Special Education Leadership Development Academy (SELDA)

November 15, 2023

November SELDA Attendance

SELDA
NOVEMBER 15, 2023

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IDEA: SPECIAL EDUCATION LAW 101

INITIAL EVALUATION

INITIAL EVALUATION

- Each LEA must conduct *a full and individual initial evaluation* before the initial provision of special education and related services.
- Either a parent of a child *or the school district* may initiate a request for an initial evaluation to determine if a child is a child with a disability.
- Initial evaluations must be completed within *60 calendar days* of receiving parental consent for evaluation.
- Remember holiday periods and other circumstances when children are not in attendance for five consecutive school days shall not be counted toward the 60-calendar day timeline, including the weekend days before and after such holiday periods.

34 C.F.R. § 300.301; SBOE Rule 160-4-7-.04(1)(IDDF(04))

WHAT DOES “EVALUATION” MEAN UNDER IDEA?

- The IDEA defines "evaluation" to mean the procedures used to determine whether a child has a disability and the nature and extent of the child's need for special education and related services. Those procedures must comport with the requirements set forth at 34 C.F.R. 300.304 through 34 C.F.R. 300.311-33.315.

- Can we explain this process and the difference between an evaluation under IDEA and any other assessment that may be requested by the parent?
- What is NOT an evaluation?

EVALUATION PROCEDURES

NOTICE

- Provide notice (prior written notice as defined by 34 C.F.R. § 300.503).
- 34 C.F.R. § 300.304; SBOE Rule 160-4-7-.04(4)(IDDF (4)(4)).

TOOLS

- Use a variety of assessment tools and strategies that may assist in determining:
- Whether the student has a disability as defined by IDEA;
- The content of the child's IEP.

EVALUATION

- Do not use any single procedure as the sole criterion.
- Use technically sound instruments.

EVALUATION PROCEDURES, CONT.

VALID	Additional procedures exist for ensuring tests are not discriminatory, provided in a child's native language/communication, used for the purposes created, are valid and reliable, are administered in accordance with instructions, tailored to assess specific areas of educational need and administered by trained and knowledgeable personnel.
COMPREHENSIVE	Ensure that the evaluation is… "sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category…" How is this determined? Is there a meeting? A checklist?
DEFENSIBLE	Ensure that the evaluation is compliant with all procedures for the District and within the timelines. How do you calendar these deadlines?

FROM THE TRENCHES

Many districts have an initial meeting with the teachers and parents to document all concerns. This helps guide the evaluation but also documents that certain concerns were not raised at the inception of the evaluation.

Observation-only evaluations may be problematic (OT, PT, AT, etc.).

Plan evaluations as though you are going to due process –Are you conducting sufficiently thorough testing? Are all areas of concerns addressed? Are these recommendations in the evaluation necessary, where did they come from?

WHEN DO WE HAVE TO EVALUATE?

JZ, ET AL., V. CATALINA FOOTHILLS SCHOOL DISTRICT, 83 IDELR 62, (MAY 4, 2023)

- Student had been in hospital for suicidal ideations during his 9th grade year.
- The Summer prior to 10th grade the parents requested an "IEP meeting"
- The District reviewed the private evaluation with diagnoses of the following: Cannabis Use Disorder, MDD, Social Phobia, and ADHD.
- The Student did not attend school while the District was deciding whether to evaluate.
- During this time, the Parents enrolled the Student in a residential treatment high school out of state.
- The District's SST Team determined he did not need to be referred to special education. This decision was not provided in a PWN until this refusal was "appealed."
- The Psychologist did not share with the SST Team the hospitalizations, but the results of the battery of assessments in the private evaluations.

Parents paid for another evaluation with the diagnoses of : Generalized Anxiety Disorder, Persistent Depressive Disorder, Attachment-Related Disorder, ADHD, Cannabis Use Disorder, ODD, and Personal History of Self-Harm.

The Parents then sued the District for Failure to identify (Child find), Failure to evaluate and FAPE.

The ALJ also addressed whether the Student needed residential placement and whether compensatory education was necessary.

The ALJ found the violate IDEA. The grades, tests scores and behavior in class did not support that the Student was "struggling." He was supported by a Section 504 plan.

The ALJ also determined that the District did not violate parent participation for the decision made not to evaluate the Student because IDEA rights do not start until the Student has been determined eligible for services.

District did not.

ALJ DECISION

ALJ (CONT.)

- The ALJ concluded that the District did not have an "obligation to accept every parental request and may not adopt an inappropriate program only to quell insistent parents.“
- The District did not have to pay for an IEE because the parents never asked for one…(the District did not agree to evaluate in the first place.)
- The ALJ found that when Parents submitted their special education evaluation request to the District, through and up until Student was withdrawn, the Student was not eligible for special education and related service because his disability did not adversely affect his academic performance or ability to access the general education curriculum.

The Parents appealed:

- **(1) that the District did not wrongly refuse Parents' request for an evaluation;**
- **(2) that the District's refusal of Parents' request for an evaluation did not deprive Parents of their right to meaningfully participate in the decision-making process regarding the provision of a FAPE to Student;**
- **(3) that the District did not violate the IDEA by failing to timely respond to Parents for an Independent Educational Evaluation ("IEE"); and**
- **(4) that denial of reimbursement for the evaluation they obtained.**

APPEAL

DISTRICT COURT'S DECISION - FAILURE TO EVALUATE

If a parent's request for a special education evaluation puts the school district on notice that a student may have a disability, the school district must evaluate for that suspected disability.

The SST meeting did not meet the requirements of an "Evaluation."

RIGHT TO MEANINGFULLY PARTICIPATE

The Court found that the District violated IDEA by denying Plaintiffs the opportunity to meaningfully participate in the decision-making process regarding the evaluation.

The Court considered that the District not only refused to evaluate, but left Plaintiffs out of this decision entirely. Although the District told the Plaintiff they could attend and even invite advocates, the District held the meeting without them and informed Plaintiffs after the fact.

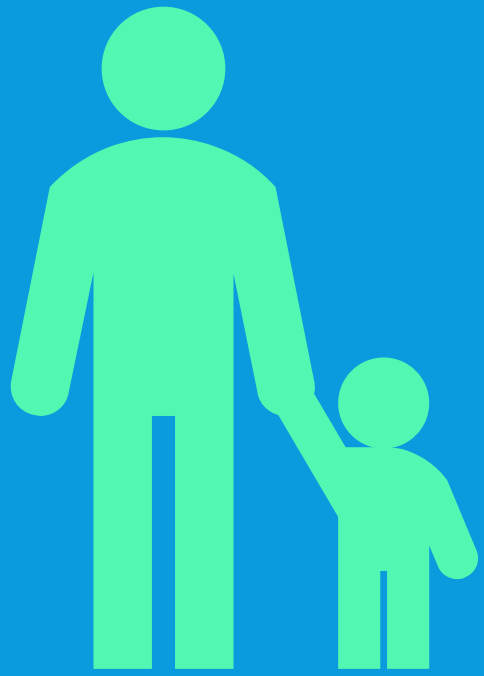
The Court also noted that the District excluded Parents' input by seemingly failing to consider the information that they had already provided as well as any additional information they could have provided about the Student's condition.

RIGHT TO MEANINGFULLY PARTICIPATE, CONT.

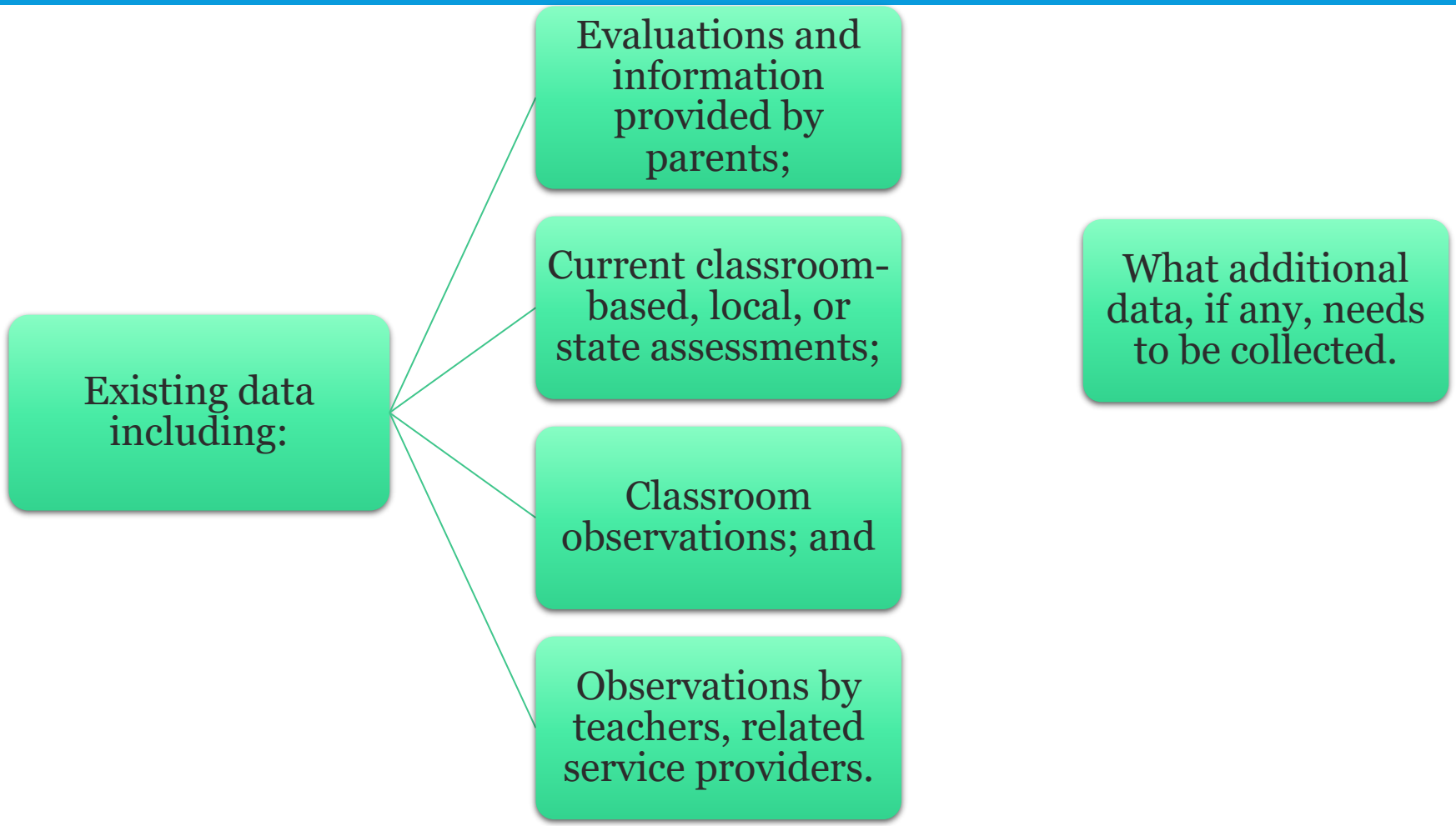
- **Additionally, the Court found that the PWN that the District sent did not give an accurate idea of what the SST had considered—or not considered—given that Dr. Moses's report and Dr. Castelo's report were erroneously listed as documents that were reviewed, and were not, in fact, reviewed.**
- **The Court found that all of these facts put together significantly impeded Plaintiffs' "opportunity to participate in the decision-making process regarding the provision of a FAPE" because they were excluded from deciding whether the Student should even be evaluated for eligibility for special education.**

RE-EVALUATION

- Each LEA must ensure that a re-evaluation of each child with a disability is conducted not more than once a year, unless parent and LEA agree otherwise; and at least once every 3 years, unless the parent and the LEA agree that a re-evaluation is unnecessary. SBOE Rule 160-4-7-.04-2(IDDF(04)).
- Should be conducted if student warrants re-evaluation based on the student's educational or related service performance or if the student's teacher or parent requests one.
- A re-evaluation must be conducted before determining that the child is no longer a child with a disability.



34 C.F.R. § 300.303; 34 C.F.R. § 300.305(e); SBOE Rule 160-4-7-.04(5)(f).



34 C.F.R. § 300.305; SBOE Rule 260-4-7-.04(5)(IDDF(4)(5))

ALWAYS CONSIDER

CAN DISTRICTS FOR-GO THE THREE YEAR RE-EVALUATION?

- The IDEA allows a district to forgo a three-year re-evaluation if the parent agrees that no new assessments are necessary.
- Districts can seek a waiver of the re-evaluation requirement before they review the existing data.
- A Court found that a District failed to comprehensively reevaluate a student with SLD during the six years following the student's initial eligibility evaluation, a Judge ordered the district to comprehensively reevaluate the student and revise the IEP to determine the appropriate disability classification, areas of need, and placement. The Judge then awarded **410 hours of academic tutoring and 30 hours of counseling services as compensatory education,** to be reduced by the hours of services the district already funded. District of Columbia Pub. Schs., 121 LRP 15672 (SEA DC 03/27/21)

WHEN CAN DISTRICTS FORGO THE THREE-YEAR RE-EVALUATION?

If a parent requests multiple re-evaluations in one year, the district will not necessarily be violating the IDEA when it does not conduct them all. This district successfully defended against a parent's complaint that the district failed to evaluate by showing that it had just performed a re-evaluation days beforehand. *In re: Student with a Disability*, 122 LRP 21770 (SEA WI 06/29/22).

An Ohio district's preference to wait until it could observe a student with OHI in-person supported its denial of requests from the parent to re-evaluate. *Amanda-Clearcreek Local School*, 121 LRP 28067 (SEA OH 07/19/21).

In situations where a public agency believes a re-evaluation is necessary, but the parent disagrees and refuses consent for a re-evaluation, the 2006 IDEA Part B regulations at 34 CFR 300.300 (c)(1)(ii) provide that the public agency may, but is not required to pursue the re-evaluation by using the consent override procedures described in 34 CFR 300.300(a)(3). See Questions and Answers on Individualized Educ. Programs (IEPs), Evaluations, and Re-evaluations, 111 LRP 63322 (OSERS 09/01/11).

If the District chooses not to pursue the re-evaluation by using the consent override procedures described in 34 CFR § 300.300(a)(3), and believes, based on a review of existing evaluation data on the child, that the child does not continue to have a disability or does not continue to need special education and related services, the District may determine that it will not continue the provision of special education and related services to the child.

FAILURE TO CONSENT FOR REEVALUATION

FROM THE TRENCHES

- Communicate with parents the benefits of a re-evaluation.
- Determine whether a full or partial re-evaluation is needed and document decision surrounding same.
- A comprehensive history of the child is important – re-evaluation is not just for eligibility purposes.
- When you encounter problem cases – one question to ask is, “When was this student last re-evaluated?”

FAILURE TO CONSENT, CONT.

- If the public agency determines that it will not continue the provision of special education and related services to the child, the public agency must provide the parent with prior written notice of its proposal to discontinue the provision of FAPE to the child consistent with 34 CFR § 300.503(a)(2), including the right of the parent to use the mediation procedures in 34 CFR § 300.506 or the due process procedures in 34 CFR §§ 300.507 through 300.516 if the parent disagrees with the public agency's decision to discontinue the provision of FAPE to the child.

This was a decision by the ALJ in a matter dealing with eligibility and evaluation.

Parents claimed that the evaluation was in violation of the Student's rights because it was not comprehensive in addressing OT needs.

Although the Parents argued they gave notice of motor needs, including a dysgraphia diagnosis, the Court held that due to the assessment by the psychologist showing that the Student was functioning in the average range the District met its obligation.

Additionally, the District was able to show that in the meeting with the parent, psychologist and other Team members to discuss areas in which the Student needed to be assessed, there was no discussion of motor deficits.

That along with the evidenced educational progress, the Judge denied the request for reimbursement. The ALJ used this same analysis to deny reimbursement for a private evaluation from a psychologist, LMB and expenses for tutoring and therapy.

REIMBURSEMENT FOR PRIVATE EVALUATION? FAYETTE CTY SCHOOL DISTRICT, 2006914 (MAY 27, 2021)

ELIGIBILITY

- A child or youth from 3 through 21 years of age is considered to have a disability under IDEA if the child or youth meets the eligibility criteria and needs special education and related services

FROM THE TRENCHES

- When is it worth fighting about eligibility?
- Eligibility is an entry way into special education - the IEP should be based on the student's individual needs, not on the student's eligibility category.
- But…eligibility categories do also provide that "snapshot" of a student such that if a teacher picks up a student's IEP there is an initial notion of the student's needs. Maybe this is why eligibility can be such a sensitive topic…

ELIGIBILITY- WHAT COURTS SAY

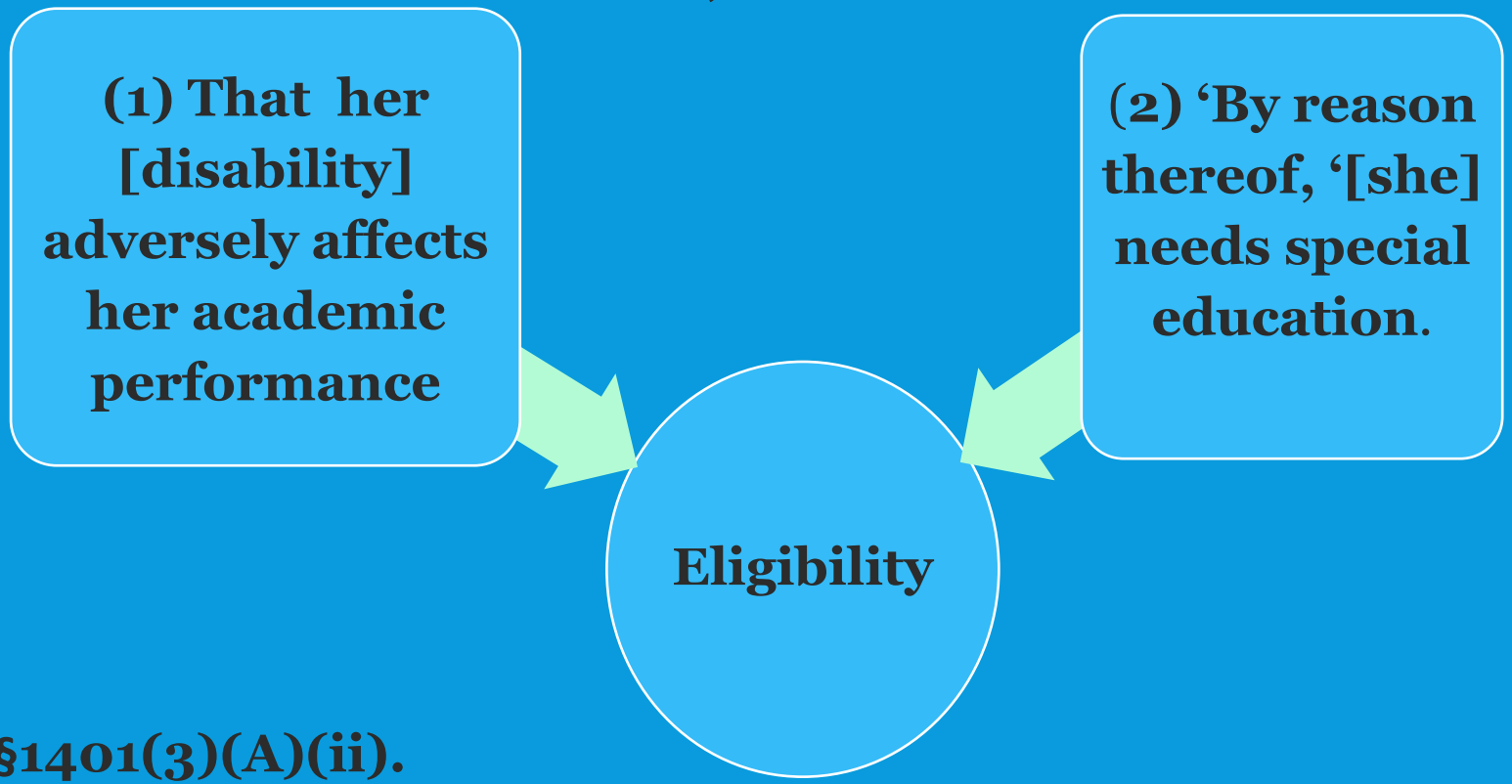
- A district should consider the services a student is already receiving in determining whether he requires special education. Evidence that a student with an impairment has made non-trivial educational progress after receiving general education interventions is a strong indicator that he does not require IDEA services. See, *e.g.*, *M.P. v. Arkansas Pass Indep. Sch. Dist.*, 67 IDELR 58 (S.D. Tex. 2016).

WHAT COURTS SAY, CONT.

- However, the eligibility team must distinguish between general education interventions and specialized instruction. Although the student in *L.J. v. Pittsburg Unified School District,* 116 LRP 37786 (9th Cir. 09/01/16), attended a general education fourth-grade class, he had the benefit of specially designed mental health services, a one-to-one behavioral aide, and accommodations that were not provided to his classmates. The district's classification of those services as general education interventions available to all students did not support its argument that the student had no need for special education services.

ERROR IN ELIGIBILITY?

One major issue in a case was whether the student was eligible for special education services. The Court relied on *Durbrow v. Cobb Cty. Sch. Dist.*, 887 F.3d 1182, 1193 (11th Cir. 2018), the Eleventh Circuit held that "to establish an entitlement to FAPE, a student . . . must show:



See 20 U.S.C. §1401(3)(A)(ii).

ERROR IN ELIGIBILITY, CONT.

"[N]either the IDEA nor the federal regulations define the term . . . 'adverse effect on educational performance,' leaving it to each State to give substance to [this term]." *J.D. ex rel. J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60, 66 (2d Cir. 2000).

ERROR IN ELIGIBILITY, CONT.

Courts have used the following to determine eligibility:

A student is unlikely to require special education if:

(1) the student meets academic standards;

(2) teachers do not recommend special education for the student;

(3) the student does not exhibit unusual or alarming conduct warranting special education; and,

(4) the student demonstrates the capacity to comprehend course material.

***Durbrow*, 887 F.3d at 1193-94; see *D.K. v. Abington Sch. Dist.*, 696 F.3d 223, 251 (3d Cir. 2012); *Alvin Indep. Sch. Dist. v. A.D.*, 503 F.3d 378, 383 (5th Cir. 2007); *Bd. of Educ. of Fayette Cty. v. L.M.*, 478 F.3d 307, 313-14 (6th Cir. 2007).**

ERROR IN ELIGIBILITY, CONT.

The student was making A's and B's, the teachers did not recommend special education and the student was comprehending material.

As a matter of fact, testing showed a reading comprehension level above grade level, even without specialized instruction

ACADEMIC PROGRESS AS A MEASURE FOR ELIGIBILITY

- But remember…
- Student found ineligible by district due to academic progress, court found District in violation of IDEA and awarded compensatory ed.
- "**Academic progress cannot serve as the sole 'litmus test' for eligibility.**"
- The fact that the student could achieve academically should have been measured in light of his "considerable intellectual potential."
- District should have looked beyond his academics at his significant attentional and behavioral issues impeding his progress.

G.D. ex rel. G.D. v. Wissahickon Sch. Dist., 832 F. Supp. 2d 455, 466 (E.D. Pa. 2011); See also, *Lauren P. ex rel. David and Annmarie P. v. Wissahickhon Sch. Dist.*, 310 Fed. Appx. 552 (3rd. Cir. 2009).

COBB COUNTY SCHOOL DISTRICT (DOCKET NO. 2203340)

The Parent refused to agree with eligibility and demanded autism in the first meeting, even though there was no autism diagnosis.

The day of the second meeting the Parent provided an autism diagnosis based on ratings scales filled out by a teacher prior to the medical event.

IEP meeting was tabled and then difficult to reschedule. When it was finally scheduled, the IEP team developed three goals and 120 minutes a week for two weeks while building rapport since the student had not been in school for over a year.

ELIGIBILITY

At the time of the eligibility meeting, the District considered the student's current diagnoses, including the recently added expressive-receptive language disorder and autism; documented the history of the student's present condition; and summarized the results of every assessment that had been attempted or completed, both those administered by the District and those administered by private providers.

The Eligibility meeting was actually two meetings. At the first meeting it was clear that Petitioner wanted an autism eligibility, but it was only at the second meeting that an actual autism diagnosis was provided.

The Team discussed the fact that some of the Student's behaviors were consistent with her diagnosis of autism but explained that a final decision regarding that eligibility category could not be made without a comprehensive speech evaluation per the State rules.

ELIGIBILITY, CONT.

There is no support for Petitioners' contention that O.L.'s eligibility determination was based on inaccurate or outdated information, or that the "IEP/Eligibility team refused to consider all of the information presented to them by [V.L.]."

Additionally, it was clear that the Team was willing to conduct those necessary assessments and then consider eligibility.

Petitioners' claim that the eligibility was based on inaccurate information stems from a handful of inconsequential errors in the eligibility report. The ALJ held that these claims were either false or inconsequential.

Even though the District did not immediately find the student eligible under the autism category this did not mean that the District did not consider that information.

ELIGIBILITY, CONT.

- The ALJ found that given that the provision of FAPE is not dependent on a child's particular eligibility category, Petitioners failed to prove that the Student's eligibility category prevented her from receiving FAPE.
- Petitioner also claimed the District violated the Student's rights when the eligibility meeting was delayed. The Judge attributed this delay to the parent; therefore, the District was not found in violation.

CONSENT FOR INITIAL PLACEMENT

REMEMBER CONSENT IS IMPORTANT

- Consent for an initial evaluation should not be construed as consent for initial placement.
- Must obtain informed consent in order to place a student and the LEA may not use due process procedures to override this consent.
- If a parent refuses to consent to initial placement the LEA will not be considered in violation of the requirement to make FAPE available.
- If a parent gives consent, he/she may later revoke that consent and should be provided with notice at that time.
- 34 C.F.R. § 300.300(b)

- *West Haven Bd. of Educ.*, 120 LRP 35616 (SEA CT 03/16/20) (finding no IDEA violation where the district did not provide the student special education after the parent refused to provide consent to the initial provision of services).
- A district has no obligation to provide FAPE to a child with a disability when the parents deny consent for the provision of services. However, a parent's rejection of one or more IEP components, such as placement, does not necessarily mean the parent has denied consent for the provision of services as a whole. See *A.H. v. Clarksville County Sch. Sys.*, 73 IDELR 237 (M.D. Tenn. 2019) (ruling that because a parent's refusal to consent to a district's overly restrictive placement offer did not amount to a rejection of special education services, the district's failure to provide special education services to the 3-year-old child with Down syndrome in the least restrictive environment was a denial of FAPE).

WHAT DO COURTS SAY?

IEP MEETING NOTICE

NOTICE TO PARENTS AND PARTICIPANTS

What is in the notice?

- The invitation/notice to the IEP Team meeting shall indicate the purpose, time, and location of the meeting, participants who will be in attendance, and inform the parents of their right to invite other individuals who, in their opinion, have knowledge or special expertise regarding their child, including related services personnel.

When do I send the notice?

- It shall be sent early enough to ensure that the parent/guardian has an opportunity to attend the meeting.

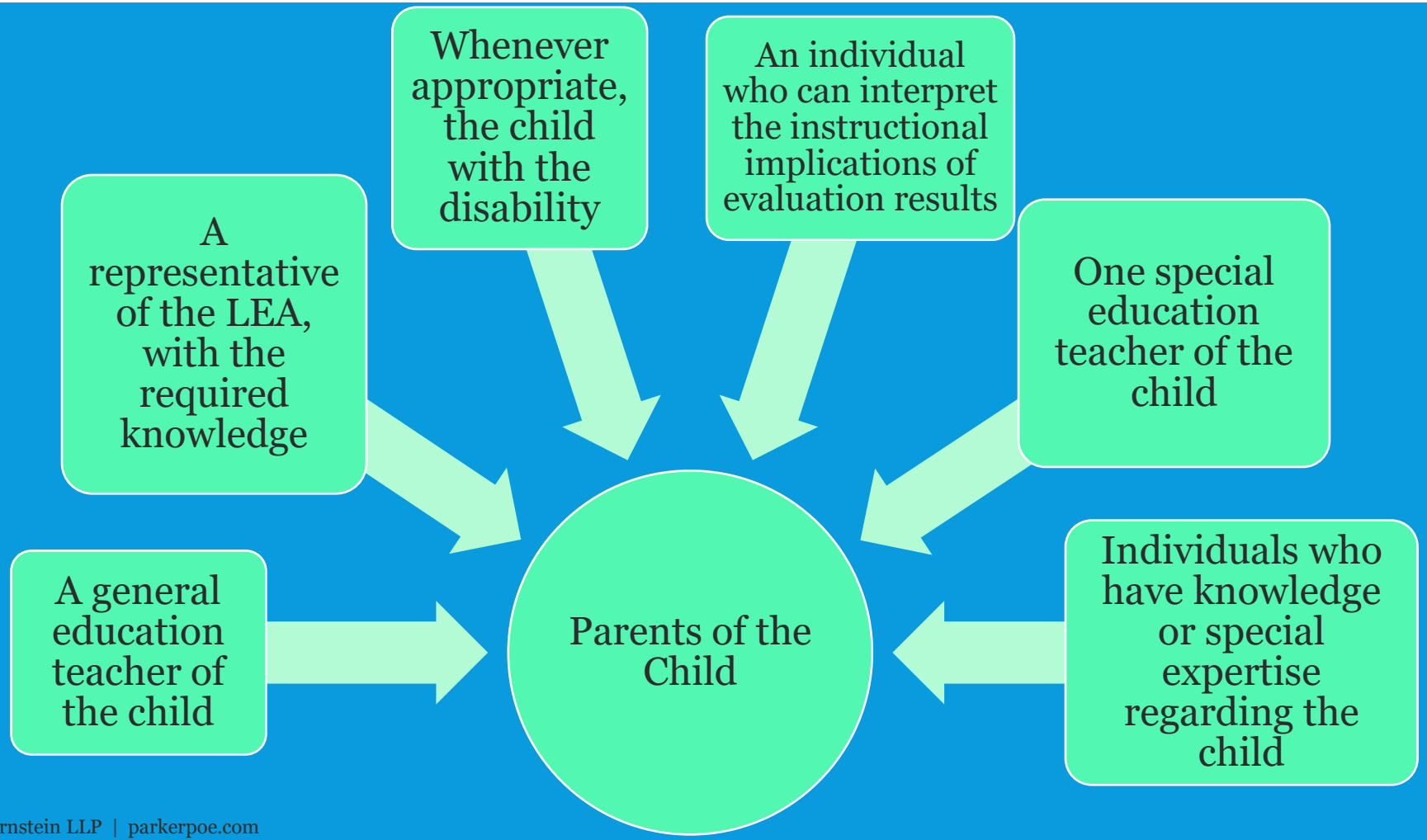
Where should the meeting be held?

- The meeting shall be set at a mutually agreed upon time and place.

FROM THE TRENCHES

- Notice of meeting does not have to provide specific names of participants.
- Many Districts have an internal procedure (written or unwritten) to send notices 10 days before the meeting, but the law does not require that.
- If you plan on implementing a time limit, the notice is the best place to have that information.
- What about sticky custody situations?

IEP TEAM MUST INCLUDE THE FOLLOWING PARTICIPANTS:



PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE

- Should contain at least the following:
  - The strengths of the child;
  - The results of the initial or most recent evaluation of the child;
  - The results, as appropriate, of the child's State or District wide assessments; and
  - The academic, developmental, and functional needs of the child.

SBOE Rule 160-4-7-.06(1)(a) and (18)(a)(IDDF (6))

- The IEP team must consider the following:
  - The child's behavior and whether it is interfering in the student's learning or that of others, consider positive behavioral interventions and supports and other strategies to address behavior in the IEP or BIP;
  - The student's limited English proficiency;
  - The need for instruction or use of Braille if the student is blind or visually impaired;
  - The communication needs of the student; and
  - The student's needs for assistive technology devices and services.

SBOE Rule 160-4-7-.06(18)(b)(IDDF (6))

SPECIAL FACTORS

DEVELOPMENT OF BIP

- Regardless of whether a district conducts an FBA of an IDEA-eligible student, it must ensure that the student's behavioral intervention plan or IEP adequately addresses her behaviors.
- A district that offers inadequate or ineffective behavioral interventions significantly increases its chances of being found liable for a denial of FAPE.
- Not only did the district in this case wait six months to conduct an FBA, but the interventions it eventually offered had no meaningful impact on the child's behavior.
- The district could have avoided a FAPE claim by ensuring the IEP team had adequate information about the child's behavioral needs.
- S.S., et al., v. BOARD OF EDUCATION OF HARFORD COUNTY, et al., Defendants, 120 LRP 32989 (October 27, 2020).

If a district does not understand why a student engages in certain behaviors, it cannot offer service providers effective strategies to address them.

The BIP at issue here focused solely on "noncompliance." That misclassification of the student's behavioral issues, coupled with the district's failure to identify the reasons for her "noncompliant" behaviors, made the BIP deficient.

Paris School District v. A.H., by and through her parent, 69 IDELR 243 117 LRP 12828 (2017).

A systematic process for defining a child's specific behavior and determining the reason why (function or purpose) the behavior is occurring. The FBA process includes examination of the contextual variables (antecedents and consequences) of the behavior, environmental components, and other information related to the behavior.

The purpose of conducting an FBA is to determine whether a Behavioral Intervention Plan should be developed and if so, to assist the Team in identifying appropriate interventions.

Or to address problem behavior that the BIP does not impact currently.

Do you need an expert?

SBOE Rule 160-4-7-.21(20) Definitions

WHAT EXACTLY IS A FUNCTIONAL BEHAVIOR ASSESSMENT?

WHAT IS A BEHAVIOR INTERVENTION PLAN?

- A plan for a child with disabilities, included in the IEP when appropriate, which uses positive behavior interventions, supports and other strategies to address challenging behaviors and enables the child to learn socially appropriate and responsible behavior in school and/or educational settings.

SBOE Rule160-4-7-.21(7) Definitions

PARENTAL CONCERNS

This section should contain all parental concerns related to the education of their child and any other issues that they would like to be addressed by the Team.

SBOE Rule 160-4-7-.06(18)(a)(2)(IDDF (6))

PARENTAL PARTICIPATION LEGAL REQUIREMENT

- IDEA “guarantee[s] parents both an opportunity for meaningful input into all decisions affecting their child’s education and the right to seek review of any decisions they think inappropriate.”

- “We decline to deem "meaningful participation" to require perfect comprehension by parents of all aspects of a student's IEP.”
- Violation has to deny FAPE.

- When the parents of a child with a disability are divorced, the parental rights under the IDEA apply to both parents, unless a court order or other state law specifies otherwise. 71 Fed. Reg. 46,568 (2006). See *Cape Henlopen Sch. Dist.*, 114 LRP 35279 (SEA DE 08/04/14) (A judicial decree giving a child's mother the final word on educational decisions meant that the father was no longer a "parent" under the IDEA definition and wasn't entitled to attend IEP meetings.).

WHO CAN PARTICIPATE?

FROM THE TRENCHES

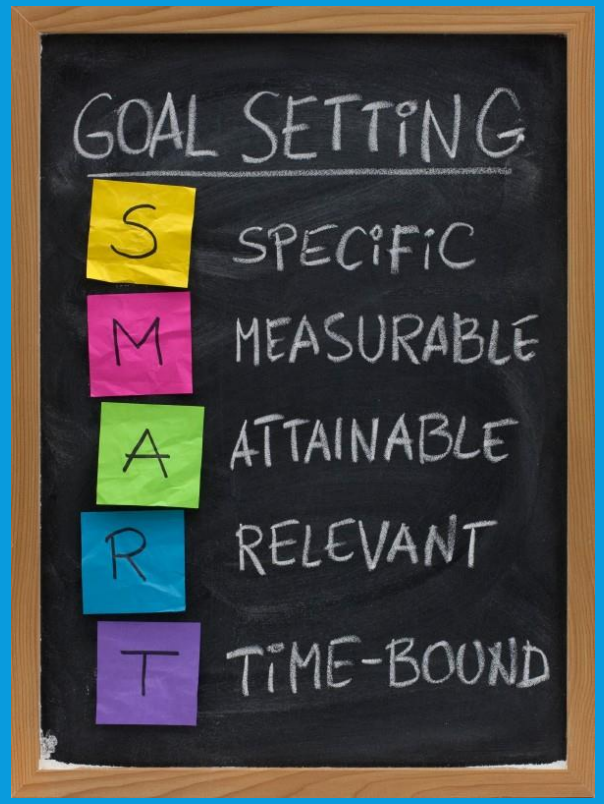
- Always be the most reasonable in the room to show parental participation.
- Give parents significant leeway in this section.
- Make sure and continually add to this section throughout the meeting, if needed.
- If a parent wants to attach a document to the IEP – allow it.
- Allow the Parent to read.
- Respond to parent concerns during the meeting, if at all possible and where appropriate.

"A statement of measurable annual goals, including academic and functional goals designed to (1) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (2) meet each of the child's other educational needs that result from the child's disability."

SBOE Rule 160-4-7-.06(1)(b)(IDDF (6))

GOALS AND OBJECTIVES

HOW DO WE WRITE GOALS?



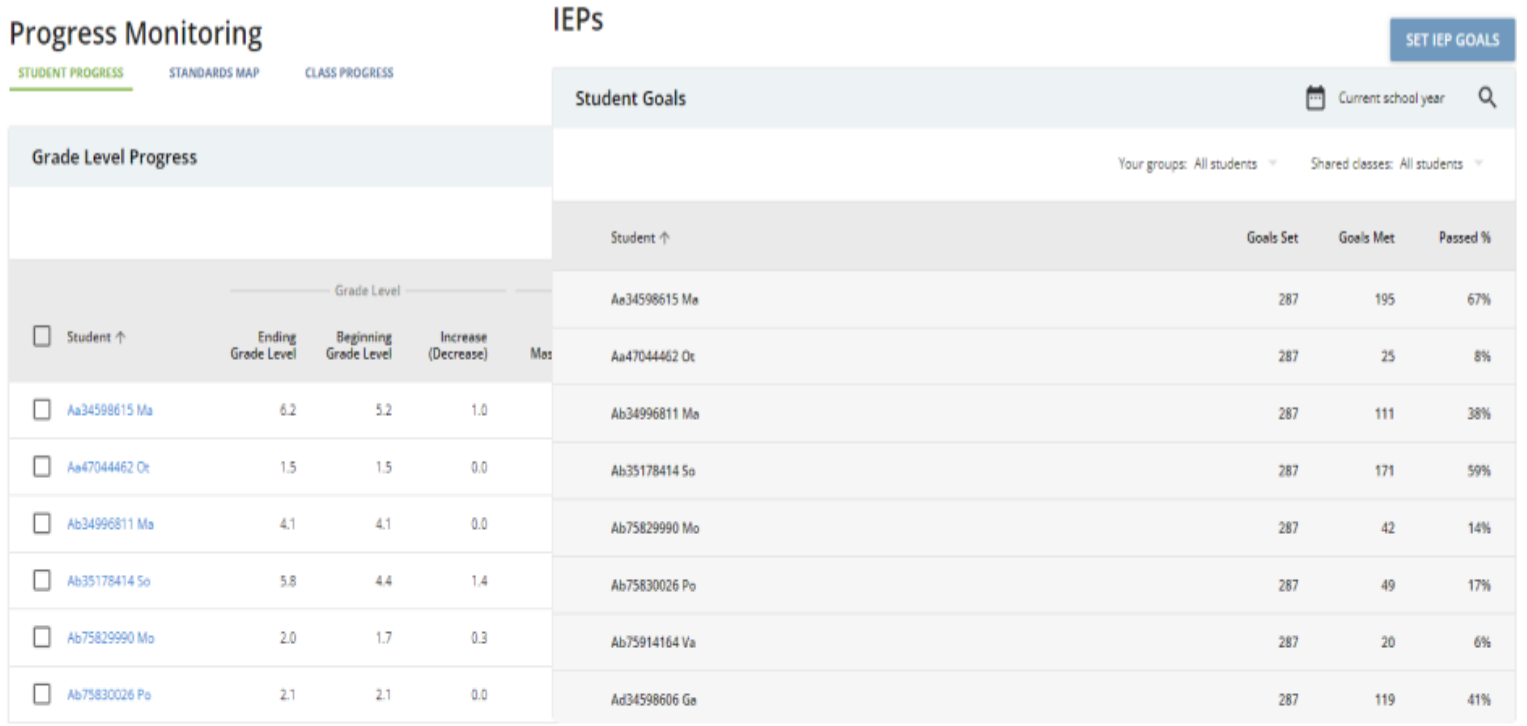
- Goals don't necessarily need to detail every step of the measurement process. In *Oregon Department of Education*, 115 LRP 17208 (SEA OR 03/27/15), the Oregon Department of Education explained that while IDEA regulations require a description of how a district will measure a child's progress and when periodic reports will be provided, the regulations do not list rigid requirements for what to include in an annual goal. The state ED noted that the IEP in this case proposed to measure a 13-year-old's progress in reading with a curriculum-based measurement probe at a rate of 127 correct words per minute for a sixth-grade level text.
- The parent argued that the IEP should explain what probe would be utilized, how it would be utilized, and the exact methods for providing data to the parent. But the state ED pointed out that the IEP goals already contained all the elements required by the IDEA. The drafters of the IDEA's regulations decided against requiring more specificity regarding IEP goals, the state ED remarked, citing 71 Fed. Reg. 46,664 (2006).

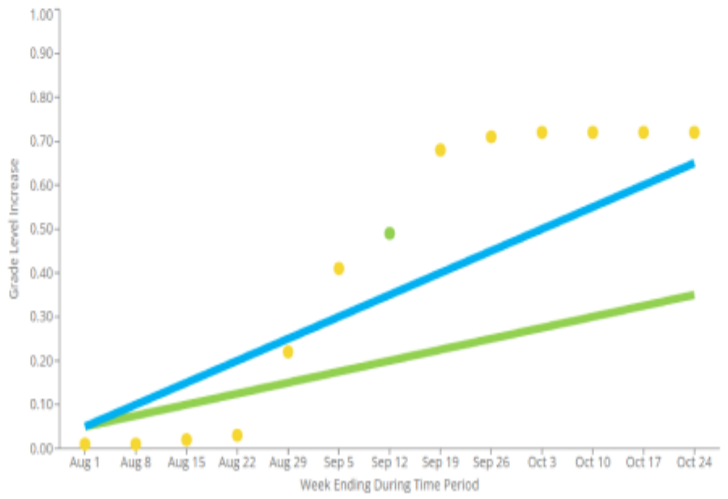
STRANGER TEST…

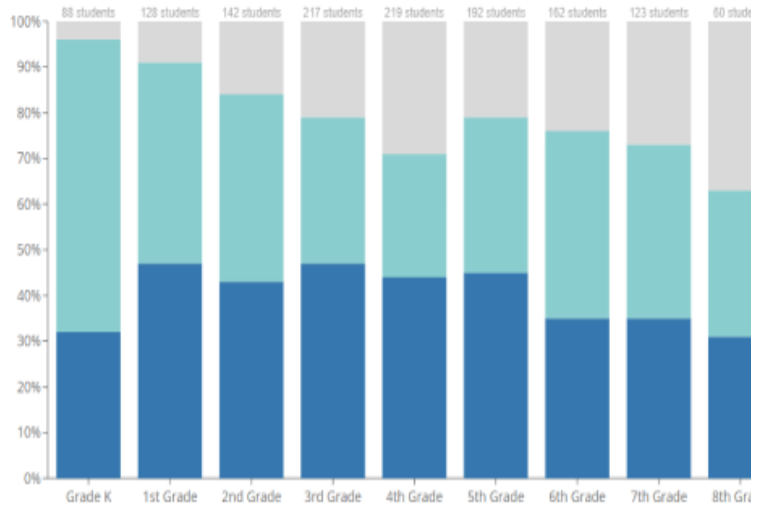
- One administrative law judge suggested that a well-written IEP goal should pass the "stranger test." Under that test, an IEP goal is appropriate if a person unfamiliar with the IEP would be able to implement the goal, implement the assessment of the student's progress on the goal, and determine whether the student's progress was satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006).

FROM THE TRENCHES

- Make sure the Goals and Objectives are measurable – no really.
- Make sure the data you have taken matches up to the goals (Ex. Is listening comprehension the same as reading comprehension?)
- Make sure you know a student's baseline going into the meeting – or are prepared to measure it.
- You should not have goals that re-state the State standards or are just goals to get good grades.





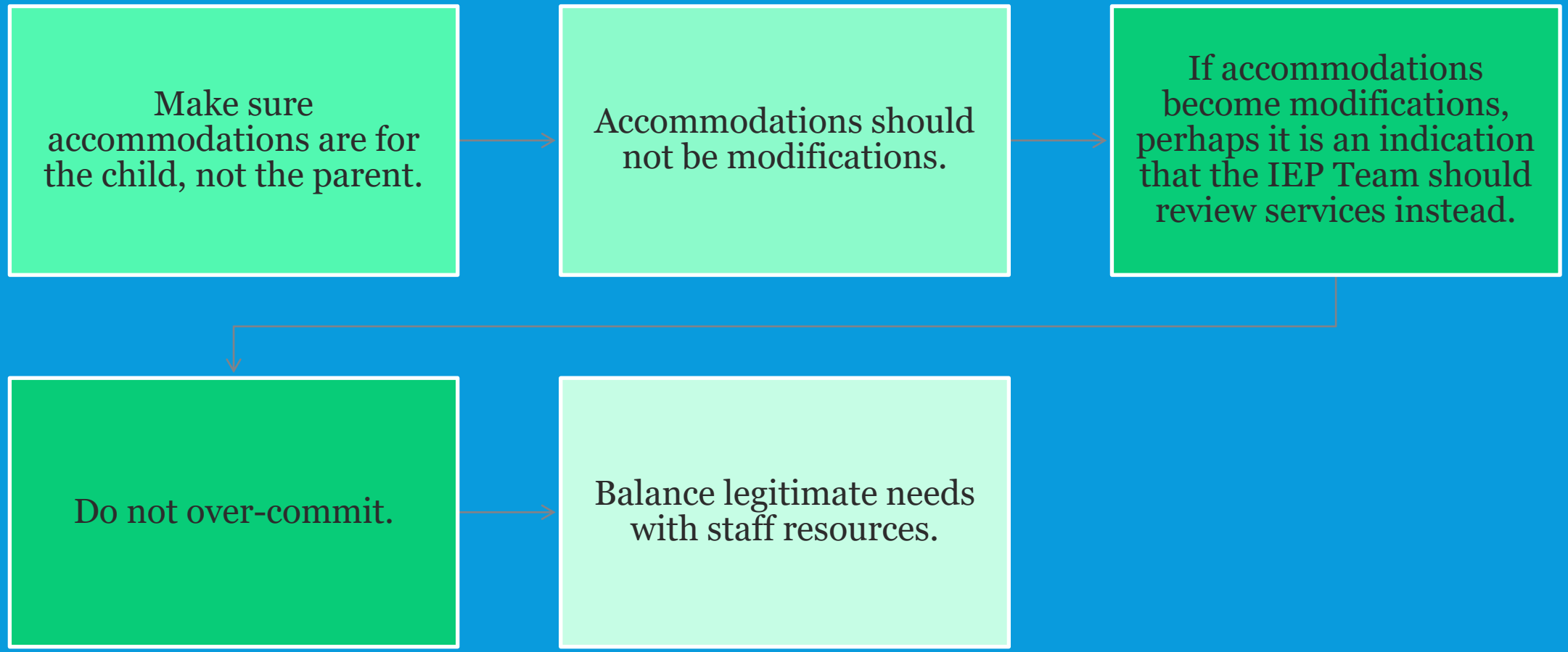


ACCOMMODATIONS / STUDENT SUPPORTS

- The IEP must include instructional and classroom testing accommodations and student supports and/or supports for personnel to allow the student to advance appropriately toward attainting annual goals, be involved in and make progress in the general curriculum, be educated in and participate with other children in academic, nonacademic and extracurricular activities.
- The IEP must also include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments.

SBOE Rule 160-4-7-.06(1)(e)(IDDF (6))

FROM THE TRENCHES



PLACEMENT

- In determining the educational placement of a child with a disability, each LEA must ensure that the placement decision is:

  (1) made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

  (2) made in conformity with the LRE provisions contained in the State rule;

  (3) made at least annually, is based on the child's IEP and is as close as possible to the child's home.

34 C.F.R. § 300.114; SBOE Rule 160-4-7-.07(IDDF(07))

- A district has a right to be concerned about a student's aggressive or violent behaviors. However, those concerns by themselves cannot dictate the student's placement on the LRE continuum; the district must consider whether it can meet the student's needs in a less restrictive setting. Here, psychologists testified that the student was on "high alert" throughout the school day because he was frightened of authority figures. Their testimony that the student was highly intelligent and motivated to succeed convinced the court that the student could excel in a general education setting with appropriate services and supports. *Troy Sch. Dist. v. K.M.*, 65 IDELR 91 (E.D. Mich. 2015).

WHAT DO COURTS SAY?

CHANGE OF PLACEMENT

- A change in location is not always a change in placement. A placement is a point along the child's continuum of placement options, while a location is the physical location where the child receives related services, such as a classroom. However, a change in location may rise to a change in placement if the change in location substantially alters the student's educational program. 71 Fed. Reg. 46,588 (2006). See *Letter to Fisher*, 21 IDELR 992 (OSEP 1994).

Least Restrictive Environment (LRE)

Each LEA shall have policies and procedures to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions and other care facilities in Georgia shall be educated with children who are not disabled.

Special classes, separate schooling or other removal of children with disabilities from the regular class environment shall occur only when 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. 34 C.F.R. § 300.114(a)(2)(i), (ii).

FAPE AND LRE: UNDERSTANDING WHAT THEY MEAN

FAPE - WHAT IS IT AND HOW HAS IT CHANGED?

- In *Rowley*, the Supreme Court established the following two-part test that courts should use to decide the appropriateness of a student's education:
  - Has the district complied with the procedures set forth in the IDEA?
  - Is the IEP, developed through the IDEA's procedures, reasonably calculated to enable the child to receive educational benefits?
- The Supreme Court held that when this two-part test is satisfied, the district has complied with the obligation imposed by Congress, and it is required to do no more.

ROWLEY ACKNOWLEDGED - ONE SIZE FITS ALL- WON'T WORK

Articulating a one size-fits-all standard is not an achievable goal for a statute that applies to students with differing abilities. For example, it applies equally to a deaf child, a child learning to eat, to dress, and to toilet represents education, as well as to a child with superior cognitive skills but behavioral challenges.

While courts have used different adjectives to describe the educational benefits required by *Rowley*, *Rowley* has proved to be a remarkably durable decision in a complex and fact-intensive area of the law.

ENDREW F. V. DOUGLAS COUNTY SCHOOL DISTRICT, 137 S. CT. 988, 999, 197 L. ED. 2D 335 (2017).

- The Court focused on the requirement for a student-by-student analysis: "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."
- But there is still no guaranteed outcome:
- "… his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have a chance to meet challenging objectives."

There must be data to support that the student is making progress;

This does not necessarily mean the student has to be making good grades;

Progress needs to be evidenced within the goals and objectives;

Be careful when repeating the same goals and objectives year after year; and

What is important to know is educational benefit looks different for every student.

EVIDENCE OF PROGRESS IS KEY.

TRANSITION AND ENTITLEMENT TO FAPE THROUGH AGE 21

Beginning not later than 9th grade or age 16 (whichever comes first) or younger if determined by the IEP Team (and updated annually), the IEP must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills and transition services needed to assist the student in reaching those goals.

Special Education students are entitled to services through age 21 unless they graduate with a regular education diploma.

If a student is receiving services upon reaching age 22, the District shall have a written procedure identifying the process for completing the services – whether the services will cease on the student's birthday or continue until the end of the semester or school year.

PROCEDURAL VIOLATIONS…NO ONE IS PERFECT

- When a complaint alleges a procedural violation, an ALJ may only find the child was denied a FAPE if the procedural violations: "(I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits." 20 U.S.C § 1415(f)(3)(E)(ii).

DISCIPLINING STUDENTS WITH DISABILITIES

BASIC RULES

A disabled student may not be discriminated against on the basis of disability.

A “change in placement” for an IDEA student requires an IEP team meeting decision.

IDEA requires IEP teams to conduct a Manifestation Determination Review (MDR) within 10 school days of any decision to change placement because of a violation of the code of conduct.

At the MDR, the MDR team must determine whether the student's misconduct was caused by his or her disabilities.

WHAT IDEA SAYS

WHAT IS A CHANGE IN PLACEMENT?

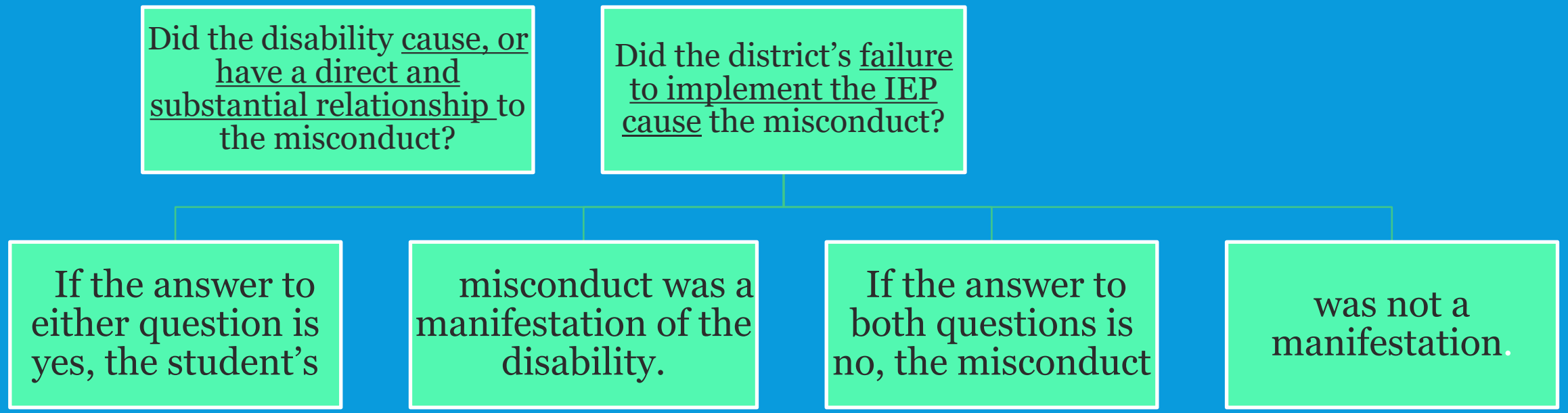
Removal for more than 10 consecutive school days; or

A series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year; based on length of removals, total time of removal, proximity of removals to each other and the type of behavior involved.

Who decides what is a change in placement?

WHAT INFORMATION DOES THE TEAM CONSIDER?

- All relevant information in the student's file;
- The child's IEP;
- Teacher observations;
- Relevant information provided by the parent; and
- Relevancy is determined by the questions before the Team.



WHAT DOES THE MDR TEAM DECIDE?

IF IT IS A MANIFESTATION

Conduct	Modify	Return
Conduct FBA and implement BIP, if this has not already been done;	If there is a BIP, modify it as necessary to address behavior; and	Return student to placement unless there is agreement to change placement.

IF IT IS NOT A MANIFESTATION

CONDUCT

- Conduct FBA and implement BIP, if appropriate;

MODIFY

- If there is a BIP, modify it as appropriate to address behavior; and

DISCIPLINE

- Discipline the student just as you would discipline students without disabilities…
  - Remember you still must provide services!

ANY EXCEPTIONS?

- There is no exception to the basic rule that schools may not discontinue services to special education students.
- However, students may be placed in interim alternative setting for 45 days (regardless of manifestation) for certain offenses:
  - Weapons;
  - Drugs; or
  - Infliction of serious bodily injury to another person.

All decisions are made by the IEP Team.

Parents may address their disagreements through the IEP process and any disagreements that remain with the decision of the IEP Team through multiple avenues including:

- Due process hearing request;
- 504 hearing request;
- DOE Complaint;
- Intercession;
- Complaints/Grievances as set out in your board policies; or
- OCR Complaints.
- “Stay Put” (where the student’s “stays put” in the last agreed upon placement) is implemented in the even that a parent files a due process hearing request pursuant to IDEA.

DISAGREEMENTS

REMEMBER:

Parents Sue:

When they, no longer :

- trust the school administrators or teachers;
- When they don't receive timely and useful information;
- When they believe educators do not care what happens to their children; or
- When they perceive communication to be rude and demeaning.

ONCE YOU HAVE MADE IT THROUGH ALL OF THAT….(WHEW!)….
WELCOME TO THE WORLD OF SPECIAL EDUCATION.

Session Evaluation

https://www.research.net/r/SELDA_Nov23_Post

December SELDA

December 7th
9:00

Virtual

Thank you G-CASE for Lunch

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