Special Education: An Overview

ADVOCATING FOR A STUDENT WITH A DISABILITY

PRESENTED BY:
THE CHILDREN’S RIGHTS UNIT
COMMUNITY LEGAL SERVICES OF MID-FLORIDA
Disclaimer

1. This information is not intended as legal advice and is meant strictly for educational purposes.

2. CLSMF is not responsible for how you use this information.
SIT BACK AND RELAX

THIS WILL BE A LOT OF MATERIAL, BUT REMEMBER...
CHIN UP.
WE’VE GOT THIS.
Agenda for today’s webinar:

- Dependency and disability
- ESSA
- IDEA
- 504
- Child Find
- Advocacy Tips

This webinar will be an overview of these topics. In-depth trainings on specific issues related to these will be presented in the future.
Disability and Dependency

- Kids with all types of disabilities experience maltreatment at higher rates than children without disabilities.
- Kids with emotional/behavioral disorders and those with cognitive/developmental disabilities are particularly more likely to experience maltreatment.
- Emotional/behavioral disabilities are often invisible and may initially appear as simply an “attitude” problem.
- Trauma underlies many emotional/behavioral disabilities in kids in Dependency.

*Jonson-Reid, Drake, Kim, Porterfield, & Han, 2004; Lightfoot et al., 2011; Spencer et al., 2005*
Minnesota study* that found that at least one-third of kids in care were eligible for special education services.

Of those children, 73% had identified mild cognitive or behavioral disabilities;

The most frequent disability categories were specific learning disabilities (33%) and emotional/behavioral disorders (27%).

Often, before coming into care children’s challenges due to disabilities are masked by their own and their families’ unmet needs and left untreated.

Results are typical of national trends.

*Haight, W., Kayama, M., Kincaid, T., Evans, K., & Kim, N. (2013). The elementary-school functioning of children with maltreatment histories and mild cognitive or behavioral disabilities: A mixed methods inquiry. Children and Youth Services Review
Why Advocacy training is important:

Individuals who work with foster youth with disabilities need to educate themselves about the range of services and supports mandated by federal policies so that they are able to leverage available supports and ensure that systems work collaboratively*.

*CW 360 o T he Intersection of Child Welfare and Disability: Focus on Children • Spring 2013
What Federally Mandated Supports Are Available in School?

- **Every Student Succeeds Act (ESSA):**
  - For ALL kids in care
  - Immediate enrollment and transfer of records
  - School transportation as necessary
  - Point of contact designation within the District and State DOE
  - Removed McKinney-Vento (homelessness) protection; moved to ESSA.
  - Requires data collection and monitoring.
For students with disabilities, there are extra federally-mandated supports. They are:

- The Individuals with Disabilities Education Act (IDEA)
- Section 504 of the Rehabilitation Act of 1973
Let’s look at IDEA

- How does a student qualify for the Individuals with Disabilities Act protections?
- How does a student get an IEP once they qualify for protection under IDEA?
Parent or school staff notice the child is having behavioral or academics issues

Evaluations requested/consent form signed by the parent

Evaluations completed. Eligibility meeting held

Child Eligible

IEP developed. Placement determined

Parents agree

Annual IEP meeting/date set for IEP services to begin

Parents disagree

Due process

Child not Eligible

Child can still be eligible for 504 services

Parents can elect to go to Due process

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So...what exactly is the Individuals with Disabilities Education Act (IDEA)?

- IDEA is a federal law covering the education of kids with disabilities.
- Covers early intervention, special education and related services to eligible infants, toddlers, children and disabilities.
- Children and youth (ages 3-21) receive special education and related services under IDEA Part B.
What is the Purpose of IDEA?

To ensure that all children with disabilities have available to them a free and appropriate public education (FAPE) ... designed to meet their unique needs AND prepare them for further education, employment, and independent living...”

34 C.F.R. § 300.1
## Qualifying Disabilities under IDEA

1. Autism  
2. Blindness  
3. Deafness  
4. Emotional Disturbance  
5. Hearing impairment  
6. Intellectual disability  
7. Multiple disabilities  
8. Orthopedic impairment  
9. Other health impairment  
10. Speech or language impairment  
11. Visual impairment  
12. Specific learning disability  
13. Traumatic brain injury
Six Important Principles of IDEA

1. Free and appropriate Public Education
2. Appropriate Evaluations
3. Individual Education Plan (IEP)
4. Least restrictive environment (LRE)
5. Parent and student participation
6. Procedural safeguards
1. FAPE

- **F**: Free. Caretakers should not have to pay for curriculum or paraprofessionals. They should not have to provide speech/language or behavioral help or give the child’s Medicaid funding to the school.

- **A**: Appropriate. This is the biggest source of contention. Generally viewed as adherence to the IEP.

- **P**: Public. Students with disabilities have the right to be educated in public schools. They should never be unduly pushed to use McKay or be home-schooled.

- **E**: Education. Must include K-12 education as well as transition to life afterwards, including employment.
2. Evaluations

- Students must be evaluated prior to receiving special education services to determine:
  - If they are eligible
  - Their educational needs

- Parents generally make initial requests for evaluations, but referrals can be made by the school as well.

- School Districts must obtain consent from the parent or guardian before conducting initial evaluations and before providing initial services.

- Initial evaluations should be completed within 60 days of receiving parental consent for the evaluation.
2. Evaluations

- School districts must use a variety of assessment tools and strategies to gather functional, developmental, and academic information.
  - Must be in child’s language and mode of communication

- The child must be evaluated in ALL areas of suspected disabilities.

- Re-evaluations should be completed at least every three years.

- Parents have the right to request an independent educational evaluation (IEE) if they disagree with the results of the evaluation.
  - School must either agree and pay for the IEE or file for a Due Process hearing to show the assessment was appropriate.
3. IEP (Eligibility)

- Eligibility is decided once evaluations are completed.

- The **team, including the parent**, decides if the child is a “child with a disability,” as defined by IDEA. If the parents do not agree with the eligibility decision, they may ask for a hearing to challenge the decision.

- If the child is found to qualify under IDEA, he or she is eligible for special education and related services. The IEP team must develop an individualized education program (IEP) for the child.

- Before the school system may provide special education and related services to the child for the first time, the parents must give consent.
3. Individual Education Plan (IEP)

- Each student who qualifies must have an IEP.
- The IEP must be reviewed annually.
- Can be reviewed and revised more than once a year if needed.
- Extended school year (ESY) must be addressed each year.
- Parents are part of the IEP team and are part of the decision-making progress.
- District must provide written notice of IEP meeting.
3. The IEP

- The IEP must contain:
  - **Present levels of performance** - what level is the child on now?
  - **Objectively measurable goals** - where do we want the child to be in one year?
  - **Services and instruction** - How are we going to get there?
  - **Related services, modifications, and accommodations**
  - A statement about **Extended School Year (ESY)**

- Should be designed to offer meaningful progress in the child’s area(s) of need.
3. IEP: Related Services

- Services that may be required to assist a child with a disability to benefit from special education
- Examples:
  - Assistive Technology
  - Counseling and Psychological Service
  - Speech Therapy
  - Language therapy
  - Occupational therapy
  - Specialized transportation
3. IEP: Accommodations

- Allows students to complete the same assignment or school work as other students, but with a change in the timing, formatting, setting, scheduling, response and/or presentation. Accommodation do not alter in any significant way what the test or assignment measures.

- Examples:
  - Preferential seating
  - Reduced assignments
  - Extended time
  - Frequent breaks
  - Directions repeated/clarified
4. Least Restrictive Environment (LRE)

- To the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled.

- Special classes, separate schooling or other removal of children with disabilities may occur ONLY IF the nature or severity of the disability prevents the education in regular classes with the use of supplementary aids and services.
  - NOTE: Placement is a “set of services” provided to the student NOT a place for the student to go!

- Students should have access to same aged peers without disabilities.
Parents/guardians must be part of the team and are involved in:

- The development, review, and revision of the IEP
- Placement decisions
- Reviewing evaluation data
- Determining what related services and accommodations are needed
- Determining what data needs to be collected during evaluations
- Transition planning and services starting at age 14
6. Procedural Safeguards

- Set of rights created to protect the rights of children with disabilities and their parents.

- Includes all procedural rights of the student and the parent.

- Must be given with each IEP and evaluation.
6. Procedural Safeguards

- When Parents and school disagree:
  - **Mediation**
    - Request ESE mediation by submitting a completed Mediation Request Form to your local school district’s ESE office or to the Bureau of Exceptional Education and Student Services by fax at (850) 245-0953. You may also contact the Bureau at (850) 245-0475 with any questions.
  - **State Complaint**
    - Parents and other interested parties may file a written complaint alleging that a public agency has violated state or federal requirements regarding the education of students with disabilities or students who are gifted.
  - **Due Process hearing**
  - **Forms and information can be found at:**
    - http://www.fldoe.org/academics/exceptional-student-edu/dispute-resolution
Katie, please stop talking about IDEA...
What if the Child Doesn’t Qualify under IDEA

- If a student has a disability, but doesn’t need specialized instruction, they may be able to qualify for services under:

Section 504 of the Rehabilitation Act
What is Section 504?

- First civil rights legislation in the United States designed to protect students with disabilities from discrimination based on their disability status.

- Section 504 is part of the Rehabilitation Act of 1973 and was intended to prevent intentional or unintentional discrimination based on a person's disability.

- Grants equal access to persons with disabilities to any program receiving federal funding.

- School district must provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability.

- Requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled are met.
Section 504 states that:

“No otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” [29 U.S.C. §794(a), 34 C.F.R. §104.4(a)].
Who is an “individual with a disability”?  

- 504 defines an individual with a disability as any person who:
  - Has a **mental or physical impairment** that **substantially** limits one or more major life activity;
  - Has a **record** of such an impairment; or
  - Is **regarded** as having such an impairment.
Defining Substantial Limitation

- **Unable to perform** a major activity that an average person could perform.

**OR**

- **Significantly restricted** in the manner or duration of performance of major life activity when compared to an average person.
Major Life Activities

- Self care
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Breathing
- Learning
- Working
- Interacting with Others
- Reading
- Speaking
- Standing
- Sitting
- Thinking
- Concentrating
Under Section 504, a school district cannot:

- **Discriminate** on the basis of disability
- **Deny accommodations** and modifications
- **Deny access** to programs, facilities, or services
- Provide programs or services that are **not equal**
- Provide programs or services which are **not as effective** as programs or services for students without disabilities
- **Provide different or separate** services (unless necessary to provide equal opportunity)
Evaluations under 504

- The Section 504 requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education.
- This may be done with existing data and/or medical documentation.
Who makes the decision regarding a student's eligibility for services under Section 504?

- A **team** of persons, including the parents, determine if the student qualifies for a 504 plan. Team can be small.

- **Section 504 determinations** are based upon the child’s disability as it presents itself *without mitigating measures* (hearing aids, medications, learned behavioral adaptations).
  - Example: Suppose you have hired a tutor for your child with a disability, who helps him with homework 2-3 hours a day and helps keep his grades at A or B level. The tutor is a mitigating measure and it can not be considered.

- If a parent disagrees with the determination, he or she may request an independent evaluation.
If the child qualifies under 504, a written educational plan is developed which describes:
- The nature of the disability
- How it impacts a major life activity
- Documents the educational impact
- Describes necessary accommodations
- Documents the placement
  - Section 504 requires that students be placed in the least restrictive environment.
Accommodations under 504

- Services must be individually designed & provided so they meet the educational needs of students with disabilities.

- Services should be designed so that students with disabilities **have the same access to and benefit from all programs** as students without disabilities.
Related Services

• Schools must provide related services, as necessary, to students who are identified for Section 504.

• Unlike the IDEA, there is no educational need component in Section 504 in order to be eligible for related services.
  ○ So the only “service” a student identified under Section 504 may need is a related service.
Scenario of accommodations and related services

- Lauren is a 6th grader with a hearing impairment. She does not require special education, but has been identified under Section 504.

- As one of the accommodations in her Section 504 plan, Lauren’s teacher uses an FM auditory trainer system which transmits the sound of the teacher's voice through a lapel microphone directly to Lauren’s single hearing aid.

- Lauren would be given the accommodation of preferential seating.

- The 504 plan also includes audiology services. The school’s audiologist periodically provides indirect service by consulting with the teacher and Lauren, as well as checking the batteries and the settings of the system.
Section 504 requires districts to provide to students with disabilities health-related services, such as administration of medication, that must be performed during the school day to allow the student to benefit from his/her education.

When a district fails to address a student’s need for health-related services, it violates Section 504.

Examples of health related services a district must provide under Section 504:

- Allergies
- Multiple chemical sensitivity
- Diabetes
- Asthma
- ADHD
- Epilepsy
504: Participation in Extracurricular Activities

- Remember: 504 is a civil rights law; all about equal access.
- Students with disabilities receiving home instruction or homebound services have the right to participate in district-sponsored activities to the extent they are able to do so

Examples:
- A former high school student with cancer has the right to attend senior class events despite the district claiming he was “too sick” to attend
- A district can’t exclude a homebound student with depression, anxiety and PTSD from a graduation ceremony

Additionally
- Districts must ensure that students with disabilities who receive instruction in the home receive **timely notice** of extracurricular activities
504: Exclusion from Activities

Districts must supply the related aids and services necessary for a student to participate in a school program or activity, including, but not limited to:

- Field trips
- Ceremonies
- Graduation
- Band concerts
- Prom
- Yearbook photos
- Meals
- Recess periods

**KEY POINT**

Section 504 prevents schools from excluding a child from non-educational programs on the basis of his or her disability.
Facilities under 504

Must be as good:
Portable classrooms- if a student with a disability is placed in a portable classroom, that classroom could amount to a Section 504 violation.

Questions to Ask:
- Is the student secluded from his/her peers?
- Does the student have equal access to the gym?
- What the temperature like in the portable classroom?
- Is the student close to the cafeteria?
- Is the portable classroom over crowded?
- Is the portable classroom in some way deficient?
Filing a complaint

- Grievances can be filed with the Office of Civil Rights (OCR):
  - Must be filed within 180 days of the alleged discrimination
  - Can be filed even if the local district grievance procedures have not been exhausted
  - Prior to investigation, the school can attempt to make a settlement with the complainant
How do they interact?
## Dual Eligibility

<table>
<thead>
<tr>
<th>If you qualify for IDEA...</th>
<th>You are protected by 504 too.</th>
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<tbody>
<tr>
<td>• Students covered by IDEA are automatically covered by Section 504, but they cover two different things...</td>
<td>• IDEA designs and implement a special education plan (IEP) for a student with a disability, <strong>Section 504 protects them from discrimination.</strong></td>
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Dual eligibility cont....

IDEA (procedural):

- School has the affirmative duty to provide an appropriate individualized education.
- Acknowledges that students with exceptionalities are different & may need to be treated differently to succeed.

§504 (civil rights):

- School has the duty not to discriminate against a student based on their disability and must provide equal access to education.
- Acknowledges that exceptional students should be treated the same (and equally) as any other student.
Picture, please!

All students in the District

Students with impairments

504
Impairment substantially limits, needs accommodations

IDEA
Needs specialized instruction
IDEA looks at individual progress:

- Is the student making meaningful progress?
- Is the student living up to his/her own potential?
- Are the student’s accommodations sufficient to minimize the student’s disability?
Section 504 makes sure nobody gets left behind:

- Special education and related aids and services must be implemented by any appropriate means, including, but not limited to an IEP.
- The accommodation plan must be created in such a way that the student’s educational needs are met as adequately as the needs of their non-disabled peers.
- Key: The goal of Section 504 is to place the disabled student on a level playing field with that of the student’s typical non-disabled peers.
You may be protected by both laws, but you only get one plan.

You can't have both an IEP and a 504 plan, so you must incorporate them.

Example:

- A student has an IEP for a specific learning disability, but also suffers from a peanut allergy
- Though a peanut allergy is not usually included in an IEP, it can be.
- If the (already created) IEP did not include the peanut allergy, the student is still protected under Section 504.
One important difference: Communication

IDEA:

- An IEP could mention auxiliary aids and services though it is not required to do so.
- Auxiliary aids and services are only necessary to provide the student with FAPE unless:
  - The school can prove that a different auxiliary aid or service is as effective in meeting the student's communication needs.
  - The school can prove that the aid or service would result in a fundamental alteration.
  - And undue financial/administrative burden.

§504:

- Schools must, without charge, ensure that communication with students with disabilities is as effective as communication with students without disabilities.
- The school must provide the aid or service requested by the parents.
A word about discipline (504 and IDEA)

- Under Section 504, cumulative short-term suspensions exceeding 10 days within a school year may constitute a significant change in placement prior to which an Manifestation Determination meeting must be conducted.

- In determining whether the suspensions constitute a significant change in placement, OCR considers:
  - 1) Whether the behavior involved substantially similar misconduct;
  - 2) The length of each suspension;
  - 3) The proximity of the suspensions to one another; and
  - 4) the total amount of time the student was excluded.
So...whose job is it to find students with disabilities and help them?
This is not Child Find…

“Before we discuss some of Bradley’s issues, the superintendent is willing to offer you $25,000 to move out of the district.”
Then, what is Child Find?

- Child find is the district’s **affirmative** duty to identify all students with a disability in need of special education and related services.

- This duty exists under both The Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act.
• Requires all children with disabilities in need of special education and related services to be identified, located and evaluated.

• Children who are evaluated must be evaluated "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities."

• Created to ensure that all children with disabilities have available to them a free and appropriate public education.
Child Find

- Child find is an affirmative, ongoing obligation

- Although a parent can initiate a request for an initial evaluation, child find is the school’s obligation

- Parental failure to request identification or evaluation does not relieve a school district of its obligation

- Parental failure to sign a consent form for an evaluation does not relieve a district of their duty to evaluate
The district should suspect a disability if...

- A student is evaluated and does not qualify for special education services under the IDEA
- A guardian expresses concern about the child’s performance
- Retention is being considered, poor grades/decline in grades
- When a student does not respond well to RTI or other interventions
- Student returns to school after a serious illness, injury, or hospitalization
- Student misses school due to a chronic health condition
- When a disability of any kind is known or suspected
The district should suspect a disability if...

- A pattern of behavioral issues as evidenced by referrals, suspensions, and recommendation for expulsion
- Medical diagnosis given verbally or in writing to anyone at the school
- Issues with relating to peers
- Indicators of depression or withdrawal
- Poor assessment scores
- Truancy/attendance issues
- Student transfers from another district with a Section 504 plan or parent indicates there is one
- A nursing record reflecting frequent trips to the school nurse
Katie...
Homestretch!

Ten Things Every Foster Parent Advocate Needs to Know
1. How to Prepare for an IEP Meeting

- Notify the school that you are attending the meeting.

- Ask for all the documents prior to the meeting:
  - Any IEP’s, Functional Behavioral Assessments, and Behavioral Intervention Plans for the past two years
  - Draft IEP for the upcoming meeting
  - Reports included in the behavior file

- Bring those documents to the meeting.
2. Who Attends the IEP Meeting?

- Parent
- Special education teacher
- General education teacher
- Any teacher who has the student in class
- Any specialist working with the student
- School psychologist, if they are discussing an evaluation
- School administrator (“this person may stand in the place of an attorney”)

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3. During the IEP Meeting

- Ask who will be taking notes and request the note taker to be specific and read their notes at the end of the meeting.

- Begin the meeting by reviewing the student’s present levels of performance:
  - Grades; teacher reports; evaluation results; state testing; medical records; discipline file; parent concerns; specialist reports (ex. Speech Language therapies, occupational therapist, physical therapist); related services professionals (transportation, counseling, and social worker)

- After reviewing the present levels of performance review the IEP and make changes based on the current present levels.
During the Meeting Con’t.

- Take your own notes.
  - Write down your concerns and questions.
- Ask questions and express your concerns.
- When the notes are read, make corrections if needed.
- Everyone signs the IEP.
- Both the parent and attorney should receive a signed copy of the IEP.
4. The IEP is a Contract

- The IEP is a *binding contract*. What is on the IEP at the end of the IEP meeting is a *legal document*. Whatever isn’t in writing doesn’t matter!

- Conversations, promises and agreements are only worth the paper they’re written on.

- If the team agrees to something, have them put it in the IEP. If they say it “isn’t necessary”, have them put it in the notes.
  - If they refuse, ask why.
  - Remind them that the notes are the “minutes” of the meeting and if something happened, it should be reflected in the notes.
  - If they still refuse, ask them to put the refusal in the notes.
5. Meeting Notes

- The minutes of the meeting should be taken by someone from the school district.
  - You may take your own notes, but they will not carry much legal weight.
- Explain that you will be reading the notes at the end of the meeting, and cover the following:
  - Who will be taking the notes
  - Ask that they be specific
  - Ask that all discussions be included.
  - If they aren’t typing as you go along, ask to read the notes up until that time.
- Ask that the notes be included. They can be placed in the special factors section of attached at the end of the IEP. Make sure that the copy you receive is stapled to the IEP.
- If the notes are not correct, ask that they be corrected to revise what was actually discussed and decided.
- If they decline, remind them that you are only asking for them to memorialize what actually occurred at the meeting.
- Don’t let them off the hook. If they still refuse, ask them to put the refusal in the notes.
6. Bring a Friend

- You have the right to bring anyone who has knowledge of the child and can offer an opinion.
- You can not be limited to just one person
- It is courteous to advise the school in advance of your intention to bring someone.
  - Possible invitees:
    - Relative
    - Friend
    - Advocate
    - BCBA
    - Healthcare worker
    - Therapist

- If you are not bringing an attorney, they should not have an attorney present. If they do, ask them to leave, explaining that you feel intimidated by their presence. Put it in the notes.
7. Time is on Your Side

- There is NO time limit to IEP meetings.
- If they try to rush you, skip over discussions, mention that certain staff will have to leave, ask to stop and reschedule.

**PARENT PARTICIPATION IS THE MOST IMPORTANT PART OF THE IEP MEETING.**

- Common reasons for rushing:
  - Union contract
  - Other meetings/appointments
  - “This has already been discussed”
8. Make a Paper Trail

- Save all of your documents.
- Put them all in one place.
  - File folder
  - Big envelopes
  - Dedicated drawer
- Try to keep them in order.
- Remember, if you don’t have it on paper, it never happened!

- Do all communication either through emails or a communication log.
  - If you do a communication log, make copies of it. You can ask the teacher to copy it for you if necessary.
- If you do have a phone conversation, ALWAYS email afterwards thanking them for the conversation, including what was discussed.
  - “Thank you for speaking to me today about Mikel’s problems with behavior. It made me happy that you offered to contact the behavior team.”
  - “Thanks for calling me today. I had no idea that Shari was having such a hard time with math. Could you let me know when we can meet to discuss that evaluation we talked about?”
- If you get an email with wrong information in it, reply with a correction.
- If your child reports something concerning to you, put it in an email to the teacher. CC it to the Principal.
- ALWAYS be polite in email. If you ever end up in a Due Process, you will likely see them again.
9. In the Good Ol’ Summertime

- Extended School Year (ESY) = Summer School

- You have the right to one meeting per year to discuss ESY. The district MUST hold this meeting.

- ESY is available to ALL children with disabilities based upon the needs of the child.

- Certain categories of children are NOT excluded, nor does the child have to have a “low IQ”, have failing grades or be on “access points”.

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The following are things to be considered in determining the need for ESY:

- Regression
  - Does the student lose more skills than the typical student over extended breaks.
- Critical stage of development where a skill could be lost
- Significant difficulty/inability in meeting IEP goals.

All of this information can be found in the Present Levels of Performance section of the IEP.

Make sure that the Present Levels reflect need for ESY.
10. You have the power; don’t be afraid to click your heels.