
Special Education: The Rights & Responsibilities of Parents

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“EDUCATION”



- **F**REE
- **A**PPROPRIATE
- **P**UBLIC
- **E**DUCTION





FREE



- NO CHARGE TO
- STUDENT OR HIS FAMILY
- PARENTS OR GUARDIAN
- PARKS V. PAVKOVIC:

“FREE MEANS FREE”
- IRRELEVANT WHO’S PAYING



APPROPRIATE

- ROWLEY CASE: ACCORDING TO EACH STUDENT'S UNIQUE NEEDS
- THE FACTS OF ROWLEY



PUBLIC

- PROVIDED

- OR--

- PAID FOR

- BY--



- A PUBLIC SCHOOL DISTRICT

(LOCAL EDUCATION AGENCY “LEA”)





EDUCATION



THE ROWLEY CASE – ESTABLISHING EDUCATIONAL BENEFIT

- Standard for Special Education Services – “Some educational benefit”
 - Not the MAXIMUM, not the bare minimum
 - Not a “Cadillac,” just a serviceable “Chevy.”
- Two-Prong Legal Analysis
 1. PROCEDURAL: Has the district complied with the procedural requirements of the Act?
 2. SUBSTANTIVE: Is the IEP “Reasonably Calculated” to confer educational benefit?





EDUCATION



- Disability category should NEVER drive services
- IEPs must be individualized – Districts must NEVER state that they provide “set” services or that they “don’t provide” a requested service.
- “Consider” all requests – Even under Lachman



PRACTICAL APPLICATION OF SPECIAL EDUCATION LAW



The Process of Obtaining Special Education Services

- Child Find responsibilities – affirmative duty
- Referral for initial Case Study Evaluation (CSE)
 - May be made by a parent, employee of school district, ISBE, another State agency, or a community service agency
 - RTI does not delay district's need to respond to a parent request for CSE



The Process of Obtaining Special Education Services

- District has 14 days to respond to parents requesting case study evaluation
 - Parents can request a due process hearing to contest district's refusal to conduct CSE
 - If District agrees, parent must sign consent for evaluations (domain meeting)
 - Date parents sign starts the 60 school day timeline



Is a Denial of a CSE Justified?

- Grades
- Behavior
- Peer relationships
- Emotional well being
- Attendance
- Home Issues
- Court Involvement
- Drug and Alcohol Issues
- Hospitalizations



Is a Denial of a CSE Justified?

Medical diagnosis has to constitute a disability under the IDEA , mere medical diagnosis does not qualify)(Alopecia Areata). Bloom Township HS Dist. 206, 112 LRP 21291 (April 23, 2012).

“Educational performance” means more than a child’s ability to meet academic criteria. It must also include reference to the child’s development of communication skills, social skills, and personality, as the Code, itself, requires. 34 CFR 300.533(a)(1); Mary P. v. ISBE, 919 F. Supp. 1173 (N.D. Illinois 1996).

Truancy does not automatically exclude special education. Emotional disturbance should be evaluated independently.

Drug and Alcohol Issues: Can be self-medication of underlying emotional issues.



The Process of Obtaining Special Education Services

- Conference is then held to determine eligibility
- If eligible, an IEP is written for the child within 30 days of eligibility determination
- Initial placement decision made
- School must wait 10 days before placement and services are made (parents can waive this waiting period)



Least Restrictive Environment

- What is LRE?
- What is the range of educational placements?
- Mainstreaming? Inclusion? Is it required? When?
- What is the test according to the 7th Circuit?



7th Circuit Test

- “The Act itself provides enough of a framework for our discussion; if Beth's education at Lake Bluff Middle School was satisfactory, the school district would be in violation of the Act by removing her. If not, if its recommended placement will mainstream her to the maximum appropriate extent, no violation occurs.”



Satisfactory?

- Time in class
- Progress in goals
- Where is learning occurring
- Behaviors
- Accessing curriculum/mainstream environment



TDS vs. Home School

- Can the student's needs be met in the mainstream (home school) setting, i.e. will they get a satisfactory education?
 - What benefit will the child receive from access to non-disabled peers
 - Can they access that benefit
 - What level of related services does the student need



TDS vs. Home School

- Does the district have the appropriate educational services to meet the students needs (life skills, multisensory classes, autism services)
- If already in special education, have they met their goals and objectives
- Private evaluations? Recommendations?
- Discipline, attendance (school refusal anxiety)
- In school stronger evidence than out of school...



How Do You Define Progress?

Making Sure the IEP is Implemented as Planned

Goals must be measurable

Progress updates

Annual reviews

Reevaluations

Drafts of reports/goals

School Observation



Measurable? Goal

Present Level of Performance: Jimmy struggles in class with focusing and appears sad. He doesn't have relationships with peers and at times will put his head down on his desk.

Goal: Jimmy will improve his self-esteem and classroom functioning throughout all areas of school.



Measurable

- Present Level of Performance: What is being measured. What is the starting point. Answer these kinds of questions: how many times, what period of time, how many prompts.
- Goal: Where do we end up.
- Benchmarks: Incremental steps to be reached on the way to the annual goal.



A Better Goal

- PLEP: During reading, Jimmy is off task for 60% of the class period by either putting his head down or leaving the room for a drink or to use the bathroom.
- Goal: Jimmy will be on task for 90 % of reading class, as measured by school social worker during observation.



Practical Aspects of Writing Defensible IEPs

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IEP: Individualized & Personalized

- The “I” in IEP stands for individualized. This means that the document must be individually and personally tailored to meet the identified needs of the student with a disability. In order to grasp and translate the full meaning of the term individualized into the IEP document, the document’s author(s) must have a full and complete understanding of the comprehensive case study evaluation.



The IEP is Four Things

- The IEP is at least four things:
 - 1) It is a management document that sets forth what resources the school district will make available to the student;
 - 2) It is a communication document, which clarifies which the student is entitled to based on the exceptional needs identified in the case study evaluation;
 - 3) It is an accountability document, which specifies the individualized goals, benchmarks or short-term objectives, objective measures of progress toward goal attainment, and the schedule for measuring and reporting goal attainment progress.
 - 4) It is a record of a meeting.



Anatomy of an Instructional Objective

- Who?
- Will do?
- What?
- How well?
- Under What Conditions?



IEP GOALS: SMART CRITERIA

- A quality IEP should meet the SMART criteria:
 - Specific goals and benchmarks or short-term objectives.
 - Measurable goals and benchmarks or short-term objectives.
 - Attainable goals and benchmarks or short-term objectives.
 - Relevant goals and benchmarks or short-term objectives.
 - Trackable goals and benchmarks or short-term objectives.



The Process of Obtaining Special Education Services

- Annual review of IEP
- Three year re-evaluation
- Transfer Students
 - Must provide comparable services until the district adopts prior IEP or develops, adopts and implements a new IEP



Working with Parents and School Reps to Prevent and Resolve Disputes

Do not allow anger to cloud better judgment – IT USUALLY ISN'T PERSONAL!!

Creative ideas to reduce tension - Change contact people

Listening

Communication

Neutral third party evaluator

Mediation



Special Education Discipline

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Hypothetical

Jimmy is a nine-year-old high functioning student diagnosed with Autism who is currently placed in a cross categorical classroom at his home school. This morning, he got into an argument with another student, grabbed a scissors, and pointed it in a fit of anger. When the teacher intervened, Jimmy head-butted her and knocked her backward.



Hypothetical #1

- Can Jimmy be excluded from class tomorrow?
- Can Jimmy be unilaterally removed his placement on a permanent or temporary basis?
- If not, what steps should be taken by the school district?



Special Education Discipline

IF BEHAVIOR IS RELATED TO DISABILITY:

- HONIG V. DOE
- ONLY TWO WAYS TO EXCLUDE:
 - PARENT PERMISSION
 - COURT ORDER



EXCEPT FOR:

- *WEAPONS*
- *DRUGS*
- *SERIOUS BODILY INJURY*
- *“SUBSTANTIALLY LIKELY” TO*
- *CAUSE INJURY TO SELF OR OTHERS*



SOME DEFINITIONS

“WEAPON”

WEAPON, DEVICE, INSTRUMENT, MATERIAL, OR SUBSTANCE, ANIMATE OR INANIMATE, USED FOR, OR READILY CAPABLE OF, CAUSING DEATH OR SERIOUS BODILY INJURY, BUT DOES NOT INCLUDE A POCKET KNIFE WITH A BLADE UNDER 2.5”

“DRUGS”

A CONTROLLED SUBSTANCE, UNLESS LEGALLY POSSESSED AND UNDER THE SUPERVISION OF A LICENSED HEALTH CARE PROFESSIONAL

“SERIOUS BODILY INJURY”

SUBSTANTIAL RISK OF DEATH, EXTREME PAIN, PROTRACTED AND OBVIOUS DISFIGUREMENT, OR PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODILY MEMBER, ORGAN OR MENTAL FACULTY



SCHOOL DISTRICT REQUESTS AN EXPEDITED HEARING TO SHOW:

1. *PRE-IAES PLACEMENT SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO PUPIL OR OTHERS*
2. *THE IAES PLACEMENT IS APPROPRIATE*
3. *DISTRICT HAS MADE REASONABLE EFFORTS TO MINIMIZE THE RISK*
4. *THE IAES ALLOWS THE STUDENT TO*
 - A. *PARTICIPATE IN THE GENERAL CURRICULUM*
 - B. *CONTINUE TO RECEIVE ALL IEP SERVICES INCLUDING MODIFICATIONS TO ADDRESS THE BEHAVIOR IN QUESTION*



Special Education Discipline

- Does the offense involve drugs or weapons?
- Did the student inflict serious bodily injury?
- Are there behaviors that are dangerous to self or others?

IF THE ANSWER TO ALL THESE QUESTIONS IS NO, AND SCHOOL IS SEEKING AN EXPULSION, THEN NEED TO HOLD MDR



MDR – FBA – BIP REFRESHER

MDR REQUIRES:

- ✓ TEAM OF PEOPLE
- ✓ KNOWLEDGEABLE ABOUT STUDENT
- ✓ PLUS PARENTS
- ✓ MUST MEET
- ✓ TO DETERMINE “RELATEDNESS”



REQUIREMENTS FOR “RELATEDNESS”

- ✓ *CAUSED BY THE DISABILITY – or*
 - ✓ *DIRECT & SUBSTANTIAL RELATIONSHIP TO IT*
- OR-**
- ✓ *CONDUCT WAS “DIRECT RESULT” OF THE DISTRICT’S FAILURE TO IMPLEMENT THE IEP*



IF THE ANSWER TO EITHER QUESTION IS YES

- ✓ *STUDENT CANNOT BE EXPELLED;*
- ✓ *FUNCTIONAL BEHAVIORAL ASSESSMENT MUST BE GENERATED, or, if one exists,*
- ✓ *THE BEHAVIORAL INTERVENTION PLAN MUST BE REVIEWED AND MODIFIED ACCORDINGLY*



WHAT IS AN FBA ANYWAY?

- *PROCESS OF GATHERING INFORMATION*
- *ABOUT FACTORS THAT RELIABLY PREDICT PROBLEM BEHAVIOR*
- *FOR THE PURPOSE OF DEVELOPING AN EFFECTIVE BIP*



IN OTHER WORDS YOU ARE LOOKING FOR

- BEHAVIOR AND ITS ANTECEDENTS
- *THAT REPRESENT THE CHILD'S UNSUCCESSFUL ATTEMPT TO RESPOND TO THE ENVIRONMENT, such as*
- *“YELLING AND SCREAMING IS ONE WAY TO GET ATTENTION”*
- YOU ARE NOT LOOKING FOR “INVISIBLE FORCES” WITHIN THE STUDENT



REMEMBER:

***NO INTERRUPTION
OF IEP SERVICES
FOR ANY REASON***

(EXCEPT FOR THE 10 DAYS, OF COURSE)



QUESTIONS?

**THANK
YOU!**



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