recommendations/decisions based upon cost.
33. USE a proper process for determining the Least Restrictive Environment (LRE).
34. AVOID being overly specific and including unnecessary details or "promises" in IEPs.
35. ADDRESS appropriately and annually the issue of Extended School Year (ESY) services.
36. ENSURE proper attendance of required school personnel at IEP meetings.

37. ALLOW parents to bring invitees to the meeting and afford them the opportunity to participate and IDENTIFY everyone that the parent has invited to participate at the meeting, particularly if they are participating by phone or video conference.

38. ADDRESS behavioral strategies/interventions when appropriate and SEEK the assistance of and/or contract with behavioral experts (i.e., BCBAs) when previous efforts to address behaviors, FBAs and BIPs have not been effective.

39. INCLUDE measurable goals in IEPs that are linked to present levels of performance and identified challenges.

40. STATE services of amount of services with sufficient clarity in the IEP.

41. FINALIZE placement recommendations (particularly by the beginning of the school year!)

V. IEP IMPLEMENTATION TIPS

42. REMEMBER to inform all service providers of any responsibility they have to implement the IEP and document this process.

43. ENGAGE in continuous progress monitoring on IEP goals and revise IEPs when expected progress is not being made or goals have been achieved early in the year.

44. AVOID over-reliance upon grades to demonstrate progress.

45. CONVENE an IEP meeting if there is any doubt about the appropriateness of or ability to implement the provisions of an IEP.
VI. PROCEDURAL SAFEGUARDS TIPS

46. PROVIDE parents with a copy of their IDEA rights at least once per school year.

47. GIVE prior written notice with respect to any proposal or refusal to initiate or change the identification, evaluation, placement or provision of FAPE to a child with a disability.

48. TIMELY RESPOND to parental requests to examine education records.

49. CONSIDER using the IDEA's mediation procedures to resolve complaints prior to the filing, by either party, of a due process complaint.

50. GATHER any and all school records of the student when a due process hearing has been initiated.

51. DON'T FORGET the IDEA's stay-put provision, but REMEMBER that school site is not necessarily "placement" for purposes of stay-put (unless your state regulations or applicable authority in your jurisdiction provide otherwise).

VII. DISCIPLINE TIPS

52. MAINTAIN clear and compliant discipline procedures applicable to students with disabilities (under IDEA and 504) and adequately TRAIN disciplinarians on the procedures.

53. AVOID making unilateral "changes in placement" through the use of suspension or other removal for disciplinary reasons.

54. DEVELOP alternatives to suspension that do not constitute a "change of placement," including ISS.

55. BE CARFUL when considering whether transportation is a "related service" for a student with a disability. It will be important in the area of discipline.
56. KEEP appropriate and accurate data with respect to the use of suspension or other disciplinary removals from school.

57. MAKE appropriate manifestation determinations.

58. REMEMBER that restraint and seclusion are NOT disciplinary techniques!

59. LOOK OUT for those regular education students who can claim the district should have known the student was a student with a disability prior to a long-term suspension/expulsion.

60. USE the 45-day "special circumstances" removal provision correctly.

61. REMEMBER that the IDEA does not prohibit school personnel from reporting criminal behavior of a disabled student if they would do so for a non-disabled student under similar circumstances.

62. REMEMBER that truancy is a behavioral issue and should be addressed properly by a student's IEP team.

VIII. SECTION 504/ADA TIPS

63. APPOINT an d TRAIN a good, knowledgeable district 504 Coordinator for purposes of answering questions that arise as to educational responsibilities under Section 504 and the ADA.

64. HAVE good and updated Section 504 procedures in place and TRAIN school personnel on them.

65. UNDERSTAND that a student can be found to be "disabled" under Section 504 but not in need of a 504 Plan because his/her educational needs are not as adequately as the educational needs of non-disabled students. That child would be protected from discrimination but not necessarily in need of services.

66. REMEMBER that there are special rules of discipline applicable to students who are disabled only under Section 504.
67. **AVOID** exclusions of otherwise qualified disabled students from extracurricular and nonacademic activities, including athletics.

68. **BE AWARE** that developing an individual health/nursing care plan may not suffice, by itself, for purposes of determining disability and providing services under Section 504.

69. **REMEMBER** that “learning” is not the only “major life activity” to consider when determining whether a student is disabled under Section 504.

70. **RECOGNIZE** that bullying of a student with a disability could constitute a form of discrimination—disability harassment—under Section 504 and schools are responsible for maintaining adequate procedures to address it. Also **REMEMBER** that bullying can impact on FAPE.

71. **RECOGNIZE** the potential for Section 504-based lawsuits alleging retaliation.

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**IX. MENTAL HEALTH/ATTIDUAL TIPS**

72. **AVOID** the temptation to unleash your inner attorney.

73. **DITTO** with your inner judge.

74. **REMEMBER** to “Just Breathe”!

75. **ACCEPT** it: “No Good Deed Goes Unpunished.”
Thank you for attending today and thank you for all you do!

Julie J. Weatherly
Resolutions in Special Education, Inc.