



GARRETT HEMANN ROBERTSON PC

Special Education: Rules & Resources for Administrators "From Placing to Placement"

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Section 1 - Placing: Child Find, Eligibility Issues

- Processes in place are critical
 - Incoming: look for eligibility issues, parent concerns in documentation and ask questions
 - Timing:
 - Process must identify when to evaluate, provide procedural safeguards
 - Do not place or provide SDI prior to identification, becomes procedural violation



Section 2 - Process: Procedures and Substantive Requirements

- IEP Team Members
- Required IEP Team Members
- FAPE
- General Components of IEP



IEP Team Members

- Parent(s) of the child
- Regular education teacher (very rare for regular education teacher not to be included)
- Special education teacher
- District representative (ensure services)
- Interpreter of evaluations
- Other who may have knowledge of the student
- The student, whenever possible
- Can have multiple roles in one team member



Failure to Include Required Team Members

- Failure to include required team member may be fatal to valid IEP. *S.B. v. Pomona Unified Sch. Dist.*, 50 IDELR 72 (C.D. Cal. 2008) (regular ed. preschool teacher); *M.L. V. Federal Way S.D.*, 42 IDELR 57 (9th Cir. 2003)(Reg. ed. teacher)
- Certain school staff may be excused from IEP meeting after written consent from parent.
- Parental participation in IEP meeting is required unless parent elects to not attend.



District Representative

- Required member of IEP team
- Qualified to provide or supervise services
- Knowledge of curriculum and resources
- Authorized to make decisions, commit resources



Excusal from IEP Meetings

- Parent and district agree to absence in writing
- Absentee can provide input prior to meeting
- Agreement does not constitute consent
- Educator, if excused, does not require replacement
- No specific timelines are required, but 10-day is best
- IEP can be declared void if proper members are not present



Key Components to FAPE

- It is non-negotiable—it must be provided
- Special education and related services
- Provided at public expense, without charge
- Services provided in conformity with IEP
- Individualized per unique needs of student
- Available to all children ages 3-21
- Includes children suspended or expelled



Free and Appropriate Public Education

Key Points:

- The “Rowley” Two-Part Test
 - Procedural compliance
 - Educational benefit?
- “Cadillac” versus “Chevrolet”

Measurement of FAPE:
some meaningful
educational benefit



IEP Overview

- IEP as cornerstone of IDEA
- Describes educational needs of student
- Includes specially designed instruction
- Designates related services
- Developed by a specific team of individuals
- Serves as a commitment to provide services
- No guarantee of student achievement
- Districts can be held to oral agreements



IEP Implementation

- Must be in effect at beginning of school year
- Transfer IEPs must also be implemented per FAPE
- IEP accessible to teachers, service personnel
- Staff may need specific training per an IEP.
- Interim IEP can be used, but not encouraged.



General Components of IEP

- | | |
|---|--|
| <ul style="list-style-type: none">▪ Present Levels of Academic Performance<ul style="list-style-type: none">▪ Strengths and weaknesses▪ Where is student right now with problem?▪ Statement of Goals<ul style="list-style-type: none">▪ What growth do we want to see in a year's time? | <ul style="list-style-type: none">▪ Method of Measuring progress toward Goal.<ul style="list-style-type: none">▪ How we will know student is progressing.▪ If no way to measure progress toward goal, IEP is deficient.▪ If you don't know what goal means you can't measure progress. |
|---|--|



General Components of IEP

- What specially designed instruction?
- What related services?
 - Speech services
 - Transportation
 - OT/PT
 - Assistive Technology
- Supplementary Aids and Services
- How much participation in general education
- Time, place and duration of services
- Transition Services



Timelines to Remember

- Evaluation (60 school days): District has 60 school days to complete evaluation and eligibility process from date of referral.
- IEP development (30 school days): District has 30 school days to develop an IEP following eligibility determination.
- Update IEP (Annually): IEP is good for 1 year.
- Suspensions for 11+ days: Considered a change in placement requiring an IEP meeting.
 - Count 1/2 days
- Student Records Request: 45 days to provide.



Section 3 - Participation Issues

- Bullying and Harassment
- Restraints / Seclusion



Under Section 504, IDEA, disability is a protected class

1. Bullying of student on the basis of disability is “harassment” prohibited under federal law
Federal law standard is “deliberate indifference;” required to take affirmative steps to appropriate address bullying and harassment.
2. Bullying/harassment of students may also have impact on participation for 504, FAPE



Section 504, IDEA

3. Should address within 504 Plan/IEP
4. Look for impact on educational environment for student
5. Social goals, accommodations (contact person, walk through situations, address perspectives, problem solve with staff
6. Disability may affect perceptions, address as part of IEP



Bullying and FAPE

Bullying may be an issue of FAPE or private placement if it “reaches a level where a student is substantially restricted in learning opportunities [he or she] has been deprived of FAPE.”



Least Restrictive Environment

- FAPE must be provided in the LRE
- To the maximum extent appropriate, disabled students are to be educated with their non-disabled peers
- LRE applies to both academic and nonacademic settings (i.e. recess, meals and other activities)
- Must be a continuum of alternative placements available to meet needs



LRE

Special classes, separate schooling or the removal of disabled students from the regular education environment occurs only if:

- The nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily
- Many factors to take into account, including effect on other students
- Partial days: data, document, update, end



Procedural Safeguards for Parent

- Opportunity to examine educational records of student;
- Opportunity to **meaningfully participate** in IEP and placement meetings;
- Prior written notice of decisions made about evaluation and placement of student.



Procedural Safeguards for Parent

- Independent Educational Evaluation if parent disagrees with district evaluation
- An opportunity to mediate disputes
- Right to file a due process complaint and have an administrative hearing
- Right to a resolution session upon filing of due process request



Parental Participation at IEP

- Participation is not required, but efforts must be made to include them whenever possible
- Meetings can be held in parents absence, but...
- Parents are viewed as first on the list of participants
- IEP notice is required, grant parents sufficient time
- If no attendance, attempt contact and record attempts.
- Parents are "equal", but do not hold "veto" powers



Meaningful Participation

- Consideration of parent's suggestions
- Notice of the meeting and participants
- Interpreter for parents if necessary
- "Parent" is broadly defined
- No veto right



Behavior Intervention Plan

Behavior Addressed

- Anger management
- Impulse control
- Pro-social relationships with other students
- Work avoidance
- Frequently falling asleep
- Any repeated behavior that interferes with teaching and learning

Denial of FAPE

- Failure to develop a BIP based upon a functional behavior assessment
- Failure to implement a BIP by school staff
- Developing an inappropriate BIP



Restraints

Address all students, not just special ed:

- Restraint only permissible if it is a reasonable threat of imminent, serious bodily injury to the student or others; and less restrictive interventions would not be effective
- Training of staff
- Continuous monitoring of situation
- Reporting



Restraint and Seclusion: OAR 581-022-0550 through 0566

- Revisions (again) July 2014
- **Prohibits** chemical, mechanical or prone restraint (as defined)
- Use of physical restraint or seclusion **prohibited unless**:
 - Behavior imposes reasonable threat of imminent, serious bodily injury to the student or others **and**
 - Less restrictive interventions would not be effective



Seclusion

NO SECLUSION CELLS

Seclusion now defined as: involuntary confinement of a student "alone in a room from which the student is physically prevented from leaving"

Guidance: staff standing in a doorway, preventing from leaving IS seclusion. Inside room with student, not seclusion.

IF it is not a seclusion (not alone in room), then it should be reported as a restraint.

ODE Guidance: Can also be a "designated area" seclusion if student is kept in an area secluded within a room with staff on the outside preventing the student from leaving.



Not Seclusion

- If the student is removed for a short period of time to regain self-control, but is not prevented from leaving the room.

Make it clear to staff/student that the student can leave the room or area when he/she wants to leave.



Standards for Seclusion Rooms

- Part of structural integrity (no cells or freestanding units), minimum of 64 sq.ft. and 7 feet or more between adjacent walls
- Not isolated from staff
- Requirement for door, window
- Requirements on ventilation, no unattached furniture or exposed wiring, etc.
- Can't climb up a wall



Section 4 – Protections for Disciplinary Process

Revisions to regular ed disciplinary process:

- Must limit the use of expulsion to the following circumstances
- Conduct that is a threat to health or safety of students or employees
- When other strategies to change student conduct have been ineffective; or
- When the expulsion is required by law; **and**
- Must require consideration of the age of a student and the past pattern of behavior of a student prior to imposing the suspension or expulsion of a student

HB 2192: New Expulsion Requirements

▪ Line up behavior issues/discipline with HP 2192:

Limit expulsion to the following circumstances:

- Conduct that poses a threat to the health or safety of students or school employees;
- When other strategies to change student conduct have been ineffective; or
- When required by law (weapon, drugs)

HB 2192 Policy Changes

- Address behavior that is a threat
- System of consequences designed to correct student misconduct
- Remove student from classroom setting if threatens injury or property damage
- Provide setting with immediate attention
- Require school to obtain evaluation by licensed health care provider prior to return to school (10-day limit)

Manifestation Determination

- If student's conduct is a manifestation of student's disability, student may not be suspended more than 10 days or expelled.
- Conduct must be caused by or bear a direct and substantial relationship to the disability; or
- Conduct was a direct result of district's failure to implement IEP.



Counting Days

- For the purposes of counting suspension or expulsion days, 34 CFR 300.11 provides the following definitions: (i) a day means a calendar day; (ii) a school day means any day including partial days that students are in attendance at school for instructional purposes; and (iii) a business day means Monday through Friday except for federal and state holidays.
- Oregon law: Count half days 581-015-2405(3)(a), (b)



Suspension of SPED Student

- Every time a regular ed. teacher removes a SPED student from class, this potentially triggers a change of placement for special education purposes.



Suspensions over 10 days =

- Change of Placement
 - Requires IEP meeting
 - Is there a BIP?
 - If not, should there be?
 - Is the student's conduct a manifestation of disability?
- Suspension over 10 days without IEP meeting is a denial of FAPE.
 - No placement decision by IEP team
 - No parental participation
 - Failure to provide services per IEP



Pattern of Removals

- A series of removals may constitute a pattern for the purposes of a change in placement based upon the similarity of the behavior and the various individual suspension periods.
- An in-school suspension does not count as a disciplinary removal under certain circumstances so long as the student is able to continue to participate in general curriculum and receive his or her IEP services.



Children "Not Yet Eligible"

- Procedural safeguards IF:
 - In evaluation process or "prior knowledge"
 - "Knowledge:" Parent requested evaluation, parent expressed concern in writing to school, teacher, or school personnel expressed concern to SPED director or supervisor
 - Exception: Parent denied evaluation or consent



Interim Alternate Education Setting (IAES)

- Up to 45-school day removal, without MD for:
 - Drug or weapon violation
 - Serious bodily injury
- Change of placement, district determines IAES, procedural safeguards to parents



Section 5 – Placement

- Outline
 - Standard
 - Parent Rights; District Decision
 - Partial Days



Remedies for Denial of FAPE

Under IDEA

- Compensatory education (additional hours of special education services)
- Reimbursement of private educational expenses (tutoring, private school tuition)
- Training of staff

Under Section 504

- This is an anti-discrimination statute.
- General damages
- Injunctive relief
- Personal liability for staff who intentionally discriminate against disabled student



Common Mistakes

- Regular ed. teacher who does not read necessary portion of student's IEP
 - "I have never seen the IEP"
- Improper/embarrassing notes or email messages to parents or about parents
 - Crazy parent
 - Someone not doing their job
 - Personal issues
- Failure to implement accommodations/modifications.



Common Mistakes

- Services don't match those required in IEP
 - Do the minutes of specially designed instruction add up?
- Signatures obtained after an IEP meeting from people who did not actually attend the meeting
- Failure to adhere to IDEA timelines
- Failure to follow procedures related to discipline



Section 6 – Parent Disputes

- Proactive
 - Respond to issues, complaints
 - IEP meetings to address key issues
 - Use your experts
 - Document your efforts
- Reactive
 - Mediation through ODE
 - Agreements enforceable in court
 - Complaints
 - Due Process



Contact Us

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