Laws and Legal Issues Related to Special Education: What do CTE teachers need to know?

Overview of Laws

- CTE has a long and unique history that has supported the development of employability skills in our schools from the early 1900s.
- CTE professionals need to understand that these laws are evidence that students, families, and schools need protections:
  - Protections that students and their families are informed
  - Protections that due process is provided
  - Protections that students get appropriate educational opportunities
  - Protections for schools from frivolous accusations
- Knowledge of six significant laws will serve CTE professionals well.

The Individuals with Disabilities Education Act (IDEA) (2004)
- IDEA is the law that most often gets quoted in “it’s the law” types of discussions.
  - It was originally passed in 1975, and it was called “P.L. 94-142.”
  - Originally titled, “The Education for all Handicapped Children’s Act,” it’s title has changed in three significant ways:
    - “Handicapped” replaced with “Disabilities”
    - People 1st language
    - “Individuals” replaced “Children”

Vocational Rehabilitation Act (1973)
- The Vocational Rehabilitation Act (1973 through current reauthorizations) is a nondiscriminatory entitlement act.
  - It provides for “Section 504,” which ensures that a child who is not eligible to receive services under IDEA can receive remediation and help from regular and general education teachers.

Carl D Perkins Vocational and Technical Education Act (1998)
  - It deems that CTE teachers meet the needs of “special populations,” which it defines as:
    - Individuals with disabilities
• Individuals from economically disadvantaged families, including foster children
• Individuals preparing for nontraditional training and employment
• Single parents, including single pregnant women
• Displaced homemakers
• Individuals with other barriers to educational achievement, including individuals who are categorized as English Language Learners (ELLs), and academically disadvantaged

The Americans with Disabilities Act (ADA) (1990)
• The Americans with Disabilities Act (1990) is a different kind of act.
  o It doesn’t allocate resources to provide education, but it does prohibit discrimination in schools, places of employment, or public venues such as restaurants, libraries, and movie theaters.
  o It provides for accommodations such as ramps and curb-cuts.
  o It is also very important for CTE teachers who prepare students to enter the world of work to realize that this act will assist in procuring employment for students with disabilities.

• FERPA ensures that students and families are in “control” of their own records and that others have limited access to these records without the person’s permission.
  o While this act is useful in many cases, professional educators must be aware that if there is an “educational need to know,” then access to the information might enhance their services.

Elementary and Secondary Education Act (ESEA) (1965)
• ESEA provided Headstart and other successful programs as demonstrated by research.
• It has now been renamed as the No Child Left Behind Act (NCLB) of 2001.
• It stresses accountability for all students.
• It requires testing and evaluation of schools based upon the students’ performance.

Basic Principles of IDEA
• IDEA is known for five basic principles.
  1. Free and Appropriate Education (FAPE) - This principle assures that all children with disabilities are entitled to an educational experience that mirrors that of children without disabilities. The expenses that support this experience are the responsibility of the public. What is ‘appropriate’ is determined by a committee composed of school personnel, family members, and when appropriate, the student. This committee is often referred to as the IEP (Individual Education Program) committee, but in Texas we call it the ARD (Admission, Review and Dismissal) committee. The committee ensures that the student’s FAPE reflects what is age-appropriate.
2. **Least Restrictive Environment (LRE)** - This principle states that a student with disabilities shall be educated with students without disabilities to the maximum extent possible. Segregated settings should only be chosen when less restrictive options are not beneficial. The ‘law’ never mentions the words “inclusion” or “mainstreaming,” but certainly LRE is a major tenet of its purpose.

3. **Individualized Education Plan (IEP)** - An IEP is a document that is developed by a team that establishes educational practices based on meaningful assessment. It determines how the student will participate in the regular education environment and the related services and/or accommodations that a student might benefit from (assistive technology, extended time with assignments, etc.). It also states how the student will participate in statewide assessments.

4. **Appropriate assessment** - IDEA calls for assessment from a multidisciplinary group and the employment of a variety of assessment instruments or techniques. Valid and reliable tests – including informal assessments such as student, teacher, and parent interviews and checklists – are essential for FAPE to be obtained.

5. **Due Process** - Due process means that parents and students, as well as school personnel, are informed about every aspect of the student’s educational experience. Procedural safeguards guarantee that parents are notified and asked for permission to assess, place, and educate their children in any way that differs from a child without disabilities. If, however, after all these processes are completed and one party is not satisfied, there are very specific procedures to follow that will assure that mediation is available, and/or a fair and unbiased hearing can take place so that a mutually agreed upon resolution can occur. If that does not happen, then there are further procedures that will show the families how to access the courts.

- Students must meet **two criteria** to receive services from Special Education.
  1. They must be evaluated and be diagnosed as having one of the IDEA defined categories: autism, deaf-blindness, deafness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairments, emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment including blindness.
  2. The IDEA-defined disability must have an adverse impact on a student’s education for him or her to be eligible to receive Special Education services.

**Transition Services**

- Transition from school to work services – IDEA defines transition as “a coordinated set of activities .....that is focused on improving the academic and functional achievement of a child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation.”
- The 2004 version of IDEA states that this must be in effect when the child reaches the age of 16 and updated annually thereafter.
Key Questions to Ask ARD Committees

• What disability category qualified the student for Special Education services?
• Within that category, is the student considered mild, moderate, severe, or profoundly affected?
• How does this disability affect the student’s:
  o Academic performance (reading, writing, calculation)?
  o Behavioral performance (defiant, respect for others, noncompliant)?
  o Functional performance (following directions, communication)?
• What student interest/aptitude measure was used to match him or her to my course?
• What related services will be available to assist the student to make progress in my class and to, therefore, receive a free and appropriate education?
• What documentation would you advise that I keep, and how often should I keep it so that it will be helpful in our next meeting and to assure FAPE?
• When is the next meeting scheduled to ‘review’ the progress?

Signing the IEP Document

I’ve attended ARD/IEP meetings and have been asked to sign the documents in two places (one for the CTE representative and one as the General Education representative). I feel uneasy about this. What should I do?

Although it is certainly not devious to sign in two places, we believe that it is best practice to have all necessary members at the meeting. The representative is assumed to know what skills are needed in a class and if that is the appropriate setting and what related services might be needed. They are also expecting to hear about what services might be available to assist them. Signing for another discipline does not, in my opinion, represent the best educational practice, even if allowed. Expediency is not the purpose of the ARD/IEP meeting.

Can a CTE teacher be forced to sign an ARD document?

No one can be ‘forced’ to sign any document beyond their will. In point of fact, I have advised new teachers, who are fearful of disobeying the administration, to sign on the back of the document endorsing as being present but not in agreement with the decision.

Instructional Aide

I really need a professional aide to assist in my class because of the diversity of learners. How do I get one?

Instructional aides or para-professionals are of great benefit to students and teachers. The need for these related service personnel are determined in the ARD/IEP meeting. If it is determined that an aide is needed for the child to receive FAPE, then that is what will be recommended. There is no ratio. It’s all individually done.
Content Mastery for CTE

At my school, we have a program called Content Mastery, but they say that they only work with academic courses and teachers, not CTE. Why is this?

Content Mastery, a Special Education program option, could certainly assist with elective courses. Given our penchant for excelling on the TAKS test, some districts are opting for using this resource as an assistance in the “tested” areas of that statewide assessment. This practice is a local policy and may sadly reflect a lack of understanding of the integration of academic and practical arts applicability.

ARD Committee and IEP

Why do CTE teachers have to attend ARD meetings for students they don’t have in class?

You may be a “designated representative” of CTE teachers and, therefore, need to be a conduit for information both to the ARD members and also to the receiving CTE teachers. Go, learn, represent CTE, and get information to and from each group. Better still, advocate that all CTE teachers attend an ARD when it is their class that is being discussed.

The IDEA legislated members of the IEP/ARD team are: the student, if appropriate, the parents, at least one general education teacher “if the child is, or may be participating in the general education” environment, a local education agency representative who is qualified to provide or supervise the provision of special education, an individual who can interpret the instructional implications of the evaluation results, and other individuals who have knowledge or special expertise regarding the child. The CTE teacher could be considered the “general educator” in this definition. CTE is increasingly seen less and less as an area outside of general education.

Is there a limit as to how many times you can go to ARDs during a week?”

Unfortunately, there is no limit. Sometimes a single ARD can last several days, so the number of ARDs is not always the issue; it might be the length of ARDs.

I get IEP modification sheets for me to sign during class without attending an ARD. Is this right?

This is inappropriate. The legislation calls for a team and a meeting. I always think to myself, “How would I answer the questions if I were a witness in a trial and was asked, ‘Were you a participant in the ARD/IEP process?’”

CTED Classes

Our principal told us that CTE teachers will, next year, have one class each that is comprised of all students in Special Education. That way we can modify that one class. Is this legal?

That terminology alone is telling us that this, indeed, is not inclusionary. “Individual needs” are not often defined as “class needs.” Remember to review the definition of
LRE that was discussed earlier. In Texas, we do have an option referred to as CTED (Career and Technology Education for the Disabled) that are self-contained classrooms and serve only identified students in Special Education. These courses may ONLY be used when the ARD committee determines that regular CTE courses, even with related services, are insufficient for the student to make satisfactory progress. This would certainly never be an appropriate educational setting for a student with mild or moderate disabilities. Documentation for placement of students in these classes should be extremely valid.

**ARD and CTE Placement**

*What is the formula for figuring ratios of SPED students to regular students in a regular classroom?*

There is no formula or ratio. There is only the standard of providing ‘appropriate education.’

*Students have been placed in my class, but I have not been told about their behavioral backgrounds. What can I do about this?*

Attend the ARD meeting. Access to educational records, including IEP information, should be available to all who have an educational need to know. Education is a profession like any other. Creating low expectation by showing past records is often cited as a reason for nondisclosure, but this should not, in my opinion, be a professional rationale for this type of behavior.

*I don’t think that having students with disabilities in my class with other students without disabilities is “fair.”*

According to Richard LaVoie, “Fair is not treating everyone the same, but giving students what they need to be successful.” When we recognize that fair is not equal (and anyone who is a parent of two or more children knows that the simplistic, fair = equal is bogus), then we will proceed with educating all children.

**Modifications and Accommodations**

*If a student who qualifies for Special Education does not do his/her work, can he/she fail the CTE class?*

- You can give grades to students in special education. You must document that you provided the student IEP-approved accommodations, modifications, services, and support. If in spite of this the student does not take advantage of the opportunity to learn and you can document that he or has not met your criteria to pass the class due to lack of cooperation, participation, or preparation, you can fail the student.

- You must be sure that the reason the student is failing the class is NOT because you failed to provide the IDEA mandated “free and appropriate public education” requirements (34 CFR 300.300, 34 CFR 300.347, Klor, p. 37, LRP, 2004).

*Can I “opt out” of providing the accommodations listed on the IEP/ARD document if I feel the student doesn’t need them?*
Only at your own peril. In the case Doe v. Withers (W.Va. Cir Ct. 1993), $15,000 was awarded a student with a learning disability from a public school history teacher who refused to implement the IEP. The teacher refused to allow the student to take his exams orally and untimed. This decision alerts teachers that they must be serious about the knowledge, understanding, and implementation of the IEP. Students and their families often sue school districts or school boards, but this case highlights that an individual teacher may also be targeted. Ignorance of the law is no excuse.

Why do I have students who are served in SPED included in my classes, with no modifications marked on their paperwork?

Perhaps they are expected to perform at the same standard for all students in your class, or perhaps they have a disability that will not be apparent in your course (orthopedic impairment but no mental or emotional involvement). Ask at the ARD committee meeting for clarification.

**Special Education Funding**

*Doesn't Special Education have money? Why can't we in CTE get more financial help?*

IDEA does provide a funding stream to provide appropriate education for students with disabilities. Having said that, I regret to inform you that when this law was first passed in 1975, Congress promised full funding (meaning 40 percent of the cost of the act). We have received between 7-20 percent of the costs of these programs. Carl Perkins also funds CTE programs, although there are no ‘set aside monies for students with disabilities.’ Carl Perkins is in alignment with IDEA to meet the needs of ALL students.

**Conclusion**

CTE teachers have always been the ones to teach functional, practical, applicable content for students to succeed in life after school. Why should we want any less for any of the students exiting our schools?

When faced with a really tough question about the education of students, I always ask myself, “What would I want for my child?” The answer should be the same for all children. We want appropriate education that will encourage productive citizens at whatever level is possible.